KA
174
.P87
R42
v.30

UNITED STATES OF AMERICA

Federal Power Commission Reports

Opinions, Decisions, and Orders

Volume 30

JULY 1, 1963–DECEMBER 31, 1963

Reported by the Commission

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1966

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., 20402.
Price $5.50 cloth

FEDERAL POWER COMMISSION

COMMISSIONERS*

LEE C. WHITE, *Chairman*

CARL E. BAGGE, *Vice Chairman*

LAWRENCE J. O'CONNOR, Jr.

CHARLES R. ROSS

DAVID S. BLACK

JOSEPH H. GUTRIDE, Secretary

*The Commissioners in this period of 1963 were Joseph C. Swidler, Howard V. Morgan, Lawrence J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

CONTENTS

	Page
Members of the Commission	II
Tables of Commission Opinions, Initial Decisions Which Have Become Final, and General Rule Making Orders	IV
Tables of Cases Reported	V
Tables of Cases Cited	XXV
Table of Statutes Cited	XXXIII
Table of Rules of Commission Cited	XXXVII
Table of Miscellaneous Citations	XLI
Foreword	XLIII
Opinions, Decisions, and Orders	1
List of Producer Orders	1663
Index-Digest	1723
Subject-Index	1753

This volume should be cited "30 FPC———".

COMMISSION OPINIONS

Opinion No.		Page
378–A	Texas Eastern Transmission Corp., et al., docket No. G–12446, et al	153
381–A	Pacific Power & Light Co., project No. 2082	499
383–A	Texaco Seaboard, Inc., et al., docket No. CI61–118, et al	613
390–A	El Paso Natural Gas Co., et al., docket No G–17849, et al	479
393	El Paso Natural Gas Co., et al., docket No. G–16235, et al	77
394	Midwestern Gas Transmission Co., et al., docket No. G–16841, et al	150
395	Montana-Dakota Utilities Co., et al., docket No. CP61–234, et al	200
396	Cities Service Gas Co., docket No. G–18799	158
397	Medina Gathering Corp., et al., docket No. CP62–194, et al	227
398	Placid Oil Co., et al., docket No. G–13183, et al	283
398–A	Placid Oil Co., et al., docket No. G–13183, et al	682
399	United Gas Pipe Line Co., et al., docket No. CP60–36, et al	329
400	Midwestern Gas Transmission Co., et al., docket No. CP61–303	469
401	United Gas Pipe Line Co., docket No. CP62–161	560
402	American Louisiana Pipe Line Co., et al., docket No. G–2306, et al	698
403	Tennessee Gas Transmission Co., et al., docket No. G–16842, et al	759
404	Northern Natural Gas Co., et al., docket No. CP62–85, et al	859
405	Continental Oil Co., et al., docket No. G–16966, et al	891
406	Transcontinental Gas Pipe Line Corp., docket No. G–10000	1044
407	Morris Mizel, et al., docket No. RI63–205	1103
408	Graridge Corp. (Operator), et al., docket No. G–19246, et al	1156
409	East Tennessee Natural Gas Co., docket No. CP63–212	1197
410	Panhandle Eastern Pipe Line Co., docket No. CP63–159	1260
411	South Carolina Electric & Gas Co., project No. 2315	1338
412	Hassie Hunt Trust, Operator, et al., docket No. G–19115, et al	1438
413	Tennessee Gas Transmission Co., et al., docket No. CP61–106, et al	1477

INITIAL DECISIONS WHICH HAVE BECOME FINAL

Citizens Utilities Co., project No. 2306		1213
Columbia Gulf Transmission Co., et al., docket No. CP62–89, et al		831
Johnston, C. N., et al., docket No. G–9136, et al		623
Lynchburg Gas Co., et al., docket No. RP63–5		934
Michigan Wisconsin Pipe Line Co., et al., docket No. CP63–230, et al		1239
Town of Poseyville, Indiana, The, docket No. CP63–224		663
Village of Greenup, Illinois, et al., docket No. CP63–157, et al		28

GENERAL RULE MAKING ORDERS

Order No.		
258–A	Docket No. R–195	541
269	Docket No. R–238	427
270	Docket No. R–245	443
271	Docket No. R–227	850
272	Docket No. R–228	1333
273	Docket No. R–251	1370
274	Docket No. R–247	1372
275	Docket No. R–252	1435
276	Docket No. R–226	1539

TABLE OF CASES REPORTED

	Page
A. J. Industries, Inc., project No. 2307	1064, 1570
Ahern, T. J., et al., docket No. G–16705, et al	1056
*Alabama-Tennessee Natural Gas Co., et al., docket No. CP62–133, et al	759, 1287
Alabama-Tennessee Natural Gas Co., et al., docket No. CP63–254, et al	1078
Alabama-Tennessee Natural Gas Co., docket No. RP63–15	1425
Algonquin Gas Transmission Co., et al., docket No. CP60–124, et al	640
Algonquin Gas Transmission Co., docket No. CP63–97	438
Algonquin Gas Transmission Co., docket No. CP63–322	696
Algonquin Gas Transmission Co., et al., docket No. CP64–6, et al	1559
Amerada Petroleum Corp., et al., docket No. G–18346, et al	1130
Amerada Petroleum Corp., Operator, et al., docket No. G–20200, et al	1130
*Amerada Petroleum Corp., et al., docket No. CI61–1133, et al	200, 677
Amerada Petroleum Corp., et al., docket No. CI62–1544, et al	681
Amerada Petroleum Corp., et al., docket No. RI62–505, et al	627
*American Gas Co. of Wisconsin, Inc., et al., docket No. CP63–34, et al	859
*American Louisiana Pipe Line Co., et al., docket No. G–2306, et al	363, 698, 1211
American Louisiana Pipe Line Co., et al., docket No. G–18419, et al	76
American Louisiana Pipe Line Co., docket No. CP64–28	1071
American Natural Gas Producing Co. (Operator), et al., docket No. CI61–1246, et al	1280
Anadarko Production Co., docket No. CI62–1307, et al	350
Appel, Edna and Weber, et al., project No. 568	1238
Area Rate Proceeding, et al., docket No. AR61–2, et al	400, 402, 512, 627, 647, 1038, 1093, 1316, 1350
Area Rate Proceeding (Hugoton-Anadarko Area), et al., docket No. AR64–1, et al	1354
Area Rate Proceeding (Texas Gulf Coast Area), et al., docket No. AR64–2, et al	1354
Arizona Power Authority, project No. 2248	494

*Designates case as an opinion or decision.

Page

Arkansas Louisiana Gas Co., docket No. G–15187 757
Arkansas Louisiana Gas Co., et al., docket No. CP61–163, et al. 1615
Arkansas Louisiana Gas Co., docket No. CP61–311 364
Arkansas Louisiana Gas Co., docket No. CP63–352 1385
Arkansas-Missouri Power Co., et al., docket No. CP62–20, et al 640
Arkansas Power & Light Co., docket No. E–6709 1565
Arnold, Agnes Cullen, et al., docket No. G–17207, et al 550
Arnold, Isaac, et al., docket No. CI60–237, et al 550
Arnold, Isaac, et al., docket No. CI64–6, et al 1297
*Ashland Oil & Refining Co., et al., docket No. CI60–350, et al. 479
Atlantic Refining Co., The, et al., docket No. G–11904, et al. 1376
*Atlantic Refining Co., The (Operator), et al., docket No. No. G–17571, et al 479, 636
Atlantic Refining Co., The, et al., docket No. G–17741, et al. 402, 647, 1316
Atlantic Refining Co., The, et al., docket No. RI64–129 758
*Atlantic Seaboard Corp., et al., docket No. RP63–5 934
*Atlas Exploration Co., Operator, et al., docket No. CI62–760, et al 227
Austral Oil Co., Inc., et al., docket No. G–17563, et al 693
Austral Oil Co., Inc., et al., docket No. G–17797, et al 402, 647, 1316
Bahovec, Fred, project No. 1185 1284
Baldosser, Charles C., Carole L., and Clyde G., et al., project No. 433 408
*Benedum, Paul, et al., docket No. CI62–696, et al 227
*Benedum–Trees Oil Co., Operator, et al., docket No. CI62–694, et al 227
*Benedum–Trees Oil Co., et al., docket No. CI62–695, et al 227
*Berkshire Oil Co., et al., docket No. G–13197, et al 283
Bolles, Kenneth J., project No. 1815 529
Bradco Properties, Inc., et al., docket No. CI60–88, et al 1580
Brady, Austin, et al., docket No. RI62–100, et al 495
Bridwell Oil Co., et al., docket No. G–19582, et al 1056
British-American Oil Producing Co., The (Operator), et al., docket No. G–14515, et al 1309
British-American Oil Producing Co., The, et al., docket No. G–18445, et al 1309
*Britton, Paul L., Jr., Operator, et al., docket No. CI62–732, et al 227
Brown Co., project No. 2311 1397
Brown, George R., et al., docket No. G–18131, et al 1597
Brown, George R. (Operator), et al., docket No. CI60–580, et al 1597

Page

Brown, H. L., et al., docket No. G–20010, et al. 1056
Brown, Herman, et al., docket No. CI61–709, et al. 1600
Burnett, H. N., docket No. RI64–334 1384–A
Cabot Corp., et al., docket No. CI60–414, et al. 1084
California Co., The, a division of California Oil Co., docket No. G–16167, et al. 448, 692
California Electric Power Co., et al., docket No. E–7106 942
California Electric Power Co., docket No. E–7107 461
California Electric Power Co., docket No. E–7133 1362
California Electric Power Co., et al., project No. 325, et al. 889
California–Pacific Utilities Co., et al., docket No. CP62–200, et al. 16
*Callery Properties, Inc., et al., docket No. G–17340, et al. 283, 682
Carnegie Natural Gas Co., docket No. CP63–282 485
Carnegie Natural Gas Co., docket No. CP64–26 988
Carr, F. William (Operator), et al., docket No. RI64–121, et al. 638
*Casey, Illinois, City of, et al., docket No. CP62–188, et al. 759, 1287
Central Illinois Public Service Co., docket No. CP63–294 487
Central Illinois Public Service Co., docket No. CP63–312 555
Central Maine Power Co., project No. 2194 1022
Chandeleur Pipe Line Co., docket No. CP64–37 1515
Chicago District Pipeline Co., docket No. RP64–5 1517
Cincinnati Gas & Electric Co., The, docket No. E–7125 641, 1427
*Cities Service Gas Co., docket No. G–18799 158, 623, 676
Cities Service Gas Co., docket No. CP63–188, et al (Phase I) 1302
Cities Service Gas Co., docket No. CP63–188 (Phase II) 1612
Cities Service Gas Co., docket No. CP63–278 22
Cities Service Gas Co., docket No. CP63–304 383
Cities Service Gas Co., docket No. CP63–345 1100
Cities Service Gas Co., docket No. CP63–349 651
Cities Service Gas Co., docket No. CP64–83 1585
Cities Service Gas Co., docket No. CP64–84 1587
Cities Service Production Co., et al., docket No. RI64–129 758
*Citizens Utilities Co., project No. 2306 1213, 1437
Colorado Interstate Gas Co., et al., docket No. G–15811, et al. 410
*Colorado Interstate Gas Co., et al., docket No. G–16904, et al. 77, 643
Colorado Interstate Gas Co., et al., docket No. CP61–143, et al. 1615
Colorado Interstate Gas Co., docket No. CP63–197 1589
Colorado Interstate Gas Co., docket No. CP63–324 605
Colorado Interstate Gas Co., et al., docket No. CP63–344 (Phase I), et al. 356
Colorado Interstate Gas Co., docket No. CP64–60 1392

Page

Colorado Interstate Gas Co., docket No. RP64–1 24
Colorado Oil and Gas Corp., et al., docket No. CI60–721, et al 1548
Colorado-Wyoming Gas Co., docket No. CP63–347 827
Colorado-Wyoming Gas Co., docket No. RP64–2 25
*Columbia Gulf Transmission Co., et al., docket No. CP62–89, et al 831
Columbia Gulf Transmission Co., et al., docket No. CP64–1, et al 1297
Columbian Fuel Corp., et al., docket No. CI62–1068, et al 1580
Comision Federal De Electricdad, et al., docket No. E–6489 55
Community Public Service Co., docket No. E–7102 ..... 71, 385
Community Public Service Co., docket No. E–7116 531
*Continental Oil Co., et al., docket No. G–12432, et al 153
*Continental Oil Co. (Operator), et al., docket No. G–14440, et al 200, 677
*Continental Oil Co. (Operator), et al., docket No. G–15417, et al 891
Continental Oil Co., et al., docket No. G–16840, et al 1551
*Continental Oil Co., et al., docket No. G–16966, et al 891
Continental Oil Co., et al., docket No. G–17649, et al 452, 972, 1278
Continental Oil Co., et al., docket No. G–17936, et al 402, 647, 1316
Continental Oil Co., et al., docket No. RI64–129 758
Coppinger, W. J. (Operator), et al., docket No. RI62–100, et al 495
Crow, David, Trustee, et al., docket No. G–20083, et al 402, 647, 1316
Crown Central Petroleum Corp., et al., docket No. G–16907, et al 693
Dairyland Power Cooperative, et al., docket No. E–7113 ..... 365, 1002, 1428
Davidson, G. S. & Norma D., et al., docket No. RI62–100, et al 495
*Davis, H. H., et al., docket No. G–19672, et al 479
Delaware Power & Light Co., et al., docket No. E–7137, et al 1305
Dora, Alabama, the Gas Board of, docket No. CP63–269 1296
Dougherty and Kidd, docket No. G–17122 1556
Duke Power Co., docket No. E–7121 1004
Duke Power Co., docket No. E–7122 524
*East Tennessee Natural Gas Co., docket No. CP63–212 1197
East Tennessee Natural Gas Co., docket No. CP63–313 607
Eastern Shore Natural Gas Co., docket No. CP63–341 653

Page

Eastern Shore Public Service Co. of Maryland, The, et al., docket No. E–7114, et al 1305
Eastern Shore Public Service Co. of Virginia, The, et al., docket No. E–7137, et al 1305
Eklutna Project, Alaska, docket No. E–6544 1039
El Paso Natural Gas Co., docket No. G–1895, et al 989
El Paso Natural Gas Co., docket No. G–4769, et al 1400
El Paso Natural Gas Co., docket No. G–12372 930
El Paso Natural Gas Co., et al., docket No. G–16105, et al 410
*El Paso Natural Gas Co., et al., docket No. G–16235, et al .. 77, 643
*El Paso Natural Gas Co., et al., docket No. G–17849, et al . 479, 636
El Paso Natural Gas Co., docket No. G–20519 386
El Paso Natural Gas Co., et al., docket No. CP62–265, et al . 16
El Paso Natural Gas Co., docket No. CP62–266 608
El Paso Natural Gas Co., et al., docket No. CP63–126, et al .. 1572
El Paso Natural Gas Co., docket No. CP63–283 388
El Paso Natural Gas Co., docket No. CP63–288 ..... 389, 556
El Paso Natural Gas Co., et al., docket No. CP63–296, et al . 1526
El Paso Natural Gas Co., et al., docket No. CP63–296 (Phases I & II), et al 1520
El Paso Natural Gas Co., docket No. CP63–297 930
El Paso Natural Gas Co., docket No. CP63–333 654
El Paso Natural Gas Co., docket No. CP63–335 656
El Paso Natural Gas Co., docket No. CP64–7 991
El Paso Natural Gas Co., docket No. CP64–64 1528
El Paso Natural Gas Co., et al., docket No. CP64–76, et al 1236, 1525
Emmitsburg Gas Co., docket No. CP64–24 1311
Equitable Gas Co., docket No. CP63–334 658
Estes, Edward R. and Robert R., d/b/a Estes Brothers, Inc., project No. 1196 950
Export-Import Applications, Proposed Amendment to Rules, docket No. RA133 ..... 1384-B
Fair, Ralph E. (Operator), et al., docket No. G–17146, et al . 1056
Falcon Seaboard Drilling Co. (Operator), et al., docket No. CI61–433, et al 1084
Flaitz, J. M., et al., docket No. CI63–225, et al 693
*Flanigan Bros., Operator and Agent, et al., docket No. CI62–999, et al 227
Florida Gas Transmission Co., et al., docket No. G–18338, et al 821, 1224
Florida Gas Transmission Co., docket No. CP63–277 ..... 27, 488
Florida Gas Transmission Co., docket No. CP63–346 1230
Florida Gas Transmission Co., docket No. CP64–53 1226
FO Corp., The, docket No. RI62–214 361
Foster Petroleum Corp, docket No. RI64–17, et al 672

Page

*Frankel, J. R., et al., docket No. G–13197, et al. 682
Fuels Research Council, Inc., et al., docket No. CP62–57 1138
Fuels Research Council, Inc., et al., docket No. CP62–57, et al. 1529
Gate, Oklahoma, Town of, docket No. CP63–280 412
General American Oil Co. of Texas, docket No. RI62–213 1292
Geological, Geophysical Associates, Inc. (Operator), et al., docket No. CI61–1519, et al. 1600
*George W. Graham, Inc., Operator, et al., docket No. G–19123, et al. 1438
Georgia Power Co., docket No. E–7099 197
Georgia Power Co., project No. 2177 1155
Glassell, Alfred C., Jr., et al., docket No. G–9278, et al. 1331
Goodrich, H. R., et al., docket No. G–15086, et al. 952
Goodrich, R. H., et al., docket No. G–15069, et al. 952
Graham-Michaelis Drilling Co., et al., docket No. RI62–100, et al. 495
Graham-Michaelis Drilling Co. (Operator), et al., docket No. RI62–100, et al. 495
*Grantley Co., The, et al., docket No. CI62–731, et al. 227
*Graridge Corp. (Operator), et al., docket No. G–19246, et al. 60, 456, 1096, 1156, 1524
Graridge Corp. (Operator), et al., docket No. CI63–369, et al. 424
*Great Lakes Natural Gas Co., Inc., docket No. CI62–730, et al. 227
*Greenup, Illinois, Village of, et al., docket No. CP63–157, et al. 28
Grove Municipal Services Authority, The., et al., docket No. CP63–249 397
Gulf Oil Corp., et al., docket No. G–19062, et al. 979, 1195
*Gulf Oil Corp., et al., docket No. CI60–43, et al. 329, 626, 691, 1209
Gulf Oil Corp., et al., docket No. CI64–26, et al. 1559
Gulf Oil Corp., et al., docket No. RI64–120, et al. 638
Gulf Pacific Pipeline Co., docket No. CP63–223 533
Gulf Pacific Pipeline Co., et al., docket No. CP63–223, et al. 1236, 1525, 1526
Gulf States Utilities Co., docket No. E–7124 965, 1057
Halbouty, Michel T., et al., docket No. CI60–700, et al. 1084
Hall–Interstate Mining Co., et al., project No. 568 1238
Harkins & Co. (Operator), et al., docket No. RI61–69 489
Harper Oil Co. (Operator), et al., docket No. RI62–111 954
Hartman, W. L. (Operator), et al., docket No. RI62–100, et al. 495
Hawley, John B., Jr., et al., docket No. RI62–100, et al. 495
Hawley, John B., Jr., Trustee, et al., docket No. RI62–100, et al. 495
Hefner Co., The (Operator), et al., docket No. RI63–472 1035

Page
Hill, Salina F., project No. 945 1437
Holyoke Water Power Co., docket No. E–7132 1351
Hope Natural Gas Co., et al., docket No. CP61–152, et al 1280
Hope Natural Gas Co., docket CP63–311 468
Hugoton Plains Gas and Oil Co., docket No. RI60–102 513, 973
Humble Gas Transmission Co., et al., docket No. CP61–290, et al 1084
Humble Oil & Refining Co., et al., docket No. G–14967, et al 60, 456
*Humble Oil & Refining Co., et al., docket No. CI61–157, et al 613
Humble Oil & Refining Co., et al., docket No. CI64–5, et al 1297
Humble Oil & Refining Co., et al., docket No. CP64–74 1196
Humble Oil & Refining Co., docket No. RI63–295 514
*Hunt, Caroline, Trust Estate, et al., docket No. CI61–1344, et al 1438
*Hunt, H. L., Operator, et al., docket No. G–19116, et al 1438
*Hunt, H. L., et al., docket No. CI61–1282, et al 1438
*Hunt, Hassie Trust, et al., docket No. G–14109, et al 283, 682
*Hunt, Hassie Trust, Operator, et al., docket No. G–19115, et al 1438
Hunt, Hassie Trust, et al., docket No. RI64–53, et al 413, 856
Hunt, Hassie, Trust Estate, et al., docket No. RI64–296, et al 1316
Hunt Industries (successor to Lyda Hunt–Margaret Trusts, Lyda Hunt–Caroline Trusts, Lyda Hunt–Herbert Trusts, Lyda Hunt–Bunker Trusts, Lyda Hunt–Lamar Trusts), docket No. G–13840, et al 1534
*Hunt, Lamar, Trust Estate, et al., docket No. G–19119, et al 1438
*Hunt, Lamar, et al., docket No. CI61–1736, et al 1438
*Hunt, Lyda–Herbert Trusts, et al., docket No. CI61–1621, et al 200, 677
*Hunt, Nelson Bunker, et al., docket No. CI61–1346, et al 1438
Hunt Oil Co., docket No. G–9065, et al 220
Hunt Oil Co., docket No. G–16422, et al 1167
*Hunt Oil Co., et al., docket No. G–19117, et al 1438
*Hunt, William Herbert, Trust Estate, Operator, et al., docket No. G–19118, et al 1438
Hunt, William Herbert, Trust Estate, et al., docket No. RI64–54, et al 413, 856
Hunt, William Herbert, Trust Estate, et al., docket No. RI64–297, et al 1316
Idaho Power Co., project 1971 1471
Indiana & Michigan Electric Co., docket No. E–7089 391, 392, 452, 967, 1286
*Iowa Electric Light & Power Co., et al., docket No. CP62–119, et al 859
Iowa Power and Light Co., docket No. E–7119 687

Page

Iowa Public Service Co., docket No. E–7115 ..... 536, 648
Iowa Southern Utilities Co., docket No. E–7103 1
Iroquois Gas Corp., docket No. CP61–276 538
J. M. Huber Corp., et al., docket No. RI61–533, et al 495
*J. Ray McDermott Co., Inc., et al., docket No. G–17337, et al 283, 682
Jefferson Lake Sulphur Co. (Operator), et al., docket No. G–17997, et al 402, 647, 1316
Joseph E. Seagram & Sons, Inc., et al., d/b/a Frankfort Oil Co., docket No. CI61–1412, et al 1553
Johnson, William F. and Madge G., et al., project No. 433 408
*Johnston, C. N., et al., docket No. G–9136, et al 623
K & H Operating Co., Agent for Sword Co., et al., docket No. G–18058, et al 1552
Kane, G. A., et al., docket No. RI62–100, et al 495
Kansas City Power & Light Co., docket No. E–7111 515
Kansas Natural Gas, Inc., et al., docket No. RI62–100, et al 495
Kansas Natural Gas, Inc. (Operator), et al., docket No. RI62–100, et al 495
Kansas–Nebraska Natural Gas Co., Inc., docket No. CP62–215 956
Kansas–Nebraska Natural Gas Co., Inc., docket No. CP63–229 57
Kansas–Nebraska Natural Gas Co., Inc., docket No. CP63–265 17
Kansas–Nebraska Natural Gas Co., Inc., et al., docket No. CP63–340, et al 356
Kansas–Nebraska Natural Gas Co., Inc., docket No. CP64–86 1591
Kansas Oil and Gas Severance Tax Act, Rate Filings Based upon, docket No. R–167 1579
Kaskaskia Natural Gas Co., docket No. CP63–326 857
Kellerman, R. E., et al., docket No. G–18136, et al 693
Kerr-McGee Oil Industries, Inc., et al., docket No. G–16718, et al 1381
Ketchikan, Alaska, City of, project No. 2328 1058
*Kilroy Properties, Inc., et al., docket No. G–17338, et al 283, 682
Kuhn, Walter F., et al., docket No. RI62–100, et al 495
Lake Shore Pipe Line Co., docket No. CP63–243 373
Lateral Gas Pipeline Co., docket No. CP63–338 975
License, Terms and Conditions of, Form L–3 (Revised), November 1, 1963 1658
Lone Star Gas Co., docket No. CP63–355 958
Lone Star Gas Co., docket No. CP64–25 933
Lone Star Gas Co., docket No. CP64–33 1016
Lone Star Gas Co., docket No. CP64–72 1412
*Lynchburg Gas Co., et al., docket No. RP63–5 934

Page
Lyons, C. H., Sr., et al., docket No. CI60–329, et al. 550
Madison, Missouri, City of, et al., docket No. CP63–307, et al. 661
Magna Oil Corp., et al., docket No. CI61–44, et al. 1084
Maine Public Service Co., docket No. E–6751 1414
Manufacturers Light & Heat Co., The, docket No. CP63–300 1231
Maracaibo Oil Exploration Corp. (Operator), et al., docket No. RI60–138, et al. 402, 647, 1316
*Marshall, Illinois, City of, et al., docket No. CP62–187, et al. 759, 1287
*Martinsville, Illinois, City of, et al., docket No. CP62–189, et al. 759, 1287
Mayroone, Reuben W., Jr., d/b/a Riverside Oil Co. (Operator), et al., docket No. G–20182, et al. 1597
McCain, M. F., et al., docket No. CI62–582, et al. 550
*McConnell, Russell, et al., docket No. CI62–762, et al. 227
*Medina Gathering Corp., et al., docket No. CP62–194, et al. 227
Michigan Gas Storage Co., et al., docket No. CP63–217, et al. 375
Michigan Gas Storage Co., docket No. CP63–287 394
*Michigan Wisconsin Pipe Line Co., et al., docket No. G–2327, et al. 363, 698, 1211
Michigan Wisconsin Pipe Line Co., et al., docket No. G–12292, et al. 76
Michigan Wisconsin Pipe Line Co., et al., docket No. CP62–57 1138
Michigan Wisconsin Pipe Line Co., et al., docket No. CP62–57, et al. 1529
Michigan Wisconsin Pipe Line Co., docket No. CP62–212 18
*Michigan Wisconsin Pipe Line Co., et al., docket No. CP63–230, et al. 1239
Michigan Wisconsin Pipe Line Co., docket No. CP63–289 352
Mid-West Coal Producers Institute, Inc., et al., docket No. CP62–57 1138
Mid-West Coal Producers Institute, Inc., et al., docket No. CP62–57, et al. 1529
Midwestern Gas Transmission Co., docket No. G–16841 1313
*Midwestern Gas Transmission Co., et al., docket No. G–16841, et al. 150, 659, 1149
*Midwestern Gas Transmission Co., et al., docket No. CP61–303 469
*Midwestern Gas Transmission Co., et al., docket No. CP62–116, et al. 759, 1287
Midwestern Gas Transmission Co., et al., docket No. RP61–19, et al. 698

Page

Minnesota Power & Light Co., docket No. E–7094 1616
Minnesota Power & Light Co., docket No. E–7095 1618
Minnkota Power Cooperative, Inc., et al., docket No. E–7113 ..... 365, 1002
Mississippi Power Co., docket No. E–7112 198
Mississippi River Fuel Corp., et al., docket No. CP61–141, et al 1280
Mississippi River Fuel Corp., et al., docket No. CP61–348, et al 1223
Mississippi River Fuel Corp., docket No. CP63–295 439
Mississippi River Transmission Corp., docket No. CP61–274 1535
Mississippi River Transmission Corp., et al., docket No. CP62–242, et al 1223
Mitchell, J. B., et al., docket No. RI60–282 1388
Mitchell, M. J., docket No. G–19999 33
*Mizel, Morris, et al., docket No. RI63–205 ..... 1103, 1652
Monson Gas Co., docket No. CP62–196 755
*Montana-Dakota Utilities Co., et al., docket No. CP61–234, et al 200, 677
Montana-Dakota Utilities Co., docket No. CP63–110 1017
Montana-Dakota Utilities Co., docket No. CP63–310 557
Montana-Dakota Utilities Co., docket No. E–7105 74
Montana Power Co., The, project No. 517, et al 490
Montana Power Co., The, project No. 1501, et al 518
Montana Power Co., The, project No. 2188 1019
Montezuma, Georgia, City of, docket No. CP64–57 1476
Mound Co., et al., docket No. G–17362, et al 433
Mound Co. (Operator), et al., docket No. G–19729, et al 433
Mound Co., et al., docket No. G–20275, et al 402
Mound Co. (Operator), et al., docket No. CI60–258, et al 436
Mountain Fuel Supply Co., docket No. CP63–258 1393
Mountain Fuel Supply Co., docket No. CP64–55 1417
N. Appleman Co., et al., docket No. RI62–100, et al 495
NAFCO Oil and Gas Inc. (successor to Oil and Gas Property Management, Inc.), docket No. G–18432, et al 1229
National Associated Petroleum Co., et al., docket No. RI62–100, et al 495
National Coal Association, et al., docket No. CP62–57 1138
National Coal Association, et al., docket No. CP62–57, et al 1529
Natural Gas Pipeline Co. of America, docket No. G–18148, et al 396
Natural Gas Pipeline Co. of America, docket No. CP61–30, et al 1592
Natural Gas Pipeline Co. of America, et al., docket No. CP61–149, et al 1615

Page
Natural Gas Pipeline Co. of America, docket No. CP62–144 416
Natural Gas Pipeline Co. of America, et al., docket No. CP62–243, et al 279, 1223
Natural Gas Pipeline Co. of America, docket No. CP62–256 19
Natural Gas Pipeline Co. of America, docket No. CP63–174 1042
Natural Gas Pipeline Co. of America, docket No. CP63–255 354
Natural Gas Pipeline Co. of America, docket No. CP64–13 993
Natural Gas Pipeline Co. of America, docket No. CP64–30 977
Natural Gas Pipeline Co. of America, docket No. CP64–68 1536
Natural Gas Pipeline Co. of America, et al., docket No. RP63–6, et al 698
Nevada Power Co., docket No. E–6832 1394
New Boston, Illinois, City of, docket No. CP64–22 1603
New England Power Co., project No. 2077 1193
New England Power Co., project No. 2323 1120
New York State Natural Gas Corp., docket No. CP63–285 491
New York State Natural Gas Corp., docket No. CP63–302 528
New York State Natural Gas Corp., docket No. CP64–35 1232
New York State Natural Gas Corp., docket No. CP64–56 1207
Newmont Oil Co., et al., docket No. G–17765, et al 452, 972, 1278
Niagara Mohawk Power Corp., project No. 2060 1020
Niagara Mohawk Power Corp., project No. 2084 1021
North Central Oil Corp. (Operator), et al., docket No. CI61–1570, et al 1468
North Penn Gas Co., et al., docket No. CP64–44, et al 1335
North Star Natural Gas Co., docket No. CP63–268 1227
Northeast Oklahoma Gas Authority, The, et al., docket No. CP63–249 397
Northern Indiana Public Service Co., docket No. CP63–325 995
Northern Natural Gas Co., et al., docket No. G–12153, et al 1364
Northern Natural Gas Co., docket No. G–13875, et al 1653
*Northern Natural Gas Co., et al., docket No. G–18110, et al 479
*Northern Natural Gas Co., et al., docket No. CP61–303 469
*Northern Natural Gas Co., et al., docket No. CP62–85, et al 859
Northern Natural Gas Co., docket No. CP62–180 1234
Northern Natural Gas Co., docket No. CP63–219 440, 1294
Northern Natural Gas Co., docket No. CP63–235 1578
Northern Natural Gas Co., docket No. CP63–261 35
Northern Natural Gas Co., docket No. CP63–262 36
Northern Natural Gas Co., docket No. CP63–267 20
Northern Natural Gas Co., et al., docket No. CP63–291, et al 997
Northern Natural Gas Co., docket No. CP64–17 1129
Northern Natural Gas Co., docket No. CP64–47 1474
Northern Natural Gas Co., docket No. CP64–54 1395
Northern Natural Gas Co., docket No. CP64–58 1538

Page

Northern Pump Co. (Operator), et al., docket No. RI62–100, et al 495
Northern States Power Co., docket No. E–7118 644, 756
Northern States Power Co. (Minnesota), docket No. E–7140 1430
Northern States Power Co. (Wisconsin), docket No. E–7101 2
Northern Utilities, Inc., docket No. CP63–301 609
Northwest Paper Co., The, docket No. E–7092 1463
Oakdale Irrigation District, et al., project No. 2005 678
*Ocean Drilling & Exploration Co., et al., docket No. G–17342, et al 283, 682, 884
*Ocean Drilling & Exploration Co. (Operator), et al., docket No. G–17343, et al 283, 682, 884
Ocean Drilling & Exploration Co., et al., docket No. CI61–1162, et al 1280
*Ohio Fuel Gas Co., The, et al., docket No. CP62–91, et al 831
Ohio Fuel Gas Co., The, docket No. CP63–266 539
Ohio Oil Co., The, docket No. G–13532, et al 463
O'Meara, Robert W. (Operator), et al., docket No. CI62–479, et al 693
Order No. 258–A, docket No. R–195 541
Order No. 269, docket No. R–238 427
Order No. 270, docket No. R–245 443
Order No. 271, docket No. R–227 850, 1036
Order No. 272, docket No. R–228 1333
Order No. 273, docket No. R–251 1370
Order No. 274, docket No. R–247 1372
Order No. 275, docket No. R–252 1435
Order No. 276, docket No. R–226 1539
Otter Tail Power Co., docket No. E–7126 970, 1072
Ottumwa, Iowa, City of, project No. 925 404
Owen, J. P. (Operator), et al., docket No. G–20555, et al 402, 647, 1316
Pacific Gas & Electric Co., project No. 137, et al 1168
Pacific Gas & Electric Co., project No. 175 1028
Pacific Gas & Electric Co., project No. 178 40
Pacific Gas & Electric Co., project No. 1333 1031
Pacific Gas & Electric Co., project No. 2106 493
*Pacific Northwest Pipeline Corp., et al., docket No. G–16237, et al 77, 643
Pacific Power & Light Co., docket No. E–7108 280, 409
Pacific Power & Light Co., docket No. E–7109 519
Pacific Power & Light Co., docket No. E–7110 522
Pacific Power & Light Co., docket No. E–7123 1006
Pacific Power & Light Co., docket No. E–7128 1151, 1295
Pacific Power & Light Co., docket No. E–7141 1654

Page
*Pacific Power & Light Co., project No. 2082 ..... 499, 1154
Pan American Petroleum Corp. (Operator), et al., docket No. G–7486 1605
Pan American Petroleum Corp., et al., docket No. G–16946, et al 1324
*Pan American Petroleum Corp., et al., docket No. G–18660, et al 479
Pan American Petroleum Corp., docket No. CI61–516 1606
Pan American Petroleum Corp., et al., docket No. CI61–516, et al 1230
*Pan American Petroleum Corp., et al., docket No. CI62–1034, et al 1477
Pan American Petroleum Corp., et al., docket No. CI63–1455, et al 1572
Pan American Petroleum Corp. (Operator), et al., docket No. RI61–532, et al 495
Pan American Petroleum Corp., issued August 16, 1963 497
*Panhandle Eastern Pipe Line Co., et al., docket No. G–11061, et al 363, 698, 1211
Panhandle Eastern Pipe Line Co., docket No. G–19461 559
*Panhandle Eastern Pipe Line Co., docket No. CP63–159 .. 1260, 1567
Panhandle Eastern Pipe Line Co., docket No. CP63–234 44
Panhandle Eastern Pipe Line Co., docket No. CP63–245 379
Panhandle Eastern Pipe Line Co., et al., docket No. CP63–259, et al 375
Panhandle Eastern Pipe Line Co., docket No. CP63–330 545
Paris, Missouri, City of, et al., docket No. CP63–306, et al .. 661
Pasadena, California, City of, project No. 1250 273
Peltier, Harvey, et al., docket No. CI60–505, et al 550
Pennsylvania Gas Co., docket No. CP63–274 498
Pennsylvania Power & Light Co., project No. 1881 274
Penobscot Chemical Fibre Co., project No. 2312 1465
*Peoples Gas, Light and Coke Co., et al., docket No. RP63–11, et al 150, 659, 1149
Permian Basin Pipeline Co., et al., docket No. G–15336, et al 1364
Petroleum, Inc., et al., docket No. RI62–100, et al 495
Phillipsburg, Montana, City of, project No. 1269 1000
Phillips Petroleum Co., et al., docket No. G–16611, et al 1381
Phillips Petroleum Co., et al., docket No. G–17740, et al 402, 647, 1316
*Pioneer Production Corp. (Operator), et al., docket No. G–18553, et al 479
*Placid Oil Co., et al., docket No. G–13183, et al 283, 682, 884
*Placid Oil Co., Operator, et al., docket No. G–19124, et al ... 1438

737–370—66——6

Page

*Poseyville, Indiana, Town of, The, docket No. CP63-224 663
Potomac Edison Co., docket No. E-7104 636
Pratt, Theodore R., et al., project No. 568 1238
Prentice, Robert B., et al., docket No. G-18710, et al 852
Producer Questionnaires-Order, re, issued October 30, 1963 1155
Public Service Co. of Indiana, Inc., issued December 11, 1963 1475
Public Utility District No. 1 of Chelan County, Washington, et al., project No. 943 542
Public Utility District No. 1 of Cowlitz County, Washington, project No. 2213 45
Puget Sound Power & Light Co., et al., project No. 943 542
PWC Corp., The., et al., docket No. RI62-100, et al 495
Ramsey, Virginia, et al., docket No. RI60-378, et al 1056
Raton Natural Gas Co., docket No. CP62-131 822
Raton Natural Gas Co., et al., docket No. CP62-131, et al 356
*Riddell Petroleum Corp., et al., docket No. G-18609, et al 479
Rutherford, P. R., et al., docket No. G-17928, et al 402, 647, 1316
Sabine River Authority of Louisiana, et al., project No. 2305 1009
Sabine River Authority of Texas, et al., project No. 2305 1009
Sacramento Municipal Utility District, project No. 2101 611
St. Michaels Utilities Commission, et al., docket No. E-7114, et al 1305
Salmon Corp., et al., docket No. RI62-100, et al 495
San Salvador Development Co., Inc., docket No. G-19833, et al 1193
*Sands, Caroline Hunt, et al., docket No. G-17398, et al 283, 682
*Sands, Caroline Hunt, et al., docket No. CI61-1343, et al 1438
*Shell Oil Co. (Operator), et al., docket No. G-17888, et al 479, 636
Sierra Pacific Power Co., docket No. E-7100 46, 328
Sierra Pacific Power Co., docket No. E-7134 1513
*Signal Oil & Gas Co., et al., docket No. CI61-1271, et al 200, 677
Sinclair Oil & Gas Co., docket No. G-9291, et al 5, 546, 1314, 1620
Sinclair Oil & Gas Co., et al., docket No. G-17917, et al 1096
*Sinclair Oil & Gas Co. (Operator), et al., docket No. G-18748, et al 479
Sinclair Oil & Gas Co. (formerly Joseph M. Rault, Jr., Inc.), et al., docket No. CI61-670, et al 1096
Skelly Oil Co. (Operator), et al., docket No. CI61-1419, et al 1548
Skinner Corp. (Operator), et al., docket No. G-17528, et al 1621
Slade, Inc. (Operator), docket No. G-19986, et al 483
Socony Mobil Oil Co., Inc., docket No. G-15451 1656
Socony Mobil Oil Co., Inc., docket No. G-15505, et al 417
Socony Mobil Oil Co., Inc., et al., docket No. G-17526, et al 1316
Socony Mobil Oil Co., Inc., et al., docket No. G-17625, et al 452, 972, 1278

Page
Socony Mobil Oil Co., Inc., et al., docket No. CI60–310, et al. 979, 1195
Sohio Petroleum Co., docket No. G–8488, et al. 1623
Sohio Petroleum Co., et al., docket No. G–14247, et al. 1288
South Carolina Electric & Gas Co., docket No. E–7146 1630
South Carolina Electric & Gas Co., project No. 1894 523
*South Carolina Electric & Gas Co., project No. 2315 1338, 1346
South Central Rural Electric Cooperative, Inc., et al., docket No. E–7113 365, 1002
South San Joaquin Irrigation District, et al., project No. 2005 678
Southern California Edison Co., et al., docket No. E–7106 942
Southern California Edison Co., et al., project No. 325, et al. 889
Southern Natural Gas Co., docket No. G–1907 1594
Southern Natural Gas Co., et al., docket No. G–4715 419
Southern Natural Gas Co., et al., docket No. G–18129, et al. 550
Southern Natural Gas Co., docket No. CP60–23 1546
Southern Natural Gas Co., et al., docket No. CP61–206, et al. 640
Southern Natural Gas Co., docket No. CP63–246 380
Southern Natural Gas Co., docket No. CP64–38 1595
Southwest Gas Producing Co., Inc., et al., docket No. G–18100, et al. 402, 647, 1316
State Exploration Co., et al., docket No. CI62–326, et al. 1084
Statement of General Policy No. 61–1, Revision, docket No. R–218 1374
Stevens County Oil & Gas Co., The, docket No. G–14824 1000
Stockton Light and Power Co. (of Maryland), et al., docket No. E–7117, et al. 1305
Stockton Light and Power Co. (of Virginia), et al., docket No. E–7117, et al. 1305
Sun Oil Co., docket No. G–13316, et al. 1568
Sun Oil Co. (Operator), et al., docket No. G–17923, et al. 1316
Sun Oil Co., et al., docket No. G–19574, et al. 1583
Sunray DX Oil Co., et al., docket No. G–4281, et al. 1409
Sunray DX Oil Co., et al., docket No. G–17726, et al. 402, 647, 1316
Sunray DX Oil Co., et al., docket No. CI60–250, et al. 550
Sunray DX Oil Co., docket No. RI63–60 1418
Superior Oil Co., The, docket No. G–6067 1021
Superior Oil Co., The, docket No. G–10501 1208
*Superior Oil Co., The, et al., docket No. G–16380, et al. 283, 682
Superior Oil Co., The (Operator), et al., docket No. G–17989, et al. 402, 647, 1316
*Superior Oil Co., The, et al., docket No. CI60–328, et al. 479, 636
Tacoma, Washington, City of, project No. 2016 1411
Tacoma, Washington, City of, project No. 2166 613

Page
Tapoco, Inc., project No. 2169 382
Tenneco Corp., docket No. G–19983 430
Tennessee Gas Transmission Co., docket No. G–2280 671
Tennessee Gas Transmission Co., et al., docket No. G–4715 .. 419
*Tennessee Gas Transmission Co., et al., docket No. G–16842, et al 759, 1287
*Tennessee Gas Transmission Co., et al., docket No. CP61–106, et al 1477
Tennessee Gas Transmission Co., docket No. CP63–111 547
Tennessee Gas Transmission Co., docket No. CP63–328 548
Tennessee Gas Transmission Co., et al., docket No. CP64–2, et al 1078
Tennessee Gas Transmission Co., et al., docket No. CP64–92 .. 1557
Tennessee Gas Transmission Co., et al., docket No. RP64–4, et al 452, 972, 1278
*Tennessee Natural Gas Lines, Inc., et al., docket No. CP61–27, et al 759, 1287
Texaco Inc., et al., docket No. G–4616, et al 1230
Texaco Inc., docket No. G–8969, et al 1631
Texaco Inc., et al., docket No. G–16994, et al 1089
Texaco Inc., et al., docket No. G–17613, et al 402, 647, 1316
*Texaco Inc., et al., docket No. CI61–119, et al 613
*Texaco Inc., et al., docket No. CI61–1687, et al 200, 677
*Texaco Seaboard, Inc., et al., docket No. CI61–118, et al 613
Texas Crude Oil Co. (Operator), et al., docket No. G–20124, et al 693
*Texas Eastern Transmission Corp., et al., docket No. G–12446, et al 153
Texas Eastern Transmission Corp., docket No. CP60–122, et al 1353
Texas Eastern Transmission Corp., et al., docket No. CP60–122, et al 640
Texas Eastern Transmission Corp., et al., docket No. CP62–41 829
Texas Eastern Transmission Corp., docket No. CP63–332 649
Texas Eastern Transmission Corp., docket No. CP63–350 673
Texas Eastern Transmission Corp., et al., docket No. CP64–5, et al 1559
Texas Eastern Transmission Corp., docket No. CP64–63 1422
Texas Eastern Transmission Corp., docket No. CP64–70 1424
Texas Gas Exploration Corp. (Operator), et al., docket No. CI61–1125, et al 1548
Texas Gas Exploration Corp., et al., docket No. CI62–930, et al 1548
Texas Gas Pipe Line Corp., docket No. G–20073, et al 405

Page
Texas Gas Transmission Corp., docket No. G–2067 978
Texas Gas Transmission Corp., et al., docket No. CP61–247, et al 640
Texas Gas Transmission Corp., docket No. CP63–327 689
Texas Gas Transmission Corp., docket No. CP64–46 1546
Texas Gulf Producing Co., docket No. G–9476, et al 1647
Texas Gulf Producing Co., et al., docket No. G–17925, et al 402, 647, 1316
Texas Gulf Producing Co., et al., docket No. CI63–772, et al 1597
Texoma Production Co., et al., docket No. CI63–1042, et al 1230
Tex-Star Oil & Gas Corp., et al., docket No. CI61–1524, et al 1280
*Tidewater Oil Co., et al., docket No. CI60–142, et al 329, 626, 691, 1209
Tidewater Oil Co. (Operator), et al., docket No. CI62–638, et al 1597
Tidewater Oil Co., et al., docket No. CI63–823, et al 1597
Tidewater Oil Co., et al., docket No. RI64–129 758
*Tipton, Iowa, City of, et al., docket No. CP63–54, et al 859
*Toledo, Illinois, Village of, et al., docket No. CP63–158, et al 28
*Transcontinental Gas Pipe Line Corp., docket No. G–10000 1044
Transcontinental Gas Pipe Line Corp., docket No. CP61–292 444
Transcontinental Gas Pipe Line Corp., et al., docket No. CP63–136, et al 543
Transcontinental Gas Pipe Line Corp., docket No. CP63–187 823
Transcontinental Gas Pipe Line Corp., docket No. CP63–228 38
Transcontinental Gas Pipe Line Corp., docket No. CP63–299 445
Transcontinental Gas Pipe Line Corp., docket No. CP63–303 621
Transcontinental Gas Pipe Line Corp., docket No. CP63–348 825, 1469
Transcontinental Gas Pipe Line Corp., et al., docket No. CP64–43, et al 1335
Transcontinental Gas Pipe Line Corp., et al., docket No. RP63–3, et al 1324
Transwestern Pipeline Co., docket No. CP62–290 1322
Transwestern Pipeline Co., et al., docket No. CP63–204, et al 1236, 1525, 1526
Transwestern Pipeline Co., et al., docket No. CP63–290, et al 997
Transwestern Pipeline Co., et al., docket No. CP64–34, et al 1520
Trice Production Co., et al., docket No. G–18516, et al 402, 647, 1316
*Trunkline Gas Co., et al., docket No. CP60–22 (Phase Two), et al 363, 698, 1211
Trunkline Gas Co., et al., docket No. CP62–41 829
Trunkline Gas Co., docket No. CP63–215 999

Page

Uniform System of Accounts for Independent Producers, Petition to Establish, docket No. R–220 ---- 1192
Union Carbide Corp., project No. 1856 ---- 675
Union Producing Co., et al., docket No. CI60–344, et al ---- 1134
Union Texas Petroleum, et al., docket No. G–13221, et al ---- 58, 60, 436, 456, 550, 693, 852, 979, 1084, 1089, 1096, 1130, 1134, 1195, 1280, 1288, 1309, 1324, 1376, 1381, 1468, 1548, 1551, 1552, 1553, 1580, 1583, 1597, 1600.
Union Texas Petroleum, a division of Allied Chemical Corp., et al., docket No. G–14227, et al ---- 1553
Union Texas Petroleum, a division of Allied Chemical Corp., et al., docket No. CI61–462, et al ---- 550
Union Water–Power Co., The, project No. 2302 ---- 1389
Uniontown, Kansas, City of, docket No. CP63–343 ---- 826
United Fuel Gas Co., docket No. CP61–21 ---- 554
*United Fuel Gas Co., et al., docket No. CP62–90, et al ---- 831
*United Gas Pipe Line Co., et al., docket No. CP60–36, et al ---- 329, 626, 691, 1209
United Gas Pipe Line Co., et al., docket No. CP61–151, et al ---- 640
*United Gas Pipe Line Co., docket No. CP62–161 ---- 560, 1073
United Gas Pipe Line Co., docket No. CP63–92 ---- 49
United Gas Pipe Line Co., et al., docket No. CP63–137, et al ---- 543
United Gas Pipe Line Co., docket No. CP63–271 ---- 420
United Gas Pipe Line Co., docket No. CP63–337 ---- 447
United Gas Pipe Line Co., docket No. CP63–353 ---- 949
United Gas Pipe Line Co., docket No. CP64–20 ---- 1034
United Gas Pipe Line Co., docket No. CP64–31 ---- 1074
United Gas Pipe Line Co., docket No. CP64–40 ---- 1075
United Gas Pipe Line Co., docket No. CP64–41 ---- 1077
United Gas Pipe Line Co., et al., docket No. CP64–74 ---- 1196
United Gas Pipe Line Co., et al., docket No. CP64–92 ---- 1557
United Mine Workers of America, et al., docket No. CP62–57 ---- 1138
United Mine Workers of America, et al., docket No. CP62–57, et al ---- 1529
United Natural Gas Co., et al., docket No. CP64–44, et al ---- 1335
United States Department of the Interior, Southeastern Power Administration, Old Hickory and Cheatham Projects, docket No. E–6999 ---- 398
United States Department of the Interior, Southwestern Power Administration, docket No. E–6407 ---- 1608
Utah Power & Light Co., docket No. E–7127 ---- 885
Utah Power & Light Co., project No. 20, et al ---- 63
Valley Gas Transmission, Inc., docket No. CP63–270 ---- 349
Virginia Electric & Power Co., docket No. E–7098 ---- 466

Page

W. E. Bakke Oil Co. (Operator), et al., docket No. RI62–100, et al 495
Walker, Willard E., et al., docket No. G–18099, et al. 402, 647, 1316
Warren Petroleum Corp., docket No. RI61–63 1040
Washington Water Power Co., The, project No. 204 50
Weiner, Ted (Operator), et al., docket No. G–17993, et al 402, 647, 1316
Weiner, Ted (Operator), et al., docket No. G–20126, et al 693
West Texas Utilities Co., et al., docket No. E–6489 55
Westbrook Oil Corp., et al., docket No. G–17297, et al 1056
Western Gas Service Co., docket No. CP62–113 422
Western Gas Service Co., docket No. CP63–308 986
Western Lewis-Rectorville Water District, docket No. CP61–291 1015
Wiegand Brothers Drilling Co., et al., docket No. G–17279, et al 1056
William Graham Oil Co. (Operator), et al., docket No. RI62–100, et al 495
*Wisconsin Public Service Corp., et al., docket No. CP63–244, et al 1239
*Wisconsin Southern Gas Co., Inc., et al., docket No. CP63–11, et al 859
*Worldwide Petroleum Corp., et al., docket No. CI62–761, et al 227
Yadkin, Inc., project No. 2197 ..... 362, 960
Yuba County Water Agency, project No. 2246 1610
Zapata Off-Shore Co., et al., docket No. G–18369, et al 550

TABLE OF CASES CITED

Alabama Power Co. (E–6836), 24 FPC 278, affirmed *sub nom* Southwestern Electric Power Co. *v.* F.P.C., 304 F. 2d 29, cert. den., 371 U.S. 924 ..... Page 1541
Alabama-Tennessee Natural Gas Co. (G–5471), 27 FPC 1180 163
Allegheny Land and Mineral Co. (G–19030), 25 FPC 886 ..... 229, 267
Amerada Petroleum Corp. (CI62–1544), 29 FPC 218 295
American Louisiana Pipe Line Co. (G–2306), 16 FPC 897 668
American Louisiana Pipe Line Co. (G–2306), 27 FPC 967 668
American Louisiana Pipe Line Co. (G–2306), 28 FPC 41 669
American Louisiana Pipe Line Co. (G–2306), 30 FPC 698 1145
American Louisiana Pipe Line Co. (G–18419), 27 FPC 29 514
American Louisiana Pipe Line Co. (G–18419), 29 FPC 932 ..... 577, 1257
American Sugar Refining Co. *v.* Delaware L. & W. R. Co., 207 Fed. 733 940
American Trucking Ass'n. Inc. *v.* Frisco Transportation Co., 358 U.S. 133 ..... 1606, 1607
Anderson *v.* Mullaney, 191 F. 2d 123 (1951) 604
Anglo-Can. Shipping Co. *v.* U.S., 264 F. 2d 405 (1959) 243, 753
Area Rate Proceeding (AR61–2), 25 FPC 942 401
Area Rate Proceeding (AR61–2), 25 FPC 1133 1160
Area Rate Proceeding (AR61–2), 27 FPC 952 361
Area Rate Proceeding (AR61–2), 30 FPC 402 1330
Area Rate Proceeding (AR64–2), 30 FPC 1354 1634
Arkadelphia Milling Co. *v.* St. Louis Southwestern Ry. Co., 240 U.S. 134 1460
Ark-La Electric Cooperative, Inc. (IT–6095), 6 FPC 1037 1003
Atlantic Coast Line R. Co. *v.* Florida, 295 U.S. 301 318
Atlantic Coast Line R. Co. *v.* Standard Oil Co., 275 U.S. 257 (1927) 563
Atlantic Gulf Gas Co. (G–887), 10 FPC 79 877
Atlantic Ref. Co. *v.* F.P.C., 316 F. 2d 667 ..... 260, 288, 481, 615, 684, 1440
Atlantic Ref. Co. *v.* F.P.C., 360 U.S. 378 ..... 316, 614, 1160
Atlantic Ref. Co. *v.* P.S.C. of New York, 360 U.S. 378, affirmed 257 F. 2d 717 ..... 241, 287, 321, 345, 403, 477, 620, 767, 840, 1266, 1318, 1330, 1455, 1480
Atlantic Seaboard Corp. (G–1384), 11 FPC 43 ..... 577, 676
Atlantic Seaboard Corp. (G–1384), 11 FPC 486 676
Atlantic Seaboard Corp. *v.* F.P.C., 201 F. 2d 568 249
Baltimore & Ohio Southwestern Railroad Co. *v.* Settle, 260 U.S. 166 844
Barber Asphalt Paving Co. *v.* Morris, 132 F. 2d 945 811
Barnes Transportation Co. (G–7348), 18 FPC 369 ..... 233, 1497
Bass, Perry R. (Operator) (G–17399), 29 FPC 472 285
Battle Creek Gas Co. *v.* F.P.C., 281 F. 2d 42 867
Bel Oil Corp. *v.* F.P.C., 255 F. 2d 548 (1958) 512
Ben Bolt Gathering Co. (G–20032), 26 FPC 825 270
Berkshire Gas Co. (CP61–74), 24 FPC 1041 31
Black Hills Power and Light Co. (E–6342), 10 FPC 864 1003
Black Hills Power and Light Co. (E–6650), 15 FPC 1139 1003
Bluefield Waterworks & Improvement Co. *v.* P.S.C., 262 U.S. 679 345
Board of Governors, etc. *v.* Transamerica Corp., 184 F. 2d 311, cert. den., 340 U.S. 883, reh. den. 340 U.S. 907 811
Borax Ltd. *v.* Los Angeles, 296 U.S. 10 155
Border Pipe Line Co. *v.* F.P.C., 171 F. 2d 149 (1948) 602
C.A.B. *v.* Delta Air Lines, 367 U.S. 316 320
California Co., The (G–16108), 22 FPC 256 328
California Co., The (G–16108), 22 FPC 653 328
California Co., The, *v.* U.G.I., 365 U.S. 881 328
California Electric Power Co. *v.* F.P.C., 199 F. 2d 206, cert. den., 345 U.S. 934 219
California Oil Co. *v.* F.P.C., 315 F. 2d 652 ..... 241, 615, 1440
Capital Service *v.* N.L.R.B., 204 F. 2d 848, affirmed 347 U.S. 501 811

Page

Carolina Pipeline Co. (G–15245), 20 FPC 54 1054
Cities Service Co. (G–8921), 28 FPC 1108 222, 625, 1633
Cities Service Gas Co. (G–2569), 14 FPC 134 238, 512
Cities Service Gas Co. (RP62–1), 26 FPC 665, 376 U.S. 515 1443
Cities Service Gas Co. *v.* State Comm., 355 U.S. 391 (1958) 240
Cities Service Production Co. (G–9510), 28 FPC 1114 1001
Citizens Utilities Co. (E–6716), 21 FPC 233 1214
Citizens Utilities Co. *v.* F.P.C., 279 F. 2d 1, cert. den., 364 U.S. 893 1215
Citizens Utilities Co. *v.* F.P.C., 295 F. 2d 959 1216
Civil Aeronautics Board *v.* Delta Air Lines, 367 U.S. 316 (1961) 209, 1481
Coastal Transmission Corp. (G–18338), 26 FPC 318 130, 1225
Coastal Transmission Corp. (G–18338), 26 FPC 677 1444
Coe *v.* Town of Errol, 116 U.S. 517 209
Colorado Interstate Gas Co. (G–1115), 11 FPC 324 86, 512
Colorado Interstate Gas Co. *v.* F.P.C., 142 F. 2d 943 207
Colorado Interstate Gas Co. *v.* F.P.C., 209 F. 2d 717, reversed, 348 U.S. 492 154
Colorado Interstate Gas Co. *v.* F.P.C., 324 U.S. 581 125, 207, 241
Columbian Fuel Corp. *v.* P.S.C., 333 S.W. 2d 945 (Ky. Sup. Ct., 1959) 566
Columbus and Southern Ohio Electric Co. (E–7036), 27 FPC 922 1003
Commissioner of Internal Revenue *v.* P.G. Lake, Inc., 356 U.S. 260 844
Connecticut L. & P. Co. *v.* F.P.C., 324 U.S. 515 (1945) 217, 565
Connecticut River Power Co. (E–6346), 10 FPC 1255 1121
Continental Oil Co. (G–11024), 17 FPC 880 311
Continental Oil Co. (G–11024), 27 FPC 96 287, 331, 342, 614, 908, 1321, 1330, 1443
Continental Oil Co. (G–11024), 27 FPC 592 290, 311
Continental Oil Co. (G–11024), 28 FPC 1090 454
Continental Oil Co. (CI61–1508), 29 FPC 887 293
Continental Oil Co. *v.* F.P.C., 266 F. 2d 208 (1959) 240
Continental Oil Co. *v.* F.P.C., 361 U.S. 827 240
Cook *v.* Ball, 144 F. 2d 423, cert. den., 323 U.S. 761 1505
Coons *v.* Journeyman Barbers, etc. (Minn.), 23 N.W. 2d 345 1493
Currin *v.* Wallace, 306 U.S. 1 843, 1508
Dahnke-Walker Milling Co. *v.* Bondurant, 257 U.S. 282 1508
Deep South Oil Co. of Texas (G–2952), 14 FPC 83 1502
Deep South Oil Co. *v.* F.P.C., 247 F. 2d 882 204, 563, 844, 1263, 1501
Democrat Printing Co. *v.* F.C.C., 202 F. 2d 298 (1952) 120, 475
Detroit, City of, *v.* F.P.C., 230 F. 2d 810, cert. den., 352 U.S. 829 1267
Eagle-Picher M. & S. Co. *v.* N.L.R.B., 119 F. 2d 903 155
East Tennessee Natural Gas Co. (G–19530), 23 FPC 916 120
El Paso Natural Gas Co. (G–2018), 13 FPC 421 908
El Paso Natural Gas Co. (G–12580), 22 FPC 900 726
El Paso Natural Gas Co. (G–12580), 25 FPC 987 726
El Paso Natural Gas Co. (G–12580), 26 FPC 319 726
El Paso Natural Gas Co. (G–13832), 19 FPC 371 746, 768
El Paso Natural Gas Co. (G–13862), 23 FPC 369 87
El Paso Natural Gas Co. (G–16235), 23 FPC 364 238
El Paso Natural Gas Co. (G–16235), 24 FPC 1137 117
El Paso Natural Gas Co. (G–16235), 26 FPC 687 874
El Paso Natural Gas Co. (G–16235), 27 FPC 321 969
El Paso Natural Gas Co. (G–16235), 27 FPC 984 1528
El Paso Natural Gas Co. (G–16235), 30 FPC 77 534, 1493, 1520
El Paso Natural Gas Co. (G–17849), 29 FPC 1175 59, 288
El Paso Natural Gas Co. (G–17902), 24 FPC 134 99
El Paso Natural Gas Co. (CP60–72), 27 FPC 1134 307, 841
El Paso Natural Gas Co. (CP62–63), 29 FPC 559 478
El Paso Natural Gas Co. *v.* F.P.C., 281 F. 2d 567 (1960), cert. den., 366 U.S. 912 189, 898
Eureka Pipe Line Co. *v.* Hallanan, 257 U.S. 272 219
F.C.C. *v.* Pottsville Broadcasting Co., 309 U.S. 134 673
F.P.C. *v.* East Ohio Gas Co., 338 U.S. 464 219, 1145, 1263
F.P.C. *v.* Hope Natural Gas Co., 320 U.S. 591 241, 260, 345, 573, 732
F.P.C. *v.* Hunt, H.L., 376 U.S. 515 1409
F.P.C. *v.* Interstate Natural Gas Co., 336 U.S. 577 222
F.P.C. *v.* Panhandle Eastern Pipe Line Co., 337 U.S. 498 (1949) 154, 207, 240, 594, 765, 840, 1482
F.P.C. *v.* Tennessee Gas Transmission Co., 371 U.S. 145 152, 297, 1279

Page
F.P.C. *v.* Texaco Inc. and Pan American Petroleum Corp., 377 U.S. 33 1409
F.P.C. *v.* Transcontinental Gas Pipe Line Corp., 365 U.S. 1 (1961) 130, 588, 726, 845, 1506
F.T.C. *v.* Bunte Bros., Inc., 312 U.S. 349 590, 1487
F.T.C. *v.* Cement Institute, 333 U.S. 683 732
F.T.C. *v.* Gratz, 253 U.S. 421 754
Filger *v.* Public Water Supply Dist. (Kansas City Ct. App. Mo.) 346 S.W. 2d 567 938
Florida *v.* U.S., 282 U.S. 194 (1931) 587
Form L–1, 14 FPC 562 (1953) 1067
Form L–2, 17 FPC 62 (1953) 1061
Form L–3, 17 FPC 385 (1953) 676, 1126, 1340
Form L–6, 16 FPC 1121 (1953) 1012
Form L–7, 17 FPC 486 (1953) 1285
Franklin, Illinois, Village of (G–8471), 17 FPC 118 668
Frontier Power Co. (E–6330), 9 FPC 1298 1003
Frontier Power Co. (E–6635), 14 FPC 941 1003
Galveston Electric Co. *v.* City of Galveston, 258 U.S. 388 (1922) 168
Gas Service Co., The, *v.* F.P.C., 282 F. 2d 496 (1960) 157, 1488
Goodrich, R. H. (G–8977), 29 FPC 397 1633
Granite City Steel Co. *v.* F.P.C., 320 F. 2d 711 1200
Grant City, Mo., City of (CP62–303), 29 FPC 754 864
Gulf Oil Corp. (G–9520), Examiner's decision issued September 24, 1962 (unreported) 345
Gulf Oil Corp. (G–9520), 29 FPC 837 6, 334, 628, 981, 1625, 1632, 1649
Gulf Oil Corp. (G–17973), 23 FPC 664 231
Gulf Production Co. *v.* Warren (Tex. Civ. App.), 99 S.W. 2d 616, cert. den., 302 U.S. 707 1507
Guss *v.* Utah Labor Relations Board, 353 U.S. 1 (1957) 592
Hammonds, George S. (G–16520), 29 FPC 495 1035
Hamon, Jake L. (G–16747), 29 FPC 784 287
Hanley *v.* Kansas City Southern Ry. Co., 187 U.S. 617 604
Harper Oil Co. (G–14456), 22 FPC 756 476
Harper Oil Co. *v.* Cities Service Gas Co., District Court of Oklahoma County, Oklahoma, No. 153,708 (1963) 955
Harper Oil Co. *v.* F.P.C., 284 F. 2d 137 955
Hastings, City of, *v.* F.P.C., 221 F. 2d 31, cert. den. 349 U.S. 920 712, 1145
Home Gas Co. (G–1966), 13 FPC 241 908
Hope Natural Gas Co. (G–1292), 10 FPC 583 676
Hope Natural Gas Co. (G–2051), 12 FPC 342 676
Hope Natural Gas Co. (G–2303), 13 FPC 685 908
Hope Natural Gas Co. (G–5474), 28 FPC 958 294
Hope Natural Gas Co. *v.* F.P.C., 196 F. 2d 803 940
Houston, E. & W.T.R. Co. *v.* U.S., 234 U.S. 342 (1914) 209, 566
Houston Texas Gas & Oil Corp. (G–9262), 16 FPC 118 847
Hugoton Plains Gas and Oil Co. (RI60–102), 30 FPC 513 1210
Humble Oil & Refining Co. *v.* Texas & Pacific Ry., 155 Tex. 483; 289 S.W. 2d 547 (1956) 205
Hummel *v.* McFadden (Pa.), 150 A. 2d 856 1505
Hunt, H. L. (RI62–467), 28 FPC 897, reh. den., 29 FPC 84, reversed Margaret Hunt Hill Trustee, Hassie Hunt Trust *v.* F.P.C., 335 F. 2d 355 685
Hunt, H. L. *v.* F.P.C., 306 F. 2d 334, reversed 376 U.S. 515 321, 334, 497, 617, 1409, 1443
Hunt, Hassie Trust (G–17431), 21 FPC 639 1320
Hunt, Hassie Trust *v.* F.P.C., 334 F. 2d 474 1440
Hunt Oil Co. (G–9065), 28 FPC 623 892, 1168
Hunt Oil Co. (G–9065), 30 FPC 220 434, 449, 1625, 1633, 1648
Hunt Oil Co. *v.* F.P.C., 334 F. 2d 474 1440
Illinois Natural Gas Co. *v.* Central Illinois Public Service Co., 314 U.S. 498 (1942) 567, 750
Illinois Power Co. *v.* City of Jacksonville, 18 Ill. 2d 618, 165 N.E. 2d 300 716
Inter-Island Steam Nav. Co. *v.* Terr. of Hawaii, 96 F. 2d 412 604
Inter-Island Steam Nav. Co. *v.* Terr. of Hawaii, 305 U.S. 306 604
International Union *v.* Eagle-Picher M. & S. Co., 325 U.S. 335 155
I.C.C. *v.* Parker, 326 U.S. 60 475
Interstate Natural Gas Co. *v.* F.P.C., 331 U.S. 682 219, 594, 842, 1508
Iron Ranges Natural Gas Co. (G–17626), 22 FPC 164 877

Page

Isbrandtsen Co. *v.* U.S. (3-j. D.C., 1951, J. Frank), 96 F. Supp. 883, affirmed 4–4, 342 U.S. 950 ... 243
J. M. Huber Corp. (G–3038), 14 FPC 340 ... 247, 1497
J. M. Huber Corp. *v.* F.P.C., 236 F. 2d 550 (1956) ... 578, 1488
J. Ray McDermott & Co., Inc. (CI63–301), 28 FPC 1300 ... 621
Jersey Central Power & Light Co. *v.* F.P.C., 319 U.S. 61 ... 219, 842
Kansas-Nebraska Natural Gas Co., Inc. (G–12391), 25 FPC 448 ... 585
Kansas-Nebraska Natural Gas Co., Inc. (CP62–215), 29 FPC 1058 ... 864
Kansas Pipe Line & Gas Co. (G–106), 2 FPC 29 ... 111, 267, 864, 1052
Kennedy *v.* Hicks (Ky.), 203 S.W. 318 ... 1505
Kentucky Natural Gas Corp. *v.* P.S.C., 28 F. Supp. 509 (D. Ky. 1939), affirmed per curiam, 119 F. 2d 417 ... 564
Kerr-McGee Oil Industries, Inc. *v.* F.P.C., 260 F. 2d 602 (1958) ... 1107
Kirschbaum Co. *v.* Walling, 316 U.S. 517 (1942) ... 591
Lee *v.* F.M.B., 284 F. 2d 577 (1960) ... 969
Lemke *v.* Farmer's Grain Co., 258 U.S. 50 ... 843, 1508
Lo-Vaca Gathering Co. (CI60–693), 26 FPC 606; 323 F. 2d 190; 379 U.S. 366 ... 201, 564, 833
McLean & Co. *v.* Denver & Rio Grande R.R. Co., 203 U.S. 38 ... 604
Madison County *v.* School District No. 2 (Neb.), 27 N.W. 2d 172 ... 1493
Mecom, John W., (d/b/a Mecom Petroleums) (G–10357), 25 FPC 1022 ... 625
Medina Gathering Corp. (CP62–194), 30 FPC 227 ... 1203
Michigan Consolidated Gas Co. *v.* F.P.C., 282 F. 2d 854 (1960) ... 734
Michigan Consolidated Gas Co. *v.* F.P.C. (App. D.C.), 283 F. 2d 204, cert. den., 364 U.S. 913 ... 111, 475, 847, 1052
Michigan Wisconsin Pipe Line Co. (G–1678), 13 FPC 326 ... 676, 908
Michigan Wisconsin Pipe Line Co. (G–12292), 29 FPC 932 ... 1257
Michigan Wisconsin Pipe Line Co. (G–13246), 21 FPC 552 ... 148
Michigan Wisconsin Pipe Line Co. (G–13246), 22 FPC 1155 ... 1255
Michigan Wisconsin Pipe Line Co. (G–17512), 22 FPC 603 ... 1245
Michigan Wisconsin Pipe Line Co. (G–20569), 24 FPC 177 ... 735, 1139, 1531
Michigan Wisconsin Pipe Line Co. (CP61–102), 27 FPC 449 ... 315, 482, 616, 684, 1531, 1607
Michigan Wisconsin Pipe Line Co. (CP63–230), 30 FPC 1239 ... 1532
Midwestern Gas Transmission Co. (G–16841), 21 FPC 653 ... 772, 862
Midwestern Gas Transmission Co. (G–16841), 30 FPC 150, reh. den., 30 FPC 659 ... 1150
Midwestern Gas Transmission Co. (G–18313), 22 FPC 775 ... 735, 864, 1142
Midwestern Gas Transmission Co. (G–18313), 27 FPC 180 ... 1258
Mills Bennett Estate (RI63–308), 29 FPC 212 ... 415, 640
Minneapolis Gas Co. *v.* F.P.C., 278 F. 2d 870, cert. den., 364 U.S. 891 ... 876
Mississippi River Fuel Corp. (G–17413), 28 FPC 915 ... 285
Mississippi River Fuel Corp. *v.* F.P.C., 281 F. 2d 919, cert. den., 365 U.S. 827 ... 222, 1460
Mississippi Valley Gas Co. *v.* F.P.C., 294 F. 2d 588 (1961) ... 157, 1488
Missouri ex rel. Barrett *v.* Kansas Natural Gas Co., 265 U.S. 298 (1924) ... 562, 1272, 1506
Mitchell *v.* Riegel Textile, Inc., 259 F. 2d 954 ... 1460
Montana-Dakota Utilities Co. (G–9253), 16 FPC 401 ... 201
Montana-Dakota Utilities Co. (CP61–234), 30 FPC 200 ... 579, 792
Montana-Dakota Utilities Co. (E–6210), 8 FPC 860 ... 1003
Montana-Dakota Utilities Co. (E–6210), 11 FPC 1543 ... 1003
Montana-Dakota Utilities Co. (E–6720), 17 FPC 578 ... 1003
Montana-Dakota Utilities Co. *v.* Northwestern Public Service Co., 341 U.S. 246 ... 318
Morand Bros. Beverage Co. *v.* N.L.R.B., 204 F. 2d 529, cert. den., 346 U.S. 909 ... 155
Morgan *v.* U.S., 298 U.S. 468 ... 942
National Coal Ass'n *v.* F.P.C., 191 F. 2d 462 (1951) ... 1518
National Coal Co. *v.* Overholt (W. Va.), 94 S.E. 735 ... 1505
N.L.R.B. *v.* Colten, 105 F. 2d 179 (1939) ... 753
N.L.R.B. *v.* Greensboro Co., 180 F. 2d 840 (1950) ... 243
N.L.R.B. *v.* Gunaca, 135 F. Supp. 790 (E.D. Wisc.), affirmed 230 F. 2d 542 (1956) ... 969
N.L.R.B. *v.* International Union, 287 F. 2d 605 ... 754
N.L.R.B. *v.* Reliance Fuel Oil Corp., 371 U.S. 224 ... 592

Page
Natural Gas Pipeline Co. of America (G–2302), 14 FPC 212 908
Natural Gas Pipeline Co. of America (CP60–97), 24 FPC 530 1450
Natural Gas Pipeline Co. of America (CP62–243), 28 FPC 593 475
Natural Gas Pipeline Co. of America (RP61–8), 28 FPC 731 240, 733
New Hampshire Water Resources Board (E–6807), 20 FPC 99 1390, 1398
New Jersey Power & Light Co., 9 N.J. 498, 89 A. 2d 26 162
North Carolina *v.* U.S., 325 U.S. 507 (1945) 562
Northern Natural Gas Co. (G–2217), 14 FPC 11 874
Northern Natural Gas Co. (G–12153), 28 FPC 4 351
Northern Natural Gas Co. (G–12153), 29 FPC 689 351
Northern Natural Gas Co. (G–17485), 22 FPC 164 847, 862
Northern Natural Gas Co. (G–20570), 25 FPC 1234 476, 735, 1248
Northern Natural Gas Co. (CP61–132), 25 FPC 1205 1266
Northern Natural Gas Co. (CP61–132), 26 FPC 418 1266
Northern Natural Gas Co. (CP61–132), 28 FPC 1155 1262, 1567
Northern Natural Gas Co. (CP61–132), 29 FPC 450 1267
Northern Natural Gas Co. *v.* F.P.C., 215 F. 2d 892 222
Northern Natural Gas Co. *v.* State Corporation Commission of Kansas, 372 U.S. 84 (1963) 567, 872
Northwest Natural Gas Co. (G–996), 13 FPC 221 90, 269
Norwegian Nitrogen Co. *v.* U.S., 288 U.S. 294 1203
Ohio Oil Co., The (RI60–92), 27 FPC 1373 221, 625, 1633
Oil Inc. (Operator) (CI60–170), 25 FPC 1178 270
Oklahoma Natural Gas Co. (G–19593), 23 FPC 291 219
Pacific Northwest Pipeline Corp. (G–1429), 13 FPC 230 96
Pacific Northwest Pipeline Corp. (G–8932), 14 FPC 157 96
Pacific Northwest Pipeline Corp. (G–13018), 28 FPC 7 112
Pacific Northwest Pipeline Corp. (G–13456), 22 FPC 117 270
Pan American Petroleum Corp., 30 FPC 497 1443
Pan American Petroleum Corp. *v.* Cities Service Gas Co., 191 Kan. 511, 382 P. 2d 645 (1963) 496
Pan American Petroleum Corp. *v.* Superior Court of Delaware for New Castle County, 366 U.S. 656 (1961) 1580
Panhandle Eastern Pipe Line Co. (G–1116), 13 FPC 53 908, 1487
Panhandle Eastern Pipe Line Co. (G–1147), 7 FPC 1033 753
Panhandle Eastern Pipe Line Co. (G–1705), 15 FPC 1421 32, 664
Panhandle Eastern Pipe Line Co. (G–1705), order issued February 2, 1956, 12 PUR 3d 376 743
Panhandle Eastern Pipe Line Co. (G–1725), 11 FPC 167, 204 F. 2d 925 (1953) 1052
Panhandle Eastern Pipe Line Co. (G–2047), 12 FPC 686 752, 1266
Panhandle Eastern Pipe Line Co. (G–2506), 25 FPC 787 752, 1267
Panhandle Eastern Pipe Line Co. (CP60–103), 27 FPC 35 264, 344, 482, 616, 683, 752, 842
Panhandle Eastern Pipe Line Co. and Trunkline Gas Co. (CP63–123), 29 FPC 824 363
Panhandle Eastern Pipe Line Co. *v.* F.P.C., 232 F. 2d 467, cert. den., 352 U.S. 891 1146, 1264
Panhandle Eastern Pipe Line Co. *v.* F.P.C., 236 F. 2d 289 158, 673, 1052
Panhandle Eastern Pipe Line Co. *v.* F.P.C., 305 F. 2d 763 1267
Panhandle Eastern Pipe Line Co. *v.* Michigan Consolidated Gas Co., 177 F. 2d 942 (1949) 578, 1052
Panhandle Eastern Pipe Line Co. *v.* P.S.C., of Indiana, 332 U.S. 507 (1947) 573, 1145, 1485
Penfield Co. *v.* S.E.C., 143 F. 2d 746, cert. den., 323 U.S. 768 (1944) 969
Pennsylvania Gas Co. *v.* P.S.C., 252 U.S. 23 (1920) 572
Pennsylvania Power & Light Co. (Project No. 1881), 17 FPC 98 274
Pennsylvania Water & Power Co. *v.* F.P.C., 343 U.S. 414 (1952) 600
Penn-York Natural Gas Corp. (G–600), 5 FPC 33 676
People *v.* City of Paris, 380 Ill. 503; 44 NE 2d 1954 750
Peoples Gulf Coast Natural Gas Pipeline Co., and Natural Gas Pipeline Co. of America (G–19086), 24 FPC 1 at 4, 349 871
Peoples Gulf Coast Natural Gas Pipeline Co. (G–19086), 24 FPC 106 231
Peoples Gulf Coast Natural Gas Pipeline Co. and Texas Illinois Natural Gas Pipeline Co. (G–19963), 22 FPC 1013 1450
Peoples Natural Gas Co. *v.* F.P.C., 127 F. 2d 153, cert. den., 316 U.S. 700 845

Page
Peoples Natural Gas Co. *v.* PSC of Pennsylvania, 270 U.S. 550 ..... 204, 573
Petroleum Exploration *v.* Commissioner of Internal Revenue, 193 F. 2d 59 .. 1506
Phillips Petroleum Co. (G–1148), 7 FPC 983 753
Phillips Petroleum Co. (G–1148), 24 FPC 537 ..... 332, 401, 893, 1209, 1354, 1455, 1657
Phillips Petroleum Co. (G–14244), 29 FPC 581 285
Phillips Petroleum Co. *v.* F.P.C., 258 F. 2d 906 (1958) 1107
Phillips Petroleum Co. *v.* Wisconsin, 347 U.S. 672 (1954) 219, 241, 563, 765, 840, 1192, 1272, 1356, 1506, 1633
Pioneer Gathering System, Inc. (G–16550), 23 FPC 260 249
Pittsburgh, City of, *v.* F.P.C., 237 F. 2d 741 ..... 116, 158
Pittsburgh, City of, *v.* Pennsylvania PUC, 128 A. 2d 372 (1956) 162
Placid Oil Co. (G–13183), 30 FPC 283 ..... 687, 1318, 1331, 1440, 1445
Placid Oil Co. (G–13183), 30 FPC 682 ..... 1210, 1440
Placid Oil Co. *v.* F.P.C., 334 F. 2d 474 1440
Polish Nat. Alliance *v.* N.L.R.B., 322 U.S. 643 (1943) 591
Public Service Co. of New Hampshire (Project No. 2288), 27 FPC 830 .. 1121, 1218, 1347, 1390, 1398
P.S.C. of New York *v.* F.P.C., 257 F. 2d 717 316
P.S.C. of New York *v.* F.P.C., 287 F. 2d 143 ..... 841, 1455, 1480, 1509
P.S.C. of New York *v.* F.P.C., 287 F. 2d 146, cert. den., 365 U.S. 880 (1961) 156, 286, 345, 1455
P.S.C. of New York *v.* F.P.C., 295 F. 2d 140, cert. den., 368 U.S. 948 1439
P.S.C. of New York *v.* F.P.C., 329 F. 2d 242 ..... 1317, 1331
P.S.C. of New York *v.* F.P.C., 361 U.S. 195 (1959) 286, 1553
P.U.C. of Rhode Island *v.* Attleboro Steam and Electric Co., 273 U.S. 83 (1927) 562
P.U.C. *v.* Capital Transit Co., 214 F. 2d 242 811
P.U.C. *v.* Landon, 249 U.S. 236 (1919) 562
Pure Oil Co., The (G–14351), 28 FPC 948 (1962) 285
Pure Oil Co., The (G–17930), 25 FPC 383, affirmed 290 F. 2d 370 (1962) .. 1104, 1318
Railroad Commission of La. *v.* Arkansas Harbor Terminal R.R. Co., 48 ICC 312 941
Red Bud, Ill., City of (G–16504), 25 FPC 987 712
Roche *v.* Evaporated Milk Ass'n, 319 U.S. 21 811
St. Lawrence Gas Co., Inc. (G–17500), 26 FPC 265 ..... 942, 1493
Saturn Oil & Gas Co., Inc. *v.* F.P.C., 250 F. 2d 61 ..... 240, 844, 1272
Seaboard Oil Co. (G–11970), 19 FPC 416 243
Seaboard Oil Co. (G–13169), 20 FPC 330 314
Shapiro *v.* Wilgus, 287 U.S. 348 1505
Shell Oil Co. (G–9446), 28 FPC 257 ..... 417, 625, 1632
Shell Oil Co. (G–17560), 29 FPC 472 285
Shell Oil Co. (RI61–515), 29 FPC 498 ..... 304, 403, 648, 1104, 1318
Shell Oil Co. *v.* F.P.C., 247 F. 2d 900, cert den. 355 U.S. 930 ..... 204, 844, 1488
Sierra Pacific Power Co. (E–7042), 28 FPC 335 47
Sinclair Oil & Gas Co. (G–9291), 30 FPC 5 480
Sinclair Oil & Gas Co. (G–9291), 30 FPC 1620 1632
Skelly Oil Co. (G–18638), 24 FPC 979 316
Skelly Oil Co. (G–18638), 28 FPC 401 ..... 59, 230, 262, 287, 347, 614, 1317, 1440
Skelly Oil Co. (G–18638), 28 FPC 1065 ..... 270, 614, 1440
Skelly Oil Co. (G–18638), 28 FPC 1121 684
Socony Mobil Oil Co., Inc. (G–13746), 28 FPC 357 ..... 453, 1326
Socony Mobil Oil Co., Inc. (G–13780), 27 FPC 347 ..... 287, 333, 1332, 1445
Sohio Petroleum Co. *v.* F.P.C., 298 F. 2d 465 615
South Carolina Electric & Gas Co. (Project No. 2315), 30 FPC 1338 1611
South Carolina Generating Co. (E–6585), 16 FPC 52 908
South Georgia Natural Gas Co. (G–9892), 22 FPC 211 726
South Georgia Natural Gas Co. (G–17568), 23 FPC 795 728
Southern Natural Gas Co. (G–14740), 18 FPC 57 732
Southern Natural Gas Co. (G–14740), 24 FPC 836 732
Southern Natural Gas Co. (G–14740), 25,FPC 288 732
Southern Natural Gas Co. (G–19632), 25 FPC 518 777
Southern Natural Gas Co. (G–19632), 25 FPC 925 719
Southern Natural Gas Co. (G–20509), 29 FPC 323 ..... 476, 982, 1136
Southern Natural Gas Co. (G–20509), 29 FPC 779 ..... 982, 1136

	Page
Southern Pacific Co. *v.* Gallagher, 306 U.S. 167	209
Southern Union Gas Co. *v.* New Mexico P.S.C., No. 31074, (D. Santa Fe Co., June 9, 1961	162
Southwestern Power Administration (E–6975), 27 FPC 895	365, 1003
Speaker *v.* Larkin Rural Tel. Co. (Mich. Pub. Util. Comm.), 27 PUR (N. S.), 185	938
Sprout *v.* City of South Bend, 277 U.S. 163	844
Standard Oil Co. of California (CI60–333), 27 FPC 1153, affirmed *sub nom.* California Co., Western Division *v.* F.P.C., 315 F. 2d 652 (1963)	231
Standard Oil Co. *v.* California, 291 U.S. 242 (1934)	604
Staplin *v.* Vesely (N.M.), 72 P. 2d 7	1507
State Corp. Com'n of Kansas *v.* F.P.C., 206 F. 2d 690	1145
State of Kansas, ex rel. Dole *v.* Kirchner, 182 Kan. 437; 321 P. 2d 183	1579
State of North Dakota *v.* F.P.C., 247 F. 2d 173	201, 566
State of Washington Dept. of Comm. *v.* F.P.C., 207 F. 2d 391, cert. den., 347 U.S. 936	155
State of Wisconsin *v.* F.P.C., 201 F. 2d 183 (1952)	600
States SS Co. (Mar. Sub. Be., 1962), 12 Pike & F. Adm. L. 2d 64	754
Stokeley-Van Camp, 130 N.L.R.B. 869	754
Sun Oil Co. (G–13710), 28 FPC 809	285
Sun Oil Co. (G–15122), 22 FPC 355	328
Sun Oil Co. (G–15122), 22 FPC 654	328
Sun Oil Co. *v.* U.G.I., 368 U.S. 823	328
Sunray Mid-Continent Oil Co. (G–12211), 19 FPC 618	844
Sunray Mid-Continent Oil Co. *v.* F.P.C., 270 F. 2d 404	291, 1486
Sunray Mid-Continent Oil Co. *v.* F.P.C., 290 F. 2d 552 (1961)	1421
Sunray Mid-Continent Oil Co. *v.* F.P.C., 364 U.S. 137	841
Sunshine Anthracite Coal Co. *v.* Adkins, 310 U.S. 381	154
Superior Oil Co., The (G–16380), 22 FPC 369	328
Superior Oil Co., The, *v.* F.P.C., 322 F. 2d 601	686
Superior Oil Co., The, *v.* State of Mississippi, 280 U.S. 390	209
Superior Oil Co., The, *v.* U.G.I., 365 U.S. 879	328
Tacoma, City of, *v.* Taxpayers of Tacoma, 357 U.S. 320	155
Tennessee Gas Transmission Co. (G–5259), 18 FPC 428	908
Tennessee Gas Transmission Co. (G–9331), 17 FPC 405	147
Tennessee Gas Transmission Co. (G–11980), 27 FPC 202	86
Tennessee Gas Transmission Co. (G–11980), 28 FPC 1100	1281
Tennessee Gas Transmission Co. (G–11980), 29 FPC 65	1281
Tennessee Gas Transmission Co. (G–14562), 27 FPC 610	806
Tennessee Gas Transmission Co. (G–14562), 29 FPC 4	454
Tennessee Gas Transmission Co. (G–16842), 30 FPC 759	1482
Tennessee Gas Transmission Co. (G–20388), 26 FPC 860	471
Tennessee Gas Transmission Co. (CP61–106), 27 FPC 502	813
Tennessee Gas Transmission Co. (CP61–106), 30 FPC 1477	805
Tennessee Gas Transmission Co. (CP63–85), 29 FPC 184	248
Teton Valley Power and Milling Co., Limited (E–6047), 24 FPC 361	1003
Texaco Inc. (G–13169), 28 FPC 247	222, 285, 403, 449, 885, 981, 1553
Texaco Inc. *v.* F.P.C., 290 F. 2d 149	260, 345, 481, 846, 1377
Texaco Inc. *v.* F.P.C., 317 F. 2d 796	497, 1409
Texaco Seaboard, Inc. (G–13169), 27 FPC 15	305
Texaco Seaboard, Inc. (G–13169), 27 FPC 482	285, 618, 1445
Texaco Seaboard, Inc. (CI61–118), 29 FPC 593	7, 59, 231, 287, 684, 1440, 1631
Texaco Seaboard, Inc. (CI61–118), 30 FPC 613	1210, 1440
Texas Eastern Transmission Corp. (G–2573), 14 FPC 266	31
Texas Eastern Transmission Corp. (G–12446), 21 FPC 867	1487
Texas Eastern Transmission Corp. (G–12446), 29 FPC 249	765, 840, 1482
Texas Eastern Transmission Corp. (G–12446), 30 FPC 153	765, 1482
Texas Eastern Transmission Corp. (CP60–122), 28 FPC 1035	668
Texas Gas Corp. (G–8107), 18 FPC 397	233
Texas Gas Transmission Corp. (G–17335), 22 FPC 378	313
Texas Gas Transmission Corp. (G–17335), 22 FPC 657	327
Texas Gas Transmission Corp. (RP61–15), 26 FPC 924	692, 1281, 1290
Texas Illinois Natural Gas Pipeline Co. (G–2219), 13 FPC 708	908
Tidewater Oil Co. (G–13310), 27 FPC 1267	222, 334, 625
Transamerica Corp., 184 F. 2d 319	811
Transcontinental Gas Pipe Line Corp. (G–1842), 11 FPC 94	111
Transcontinental Gas Pipe Line Corp. (G–10000), 28 FPC 979	477, 736, 847

Page
Transcontinental Gas Pipe Line Corp. (G–13143), 20 FPC 264 ..... 327, 1553
Transcontinental Gas Pipe Line Corp. (G–13143), 20 FPC 571 327
Transcontinental Gas Pipe Line Corp. (RP61–13), 27 FPC 187 ..... 294, 407, 982, 1135, 1195, 1281, 1326
Transcontinental Gas Pipe Line Corp., 365 U.S. 1 1160
Transwestern Pipeline Co. (G–14871), 22 FPC 391 ..... 98, 643
Trunkline Gas Co. (G–15394), 21 FPC 704 91
Union Texas Petroleum (G–13221), 29 FPC 734 62
Union Texas Petroleum (G–13221), 29 FPC 1279 ..... 449, 453, 551
Union Texas Petroleum (G–13221), 30 FPC 456 ..... 981, 1085, 1089, 1299, 1324, 1548, 1551, 1580, 1583, 1597, 1601
Union Texas Petroleum (G–13221), 30 FPC 979 ..... 1085, 1281, 1299, 1326, 1548, 1551, 1580, 1583, 1597, 1601
United Fuel Gas Co. (G–1781), 12 FPC 251 ..... 196, 676, 908
United Fuel Gas Co. (G–2451), 23 FPC 127 676
United Fuel Gas Co. (G–11060), 19 FPC 300 939
U.G.I. *v.* F.P.C., 283 F. 2d 817, cert. den., 365 U.S. 881 ..... 260, 288, 310, 333, 345, 1318, 1440
U.G.I. *v.* F.P.C., 287 F. 2d 159 (1961) 260, 289, 840, 1455
U.G.I. *v.* F.P.C., 290 F. 2d 133 ..... 260, 319, 1455
U.G.I. *v.* F.P.C., 290 F. 2d 147, cert. den., 366 U.S. 956 ..... 289, 303
U.G.I. & P.S.C. *v.* F.P.C., 290 F. 2d 133, cert. den., 368 U.S. 823 346
United Gas Pipe Line Co. (G–1142), 13 FPC 398 562
United Gas Pipe Line Co. (G–9547), 27 FPC 504 294
United Gas Pipe Line Co. (CP60–36), 30 FPC 329 ..... 1210, 1331
United Gas Pipe Line Co. (CP60–38), 24 FPC 933 785
United Gas Pipe Line Co. (CP62–161), 30 FPC 560 ..... 765, 1197
United Gas Pipe Line Co. *v.* Memphis Light, Gas and Water Division, 358 U.S. 103 1318
U.S. *v.* Abilene & Southern Railway Co., 265 U.S. 274 942
U.S. *v.* Bergh, 352 U.S. 40 ..... 157, 1488
U.S. *v.* Detroit and Cleveland Navigation Co., 326 U.S. 241 ..... 100, 845
U.S. *v.* El Paso Natural Gas Co., 376 U.S. 651 92
U.S. ex rel. Chapman *v.* F.P.C., 345 U.S. 153 1217
U.S. *v.* Louisiana, 363 U.S. 1 ..... 598, 798
U.S. *v.* Morgan, 313 U.S. 409 391
U.S. *v.* Seatrain Lines, 329 U.S. 424 1481
U.S. *v.* Twin City Power Co., 350 U.S. 222 1630
U.S. *v.* Wrightwood Dairy Co., 315 U.S. 110 588
Utah Power & Light Co. (E–7034), 29 FPC 128 886
Valley Gas Transmission, Inc. (G–19618), 25 FPC 233 270
Virginia Petroleum Jobbers Association *v.* F.P.C., 293 F. 2d 527, cert. den., 368 U.S. 940 (1961) 130, 668
Waukesha Sales & S. Co. (N.L.R.B., 1962), 12 Pike & F. Adm. L. 2d 420 754
Webster *v.* Fall, 266 U.S. 252 1509
Western Trunk Line, Trans-Missouri, and Illinois Freight Committee Territories, Investigations of Advances in Rates by Carriers in, 20 ICC 307 111
West India Fruit & Steamship Co. *v.* Seatrain Lines, 170 F. 2d 775, cert. den., 340 U.S. 883, reh. den., 340 U.S. 907 811
Wickard *v.* Filburn, 317 U.S. 111 566
Wisconsin *v.* F.P.C., 373 U.S. 294 ..... 289, 892, 1318, 1354
Wisconsin Michigan Power Co. *v.* F.P.C., 197 F. 2d 472, cert. den., 345 U.S. 934 565
Wright *v.* U.S., 302 U.S. 583 939
Yellowstone Park Transportation Co. *v.* Gallatin County, 31 F. 2d 644 604

TABLE OF STATUTES CITED

	Page
United States:	
Act of April 15, 1886, 24 Stat. 12	1465
Act of August 3, 1886, Chap. 623, 24 Stat. 123	1618
Act of August 5, 1909, 36 Stat. 180, extended by Act of March 5, 1912, 37 Stat. 72	1630
Act of July 31, 1950, 64 Stat. 302, amended by Act of August 13, 1953, 67 Stat. 574	1039
Administrative Procedure Act of 1946, 60 Stat. 237:	400
Sec. 4	429, 497, 852, 1543
Sec. 4(a)	443, 1371, 1436
Sec. 5	753, 812
Sec. 7(b)	969
Sec. 7(c)	240
Sec. 7(d)	240
Bankruptcy Act	769
Bituminous Coal Act, 50 Stat. 72:	154, 604
Sec. 4(a)	590
Clayton Act, 38 Stat. 731 (1914), 15 U.S.C. 14 (1958):	
Sec. 7	147
Emergency Relief Appropriation Act of April 8, 1935	371
Federal Employers' Liability Act, 35 Stat. 65, amended, 53 Stat. 1404, 45 U.S.C. 51:	
Sec. 1	590
Federal Power Act, 49 Stat. 838:	
Sec. 3(7)	273
Sec. 3(8)	1390, 1398
Sec. 3(11)	490, 519, 889, 1011, 1060, 1065, 1122, 1217, 1347
Sec. 3(13)	429, 675, 1543
Sec. 4	274
Sec. 4(a)	429, 1543
Sec. 4(b)	429, 530, 951, 1284, 1543
Sec. 4(c)	429, 1543
Sec. 4(e)	65, 274, 530, 951, 1010, 1022, 1058, 1120, 1169, 1214, 1284, 1343, 1346, 1390, 1397, 1465, 1630.
Sec. 4(g)	1630
Sec. 6	530, 951, 1284
Sec. 8	889
Sec. 10(a)	508, 530, 951, 1285, 1343
Sec. 10(c)	530, 951, 1285
Sec. 10(d)	63, 530, 543, 675, 951, 1285, 1659
Sec. 10(e)	273, 675, 1334
Sec. 10(f)	530, 951, 1285, 1334, 1565
Sec. 10(i)	1213, 1333
Sec. 11	530, 951, 1285
Sec. 12	530, 951, 1285
Sec. 14	530, 675, 951, 1285, 1661
Sec. 15	530, 951, 1285, 1661
Sec. 18	508, 530, 951, 1285
Sec. 19	530, 852, 951, 1285
Sec. 20	530, 852, 951, 1285
Sec. 22	530, 951, 1285
Sec. 23	1630
Sec. 23(a)	530, 951, 1169, 1285
Sec. 23(b)	1010, 1215, 1390, 1398, 1464, 1617, 1619, 1630
Sec. 26	1239
Sec. 141	427
Sec. 141.1	427

United States—Continued
Federal Power Act—Continued Page
Sec. 201 ... 370, 392, 467, 969, 1427
Sec. 201(b) ... 368
Sec. 201(e) ... 365, 1429
Sec. 202(a) ... 1343
Sec. 202(e) ... 55, 1414
Sec. 203 ... 366, 461, 466, 515, 520, 522, 886, 948, 1004, 1654
Sec. 204 ... 1, 3, 46, 71, 74, 282, 461, 531, 536, 644, 687, 965, 970, 1006, 1151, 1351, 1362, 1513.
Sec. 204(a) ... 4, 75, 462, 688, 1364, 1515
Sec. 204(e) ... 4, 75, 462, 688, 1364, 1515
Sec. 204(f) ... 2, 4, 48, 73, 75, 282, 462, 533, 537, 646, 688, 967, 971, 1009, 1153, 1352, 1364, 1515.
Sec. 205 ... 197, 198, 365, 392, 525, 637, 641, 852, 885, 968, 1307, 1395, 1427, 1430
Sec. 206 ... 198, 199, 366, 392, 525, 637, 641, 887, 968, 1307, 1427, 1431
Sec. 206(a) ... 852
Sec. 207 ... 1431
Sec. 208 ... 366, 852
Sec. 209 ... 852
Sec. 301 ... 366, 392, 542, 852, 969
Sec. 301(a) ... 429, 1543
Sec. 301(b) ... 968
Sec. 301(c) ... 968
Sec. 302 ... 429, 1543
Sec. 304 ... 199, 366, 429, 542, 637, 642, 1427, 1543
Sec. 304(a) ... 968
Sec. 304(b) ... 968
Sec. 307 ... 198, 199, 366, 392, 525, 637, 642, 969, 1427
Sec. 307(a) ... 372, 968
Sec. 307(b) ... 968
Sec. 307(g) ... 968
Sec. 308 ... 198, 199, 366, 443, 525, 637, 641, 887, 1427
Sec. 309 ... 198, 199, 366, 392, 429, 443, 525, 542, 637, 641, 852, 887, 969, 1334, 1427, 1431, 1543.
Sec. 311 ... 366, 429, 1543
Sec. 313(a) ... [2]46, 405, 409, 531, 543, 681, 890, 952, 965, 1015, 1154, 1214, 1349, 1392, 1400, 1412, 1468.
Federal Trade Commission Act
Sec. 5 ... 590
Federal Water Power Act of 1920, 41 Stat. 1063 ... 1619
Sec. 4(d) ... 40, 65, 1028, 1169
Federal Water Power Act Amendment of 1935 ... 1334
Fish and Wildlife Coordination Act of 1956, 16 U.S.C. 661 ... 508
Flood Control Act of 1944, 58 Stat. 887 ... 398, 1608
Sec. 5 ... 1609
General Dam Act of 1910, 36 Stat. 593 ... 1616, 1630
Sec. 4 ... 1617
Helium Act Amendment of 1960, 50 U.S.C. 167 ... 1261, 1567
Sec. 11 ... 1263
Internal Revenue Act of 1934 ... 168
Internal Revenue Act of 1942 ... 168
Internal Revenue Act of 1954 ... 183, 1094
Internal Revenue Code:
Sec. 167 ... 69, 195
Sec. 168 ... 69, 195
Sec. 172 ... 160
Sec. 1501 ... 160
Sec. 1502 ... 160
Sec. 1503 ... 160
Sec. 1504 ... 160

United States—Continued Page
Interstate Commerce Act, 41 Stat. 494 586
Sec. 1(1)(c) 604
National Labor Relations Act, 49 Stat. 450 591
Sec. 2(7) 590
Sec. 9(c) 590
Sec. 10(a) 590
Natural Gas Act, 52 Stat. 821:
Sec. 1 31, 1488
Sec. 1(b) 203, 232, 563, 684, 710, 771, 1263, 1482
Sec. 1(c) 714, 1048
Sec. 2(6) 233, 782
Sec. 2(7) 207, 562
Sec. 4 62, 176, 206, 235, 292, 334, 352, 361, 401, 403, 415, 426, 437, 451, 453, 460, 553, 638, 696, 759, 836, 853, 985, 1088, 1092, 1100, 1103, 1133, 1137, 1159, 1283, 1292, 1301, 1310, 1320, 1329, 1357, 1364, 1371, 1373, 1377, 1384, 1384-A, 1400, 1436, 1448, 1483, 1519, 1550, 1555, 1565, 1573, 1576, 1582, 1585, 1599, 1603, 1651.
Sec. 4(a) 24, 26, 1163
Sec. 4(b) 24, 26, 86, 589
Sec. 4(c) 811, 1488
Sec. 4(d) 415, 638, 936, 1318, 1384–A, 1426, 1460
Sec. 4(e) 8, 61, 152, 224, 296, 346, 351, 435, 436, 449, 458, 464, 551, 624, 647, 685, 694, 767, 857, 892, 980, 1085, 1090, 1130, 1289, 1320, 1324, 1357, 1419, 1553, 1627, 1636, 1651.
Sec. 5 24, 26, 62, 297, 334, 352, 401, 403, 437, 451, 456, 461, 512, 554, 696, 985, 1088, 1092, 1100, 1133, 1137, 1161, 1253, 1283, 1292, 1311, 1320, 1329, 1357, 1371, 1373, 1380, 1384, 1436, 1455, 1478, 1550, 1555, 1573, 1576, 1582, 1585, 1600, 1603.
Sec. 5(a) 8, 86, 224, 346, 351, 767, 892, 936, 1043, 1135, 1149, 1166, 1208, 1331, 1357, 1455, 1627, 1634
Sec. 7 8, 20, 79, 157, 201, 222, 237, 286, 337, 403, 472, 485, 512, 728, 759, 767, 836, 860, 1049, 1080, 1138, 1160, 1197, 1223, 1239, 1267, 1297, 1302, 1317, 1373, 1377, 1410, 1440, 1479, 1532, 1559, 1627, 1633.
Sec. 7(a) 28, 357, 397, 412, 487, 555, 661, 663, 707, 755, 759, 826, 857, 860, 995, 1141, 1212, 1227, 1296, 1311, 1476, 1603.
Sec. 7(b) 21, 107, 293, 354, 356, 426, 486, 578, 696, 828, 838, 855, 955, 988, 1016, 1034, 1052, 1071, 1077, 1226, 1231, 1385, 1528, 1577, 1651.
Sec. 7(c) 17, 18, 21, 22, 27, 35, 36, 38, 44, 49, 57, 93, 233, 285, 303, 335, 349, 350, 352, 354, 356, 373, 375, 379, 380, 383, 386, 388, 389, 394, 410, 420, 422, 424, 437, 439, 440, 445, 447, 450, 455, 460, 468, 486, 491, 498, 528, 539, 543, 545, 547, 548, 553, 557, 605, 607, 609, 621, 649, 651, 653, 654, 656, 658, 673, 689, 695, 763, 764, 823, 825, 827, 834, 854, 868, 930, 933, 949, 957, 958, 975, 977, 983, 986, 991, 994, 997. 1017, 1074, 1075, 1078, 1087, 1091, 1098, 1100, 1129, 1132, 1136, 1142, 1158, 1206, 1207, 1230, 1232, 1234, 1260, 1282, 1290, 1300, 1303, 1311, 1322, 1327, 1335, 1379, 1383, 1385, 1392, 1395, 1412, 1417, 1422, 1424, 1439, 1469, 1474, 1484, 1515, 1520, 1530, 1536, 1538, 1546, 1549, 1554, 1557, 1563, 1575, 1578, 1581, 1584, 1585, 1587, 1589, 1591, 1592, 1595, 1598, 1602, 1612, 1649.
Sec. 7(d) 1484
Sec. 7(e) 18, 21, 23, 27, 35, 37, 39, 44, 49, 58, 86, 296, 335, 350, 353, 355, 359, 374, 377, 380, 381, 384, 387, 388, 390, 395, 421, 423, 425, 437, 439, 442, 446, 447, 450, 455, 460, 468, 486, 492, 499, 528, 540, 544, 545, 548, 549, 553, 557, 558, 606, 607, 610, 614, 622, 650, 653, 655, 657, 659, 674, 690, 695, 706, 824, 825, 828, 834, 854, 868, 932, 934, 949, 959, 976, 978, 983, 987, 992, 994, 998, 1018,

United States—Continued
Natural Gas Act—Continued
Sec. 7(e)—Continued Page
1051, 1074, 1076, 1082, 1087, 1091, 1098, 1102, 1129, 1132, 1136, 1160, 1206, 1207, 1233, 1235, 1262, 1282, 1290, 1300, 1304, 1312, 1323, 1327, 1337, 1379, 1383, 1387, 1393, 1396, 1412, 1418, 1422, 1424, 1439, 1475, 1516, 1537, 1538, 1547, 1549, 1554, 1558, 1563, 1575, 1578, 1581, 1584, 1586, 1588, 1590, 1591, 1593, 1596, 1598, 1602, 1613, 1649.
Sec. 8(a) 1543
Sec. 9 1543
Sec. 10 24, 26, 1357, 1543
Sec. 10(a) 1155
Sec. 14 24, 26, 401, 753, 759, 1148, 1320, 1357, 1410, 1534
Sec. 14(a) 1499
Sec. 15 24, 26, 415, 443, 638, 759, 1148, 1320, 1357, 1384–A, 1519, 1534
Sec. 16 24, 26, 233, 293, 443, 561, 759, 1103, 1148, 1320, 1357, 1371, 1373, 1410, 1436, 1500, 1534, 1543
Sec. 19 305, 811, 1287
Sec. 19(a) 480, 636, 691
Sec. 19(b) 318, 1518
Sec. 19(c) 293
Outer Continental Shelf Lands Act, 67 Stat. 462 598
Sec. 4(a)(1) 603
Sec. 5(c) 456, 461, 985, 1133, 1137, 1329, 1550
Sec. 6(a)(9) 61, 458, 1131
Sec. 6(b) 799
Public Utility Holding Company Act of 1935, 49 Stat. 803 167, 369, 1299
Public Works Acceleration Act, 76 Stat. 541 397
Rivers and Harbors Act of 1899, 30 Stat. 1151, 33 U.S.C. 401:
Sec. 9 1465, 1616
Sec. 10 1465
Robinson Patman Act, 15 U.S.C. 13 86
Rural Electrification Act of 1936 (s. 3483) 369, 1002
Securities Act of 1933, 48 Stat. 74, 15 U.S.C.A.:
Sec. 77(b)(7) 604
Submerged Land Act of May 1953, 67 Stat. 29 598, 799
Sec. 2 601
Sec. 9 601
States:
California, Public Utilities Code of 946
Illinois Municipal Code, Art. 11, Div. 117 782
Illinois, Municipal Ownership Act of 714
Indiana, Burns Statutes, Sec. 54–602 to 612 670, 787
Kansas Oil and Gas Severance Tax Act (Chap. 516, Laws of 1957, G.S. 1957 Supp. 79–4201 1579
Kansas, State Water Plan Act passed by legislature in 1963, 49 Stat. 856 1345
Minnesota, Revised Laws of, for 1905, Sec. 2841, Chap. 58 1617
Oregon, Revised Statutes of, Chap. 727 1654

TABLE OF RULES OF COMMISSION CITED*

	Page
Sec. 1.6	753, 820
Sec. 1.6(b)	150
Sec. 1.6(d)	1138
Sec. 1.7	443
Sec. 1.7(c)	580, 1463, 1616, 1618
Sec. 1.7(d)	443, 691
Sec. 1.8	200, 359, 366, 415, 525, 640, 643, 759, 888, 1149, 1308, 1321,1384–B, 1395, 1432, 1534.
Sec. 1.8(c)	360
Sec. 1.9	443, 753
Sec. 1.9(a)	443
Sec. 1.9(c)	200, 525, 642, 820, 1428
Sec. 1.10	759, 1149, 1534
Sec. 1.11(a)	535, 838
Sec. 1.11(d)	381, 1385, 1577
Sec. 1.11(d)(1)	702
Sec. 1.12	672, 856
Sec. 1.12(c)	681
Sec. 1.12(d)	473
Sec. 1.12(e)	681
Sec. 1.13(c)	293
Sec. 1.13(f)	681
Sec. 1.15	443
Sec. 1.15(f)	154
Sec. 1.16	443
Sec. 1.17	443, 820
Sec. 1.17(b)	628
Sec. 1.18	176, 489, 1193, 1321, 1365
Sec. 1.18(b)	535
Sec. 1.18(e)	33, 430, 483, 952, 954, 973, 1040, 1556, 1568, 1621, 1634
Sec. 1.19	753, 839, 1358
Sec. 1.20	401, 753
Sec. 1.20(b)	1043
Sec. 1.23(a)	969
Sec. 1.27	391, 452, 968
Sec. 1.27(b)	969
Sec. 1.28	58, 1093, 1286
Sec. 1.28(a)	279, 1093
Sec. 1.29(a)	1247
Sec. 1.30(c)	1522
Sec. 1.30(c)(1)	17, 21, 23, 27, 35, 37, 39, 44, 49, 57, 349, 353, 355, 359, 374, 377, 379, 381, 383, 387, 388, 390, 395, 421, 422, 425, 439, 441, 446, 447, 449, 454, 468, 486, 492, 498, 528, 540, 544, 545, 547, 549, 558, 606, 607, 610, 622, 650, 652, 653, 655, 657, 658, 674, 690, 697, 824, 825, 828, 830, 932, 933, 949, 959, 976, 977, 987, 988, 992, 993, 998, 1017, 1018, 1034, 1071, 1074, 1076, 1077, 1082, 1102, 1129, 1207, 1225, 1227, 1231, 1232, 1233, 1235, 1304, 1312, 1323, 1337, 1387, 1392, 1396, 1412, 1417, 1422, 1424, 1474, 1558, 1563, 1578, 1604.
Sec. 1.30(e)	672, 856
Sec. 1.31	820, 1055
Sec. 1.32	472
Sec. 1.34	400

*The Commission's Rules and Regulations are contained in Title 18, Chapter I, of the Code of Federal Regulations.

Page

Sec. 1.34(a) ---- 480, 636, 691
Sec. 1.34(b) ---- 480, 636
Sec. 1.36 ---- 391
Sec. 1.37 ---- 366, 643, 888, 1395, 1432
Sec. 1.37(f) ---- 415, 640, 1321, 1384-B
Sec. 2.55 ---- 1199, 1480
Sec. 2.55(a) ---- 1373
Sec. 2.56 ---- 415, 956, 1371, 1384-A, 1436
Sec. 2.57 ---- 791
Sec. 2.58 ---- 233, 1200, 1480
Sec. 2.58(b) ---- 383
Sec. 2.58(c) ---- 353, 374, 384, 1074, 1396, 1413, 1423, 1537, 1586, 1588, 1591
Sec. 2.59(g) ---- 1237
Sec. 2.60 ---- 1373
Sec. 2.60(b) ---- 1373
Sec. 2.60(c) ---- 1373
Sec. 3.5 ---- 443
Sec. 3.5(10) ---- 681
Sec. 3.5(a)(8) ---- 691
Sec. 4.1 ---- 40, 50, 274, 1022, 1028, 1031, 1169
Sec. 4.4 ---- 41, 52, 275, 1024, 1029, 1032, 1172
Sec. 4.5 ---- 41, 52, 275, 1024, 1029, 1032, 1172
Sec. 4.20 ---- 1022, 1169
Sec. 4.22 ---- 1024, 1172
Sec. 4.23 ---- 1024, 1172
Sec. 9.3 ---- 409, 890
Sec. 11 ---- 405
Sec. 11.20 ---- 1238, 1333
Sec. 11.20(3) ---- 1238
Sec. 11.30 ---- 1566
Sec. 11.31 ---- 1238, 1333
Sec. 14 ---- 404
Sec. 34.1a ---- 2, 4, 48, 75, 462, 688, 1352, 1364, 1515
Sec. 34.1a(a)(1) ---- 2, 48, 1352
Sec. 34.1a(a)(2) ---- 4, 75, 462, 688, 1364, 1515
Sec. 34.1a(b) ---- 47, 533
Sec. 34.1a(c) ---- 533
Sec. 34.2(g) ---- 73, 282, 385, 409, 538, 648, 967, 972, 1058, 1072, 1153, 1295
Sec. 34.2(h) ---- 73, 282, 385, 409, 538, 648, 967, 972, 1058, 1072, 1153, 1295
Sec. 34.2(k)(3) ---- 48, 329, 646, 756
Sec. 34.2(k)(4) ---- 48, 329, 646, 756
Sec. 34.9 ---- 48, 73, 282, 329, 385, 409, 538, 646, 649, 756, 967, 972, 1058, 1072, 1153, 1295
Sec. 35 ---- 365, 641, 850, 968, 1036, 1476
Sec. 35.13 ---- 851
Sec. 35.14(a)(i) ---- 852
Sec. 120.3 ---- 365
Sec. 141 ---- 850
Sec. 141.1 ---- 365, 1543
Sec. 154 ---- 34, 235, 301, 336, 361, 407, 426, 432, 437, 451, 455, 460, 485, 490, 553, 696, 836, 855, 954, 975, 985, 1037, 1042, 1057, 1088, 1092, 1100, 1133, 1137, 1194, 1199, 1283, 1292, 1301, 1310, 1329, 1380, 1384, 1448, 1550, 1555, 1557, 1565, 1577, 1582, 1585, 1599, 1603, 1651.
Sec. 154.22 ---- 1142, 1404, 1426, 1524
Sec. 154.31 ---- 234
Sec. 154.32 ---- 234
Sec. 154.33 ---- 234
Sec. 154.34 ---- 234
Sec. 154.35 ---- 234
Sec. 154.36 ---- 234
Sec. 154.37 ---- 234
Sec. 154.38 ---- 234
Sec. 154.39 ---- 234

Page

Sec. 154.40 ---- 234
Sec. 154.41 ---- 234
Sec. 154.51 ---- 1524
Sec. 154.52 ---- 271
Sec. 154.63 ---- 357, 1094
Sec. 154.63(f) ---- 25, 26
Sec. 154.66 ---- 63
Sec. 154.91 ---- 206, 237, 495, 911
Sec. 154.91(a) ---- 271, 1461
Sec. 154.91(b) ---- 1293
Sec. 154.91(c)(2) ---- 1575
Sec. 154.91(e) ---- 1229
Sec. 154.92 ---- 206
Sec. 154.92(a) ---- 1105
Sec. 154.93 ---- 206
Sec. 154.94 ---- 206, 1162
Sec. 154.94(b) ---- 299, 336, 437, 451, 456, 460, 554, 696, 985, 1088, 1092, 1133, 1137, 1283 1292, 1310, 1329, 1380, 1384, 1447, 1550, 1555, 1582, 1585, 1599, 1603.
Sec. 154.94(c) ---- 352
Sec. 154.94(f) ---- 300, 336, 437, 451, 456, 460, 554, 696, 985, 1088, 1092, 1100, 1133, 1137, 1283, 1292, 1310, 1329, 1380, 1384, 1447, 1550, 1555, 1582, 1585, 1599, 1603.
Sec. 154.95 ---- 206
Sec. 154.96 ---- 206
Sec. 154.97 ---- 206
Sec. 154.98 ---- 206
Sec. 154.99 ---- 206
Sec. 154.100 ---- 206
Sec. 154.101 ---- 206, 352
Sec. 154.102 ---- 206, 1535
Sec. 154.102(c) ---- 294, 1377, 1460
Sec. 156 ---- 359, 707
Sec. 156.2(d) ---- 667
Sec. 156.7 ---- 667
Sec. 157 ---- 426, 472, 855, 1198, 1651
Sec. 157.5 ---- 473, 1199
Sec. 157.6 ---- 473, 1198, 1480
Sec. 157.7 ---- 473, 1199
Sec. 157.8 ---- 473, 1199
Sec. 157.9 ---- 473, 1199
Sec. 157.10 ---- 473, 1199
Sec. 157.11 ---- 473, 535, 1199
Sec. 157.12 ---- 473, 1199
Sec. 157.13 ---- 473, 1199
Sec. 157.14 ---- 242, 472, 873, 1199
Sec. 157.14(14) ---- 340
Sec. 157.15 ---- 473, 1199
Sec. 157.16 ---- 473, 1199
Sec. 157.17 ---- 338
Sec. 157.20 ---- 18, 22, 23, 28, 33, 36, 37, 39, 44, 50, 58, 94, 234, 350, 354, 355, 360, 374, 378, 380, 382, 384, 387, 389, 390, 395, 421, 423, 440, 442, 446, 448, 469, 486, 492, 529, 541, 544, 546, 548, 550, 558, 606, 608, 610, 622, 651, 652, 653, 656, 657, 659, 674, 690, 770, 824, 826, 828, 835, 868, 932, 934, 950, 960, 976, 978, 987, 992, 994, 998, 1019, 1075, 1076, 1082, 1102, 1129, 1143, 1204, 1208, 1233, 1235, 1259, 1269, 1301, 1312, 1323, 1337, 1387, 1393, 1396, 1413, 1418, 1423, 1425, 1475, 1516, 1523, 1537, 1538, 1547, 1558, 1564, 1577, 1578, 1586, 1588, 1590, 1592, 1594, 1596, 1614.
Sec. 157.22 ---- 1373
Sec. 157.22(a) ---- 1374

	Page
Sec. 157.22(d)	1374
Sec. 157.24	242
Sec. 157.25	242
Sec. 157.28	292, 338, 1607
Sec. 157.38(d)(3)	474
Sec. 260.1	1374, 1543
Sec. 260.2	1374
Sec. 260.7	862

TABLE OF MISCELLANEOUS CITATIONS

	Page
Address by General Counsel before the Mineral Law Section of The Texas Bar Association, July 5, 1963	1204
AIME, Society of Petroleum Engineers "Oil and Gas Property Evaluation and Reserve Estimates, 1960"	256
Assignment of Hydroelectric Power Permits Affecting National Forest Lands, 32 Ops. ATT'Y GEN. 525	1064
Bureau of Commercial Fisheries' Fish Passage Research Program	1472
Cardozo, Justice: The Nature of the Judicial Process, p. 15	369
60 C.J.S. "Motor Vehicles" Sec. 88, p. 286	726
Commerce Clause of the Constitution, Art. I, Sec. 8, Clause 3	603, 1485
Congressional Record (1960) 18603	1264
Cyc. of Fed. Proc. (3d Ed.), Vol. 8, sec. 26.273	114
Davis, Administrative Law Treatise (West Pub. Co., 1958) Chap. 7 passim, sec. 7.02	812
Davis, Administrative Law Treatise (West Pub. Co., 1958) sec. 18.07	155
Executive Order 11095, (1963)	1372
Federal Power Commission, 12th Annual Report (1932) p. 112	41
Federal Power Commission, 20th Annual Report (1940) p. 79	732
Federal Power Commission, 31st Annual Report (1951) p. 145	157, 771
Federal Power Commission, 32nd Annual Report (1952) p. 152	157, 771
Federal Power Commission, 33rd Annual Report (1953) p. 125	157, 771
Federal Power Commission, 34th Annual Report (1954) p. 170	157, 771
Federal Power Commission, 35th Annual Report (1955) p. 182	157, 771
Federal Power Commission, 36th Annual Report (1956) p. 19	157, 771
Federal Power Commission, 37th Annual Report (1957) p. 25	157, 771
Federal Power Commission, 38th Annual Report (1958) p. 18	157, 771
Federal Power Commission, 39th Annual Report (1959) p. 21	157, 771
Federal Power Commission, 40th Annual Report (1960) p. 19	157, 771
Federal Power Commission, 41st Annual Report (1961) p. 3	157, 771
Federal Power Commission, 42nd Annual Report (1962) p. 14	157, 771
Federal Power Commission Publication Sales by Producers of Natural Gas to Natural Gas Pipeline Companies (1961), Table 5, p. 9	1356
Gas Facts, 1962, p. 34	263
House Hearings on H.R. 11662 of the 74th Congress, p. 17	241
House Report No. 709, 75th Cong., 1st Sess., 4/28/37, Committee on Interstate and Foreign Commerce, p. 2	567
H.R. Rep. 75th Cong. 1st Sess., p. 4	572
House Report No. 1160, 61st Cong. 2d Sess	1617
House Ways and Means, and Senate Finance Committee hearings on H.R. 8400, 84th Congress (bill that became Internal Revenue Code of 1954)	168
Koplin, "Natural Gas Allocation Policy", 64 Yale L.J. 840 (1955)	732
Moody's Public Utility Manual, 1962, pp. 1699–1701	351
National Power Policy Committee report of 1935	370
National Power Survey report called for by President in 1933	370
NGA of 1938, statements of Chairman Wheeler and Senator Connally in Senate debate, Congressional Record 9314–6	260
Oil and Gas Journal, The, "Petroleum Statistics Study Group Report," October 14, 1963	1361
Order No. 174–B (R–138), 13 FPC 1576 (1954)	1192
Order No. 185 (R–145), 15 FPC 793 (1956)	1198, 1480
Order No. 205 (R–129), 19 FPC 907 (1958)	404
Order No. 215–A (R–179), 23 FPC 474 (1960)	1377
Order No. 252 (R–212), 28 FPC 298 (1962)	675
Pauley-Trusts Agreement, Sec. 1.01, Art. I, Par. XIII	1107
Pegrum, "The Natural Gas Industry: An Economic Appraisal of Public Policy," 29 J. of Land and P.U. Econ. 168 (1953)	732

	Page
Powell, Physics and Law-Commerce in Gas and Electricity, 58 Harv. L. Rev., 1072 (1945)	567
Presidential Permit signed by President of U.S. August 26, 1941; amended November 10, 1958 by Chairman of FPC (amendment of aforesaid Presidential Permit in Docket No. IT-5657)	55
"Rates and Rate Structure," 29 PUR (N.S.) 391, (N.Y.P.S.C., 1938)	162
Reyes, "The Responsibility of a Government Cost Type Contractor" (1962), 22 Fed. Bar J. 68	749
Rural Electrification Administration and Program established by Executive Order No. 7037 of May 11, 1935 (promulgated under the Emergency Relief Appropriation Act of April 8, 1935	371
Senate Document 189, 78th Cong., 2d Sess., p. 50	1342, 1347
Senate Report 1162, 75th Cong., 1st Sess., p. 2	572
Senate Report 1162, 75th Cong., 1st Sess., p. 4	572
Senate Report No. 1814, accompanying H.R. 10548 of the 86th Congress 1960, 2 U.S. Code Cong. & Ad. News 3599	1264
Smith-Wimberley Report, G-580, p. 83	247
Statement of General Policy No. 61-1	5, 229, 267, 306, 433, 463, 792, 852, 857, 892, 956, 1162, 1168, 1209, 1370, 1374, 1384-A, 1634, 1647.
Statement of General Policy No. 61-1, as amended, 24 FPC 818 (1960)	344, 415, 432, 514, 615, 638, 672, 857, 911, 915, 1036, 1162, 1209, 1230, 1354, 1441, 1575, 1645, 1657.
Statement of General Policy No. 61-1, 1st Amendment, 24 FPC 902	310
Statement of General Policy No. 61-1, 2nd Amendment, 24 FPC 1107	431, 489, 856, 1332
Statement of General Policy No. 61-1, 2nd Amendment, 24 FPC 1107, as amended by Order No. 264, 29 FPC 589	34, 418, 425, 484, 915, 953, 1041, 1056, 1194, 1354, 1388, 1556, 1568, 1622
Statement of General Policy No. 61-1, 4th Amendment, 26 FPC 661	310, 341
Statement of General Policy No. 61-1, 5th Amendment, 28 FPC 441	618, 846, 1435, 1634, 1649
Statement of General Policy No. 61-1, 6th Amendment, 29 FPC 590	1436
Statement of General Policy No. 61-1, 8th Amendment, 30 FPC 1435	1446
Statement of General Policy No. 62-1	791
Stocking and Watkins, Monopoly and Free Enterprise, Twentieth Century Fund, 1951, p. 11	730
Uniform System of Accounts Prescribed for Public Utilities and Licensees, General Instruction 15	1009
Uniform System of Accounts for Natural Gas Companies 201, 204, & 205	1374
Utility Committee of the Hoover Commission Task Force on Paperwork	1497
Williams and Meyers, Manual of Oil & Gas Terms, p. 109	247
Williams and Meyers, Oil and Gas Law (1959), Vol. 2, Sec. 433, pp. 490-1	1112

FOREWORD

The Federal Power Act was originally enacted as the Federal Water Power Act, approved June 10, 1920 (41 Stat. 1063, 16 U.S.C. 791–823). The Federal Power Commission was reorganized January 1, 1931, as an independent Commission under the act approved June 23, 1930 (46 Stat. 797). By title II of the Public Utility Act of 1935, approved August 26, 1935 (49 Stat. 838), the original Federal Water Power Act was made part I of the "Federal Power Act" and parts II and III were added. The Federal Power Act was amended May 28, 1948 (62 Stat. 275), August 7, 1953 (67 Stat. 461), August 15, 1953 (67 Stat. 587), June 4, 1956 (70 Stat. 226), and August 28, 1958 (72 Stat. 941 at 947). The Commission also administers the Natural Gas Act, approved June 21, 1938 (52 Stat. 821, 15 U.S.C. 717–717w), as amended February 7, 1942 (56 Stat. 83, 15 U.S.C. 717f), July 25, 1947 (61 Stat. 459, 15 U.S.C. 717f), March 27, 1954 (68 Stat. 36, 15 U.SC. 717(c)), and August 28, 1958 (72 Stat. 941 at 947; 15 U.S.C. 717r), and has certain duties under the Tennessee Valley Authority Act, approved May 18, 1933 (48 Stat. 1075), and amendments thereto; the Bonneville Act, approved August 20, 1937 (50 Stat. 731); the Fort Peck Act, approved May 18, 1938 (52 Stat. 403); and under various Flood Control and River and Harbor Acts (notably the Flood Control Act of 1944, approved December 22, 1944 (58 Stat. 887)), and other statutes, as well as Executive Orders.

This volume, the thirtieth of a series, contains all the formal opinions and accompanying orders of the Federal Power Commission rendered, July 1, 1963 to December 31, 1963, inclusive. In addition to the formal opinions, there have been included intermediate decisions which have become final and selected orders of the Commission issued during such period.

Before Commissioners: Joseph C. Swidler, L. J. O'Connor, Jr., and Harold C. Woodward.

IOWA SOUTHERN UTILITIES COMPANY, DOCKET NO. E-7103

ORDER AUTHORIZING THE ISSUANCE OF COMMON STOCK

(Issued July 1, 1963)

Iowa Southern Utilities Company (Applicant), a corporation organized under the laws of the State of Delaware, qualified to do business as a foreign corporation in the States of Iowa and Illinois, and doing business in the State of Iowa, with its principal place of business at Centerville, Iowa, filed an application on May 27, 1963, for authority pursuant to Section 204 of the Federal Power Act, authorizing the issuance of two shares of its Common Stock par value $10 per share in exchange for one share of its Common Stock par value $15 per share, presently outstanding.

Applicant proposes to issue 1,858,928.2 shares of Common Stock, par value $10 per share in exchange for 920,378.1 shares of Common Stock par value $15 per share, presently outstanding and 9,086 shares of such Common Stock reserved for conversion of 4,543 shares of $1.76 Series Cumulative Convertible Preferred Stock presently outstanding. Applicant proposes to give thirty days notice of redemption to holders of the $1.76 Series Preferred Stock on or about June 3, 1963, said shares being redeemable at $32.25 per share plus an amount equal to full cumulative dividends to the redemption date. The right of conversion will cease and terminate on the business day next preceding the redemption date. Applicant also proposes to issue two shares of Common Stock, par value $10 per share, for each additional one share of Common Stock, par value $15 per share, which may be issued prior to July 24, 1963 under the Employee Stock Purchase Plan. Applicant anticipates that approximately 350 additional shares of Common Stock par value $15 per share, will be issued under the Employee Stock Purchase Plan prior to July 24, 1963.

Applicant proposes to transfer an amount of $3,046,790.50 from Premium on Capital Stock Account to Common Stock Capital Account, and to transfer an amount of $1,600,530 from Unappropriated Earned Surplus to Common Stock Capital Account. The amount of $1,600,530 shall be increased $5 for each one share of Common Stock (par value $15 per share) which may be issued prior to July 24, 1963 under Applicant's Employee Stock Purchase Plan, and reduced $10 for each one share of $1.76 Series Cumulative Convertible Preferred Stock redeemed on July 3, 1963. Applicant has agreed to write-off to Earned Surplus the amount for the complete elimination of stock expense applicable to the Common Stock, $15 par value, which presently amounts to $615,731.

Applicant states that the stock-split will result in a wider distribution of the Common Stock which will be in the public interest and that it is appropriate for the Company to capitalize premium on Captial Stock and a portion of Retained Earnings at this time.

Written notice of the application has been given to the Illinois Commerce Commission and the Iowa State Commerce Commission, and to the Governor of each of those States. Notice has also been given by publication in the Federal Register on June 7, 1963 (28 F.R. 5623), stating that any person desiring to be heard or to make any protest with reference to the application should file a petition or protest on or before June 21, 1963 with the Federal Power Commission, Washington 25, D.C. No protest, petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission, as heretofore described and set forth in the Commission's order issued May 31, 1961, *Iowa Power and Light Company, et al.*, Docket No. E-6974 (25 FPC 1063).

(2) The proposed issuance of Common Stock, as described above will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issue here involved is regulated by a State commission within the meaning of Section 204(f) of the Act; and the proposed issuance of securities is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(4) The proposed issuance of Common Stock, as described above, is exempt from the competitive bidding requirements of Section 34.1a of the Commission's Regulations under the Federal Power Act by reason of paragraph 34.1a(a)(1) thereof.

(5) The proposed issuance of Common Stock, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purposes.

(6) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) The proposed issuance of Common Stock, as described above, upon the terms and conditions and for the purposes specified in the application, is hereby authorized, subject to the provisions of this order.

(B) The Applicant shall record the proposed transaction described above as provided in the Commission's Uniform System of Accounts prescribed for Public Utilities and Licensees and the capital stock expense applicable to the Common Stock, $15 par value, which presently amounts to $615,731 shall be eliminated by a charge to Unappropriated Earned Surplus.

(C) This authorization shall expire unless the transaction hereby authorized is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission.

(E) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States with respect to any securities to which this order relates.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

NORTHERN STATES POWER COMPANY (WISCONSIN), DOCKET NO. E-7101

ORDER AUTHORIZING ISSUANCE OF PROMISSORY NOTES

(Issued July 1, 1963)

Northern States Power Company (Applicant) a corporation organized under the laws of the State of Wisconsin and doing business in that State, with its principal business office in Eau Claire, Wisconsin, filed an application on May 27,

1963, for authorization pursuant to Section 204 of the Federal Power Act, to issue from time to time, unsecured short term promissory notes in an aggregate principal amount not to exceed $12,000,000, outstanding at any one time.

The proposed notes, payable to such commercial bank or banks from which the Applicant may borrow funds, will be issued for periods not exceeding 12 months from the date of original issue or renewal thereof, and will have maturity dates not later than December 31, 1964. Applicant will pay no commitment, finders or other fees in connection with the issuance of any of the aforesaid notes or with the borrowings evidenced by said notes. Said notes may be prepaid, in whole or in part without premium, on any legal banking day upon 24 hours' prior notice to the payee.

The interest rate for each borrowing will not exceed the prime loan interest rate at the time and place of making. As of the date of the application that interest rate was 4½%. Applicant states that it will not agree, in connection with obtaining a loan from a bank, to maintain any minimum balance in any of its checking accounts. Applicant further states that said notes will not be resold to the public.

By order issued September 6, 1962, 28 FPC 455, in Docket No. E–7048, the Commission authorized Applicant to issue up to $7,000,000 principal amount of short term promissory notes, the authorization to expire prior to December 31, 1963. As of May 24, 1963 the aggregate principal amount of such promissory notes outstanding was $4,600,000.

The request herein for authorization to issue notes in the maximum principal amount of $12,000,000 will cover the issuance of any renewal notes, including renewal notes for the payment of any notes presently outstanding or to be issued before December 31, 1963, under the above—described authorization in Docket No. E–7048.

Applicant states that the proceeds from the bank borrowings will be used first for the renewal or refunding of outstanding promissory notes. The balance will be added to general funds of Applicant and will be used, to pay in part the expenditures for Applicant's construction program for 1963 and 1964.

The cost of Applicant's construction program for the years 1963 and 1964 is estimated at $5,275,000 and $5,828,000 respectively. Of these amounts $4,197,000 for 1963 and $4,990,000 for 1964 are allocated to the Electric Department and the balance $1,078,000 for 1963 and $838,000 for 1964 are allocated to Gas Distributor Department, Heating Department and General—(All Departments). The program provides for extensive transmission line construction; the major item being the start of 160 mile, 345 kv line. The line is scheduled for completion in 1966 at an estimated cost of $11,000,000 with $900,000 proposed for 1963. It will extend from near Stevens Point, Wisconsin, to Eau Claire, Wisconsin and thence to Newport, Minnesota. It will be part of a proposed extensive 230–345 kv network extending from Garrison, North Dakota to Chicago, Illinois, and from Duluth, Minnesota to St. Louis, Missouri. Other proposed transmission line expenditures include raising the voltage from 115 kv to 161 kv on the 80 mile Eau Claire-La Crosse line and eight new sections of 69 kv line totalling 73.3 miles in length will be constructed.

Written notice of the application has been given to the Wisconsin Public Service Commission and to the Governor of that State. Notice has also been given by publication in the Federal Register on June 11, 1963 (28 F.R. 5689), stating that any person desiring to be heard or to make any protest with reference to the application should file a petition or protest on or before June 24, 1963, with the Federal Power Commission, Washington 25, D.C.

No protest, petition, or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued October 25, 1957, *Northern States Power Company (Minnesota), et al.* Docket No. E-6774 (18 FPC 532).

(2) The proposed issuance of Promissory Notes, as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) The proposed issuance of Promissory Notes in the aggregate principal amount of not to exceed $12,000,000, as described above, will be in excess of 5% of the par value of the other securities of Applicant, and, therefore, will not be exempt from the requirements of Section 204(a) of the Act by the virtue of Section 204(e) thereof.

(4) The proposed issuance of Promissory Notes, described above, will be exempt from the competitive bidding requirements of Section 34.1a of the Commission's Regulations under the Federal Power Act by reason of Paragraph 34.1a(a)(2) thereof.

(5) Applicant is not organized and operating in a State under the laws of which the security issue here involved is regulated by a State Commission within the meaning of Section 204(f) of the Act; and the proposed issuance is, therefore, not exempt by virtue of that Subsection from the requirements of Section 204 of the Act.

(6) The proposed issuance of securities, as hereinafter authorized will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest which is appropriate for and consistent with the proper performance of service by Applicant as a public utility, and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

(7) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) The proposed issuance of Promissory Notes in the aggregate principal amount of not to exceed $12,000,000 outstanding at any one time, upon the terms and conditions and for the purposes set forth in the application, all as described above, is hereby authorized, subject to the provisions of this order.

(B) This authorization is expressly conditioned upon final maturity of all notes, issued pursuant hereto, being on or before December 31, 1964.

(C) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost or any other matter whatsoever now pending or which may come before this Commission.

(D) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect to any securities to which this order relates.

Before Commissioners: Joseph C. Swidler, Chairman, L. J. O'Connor, Jr., and Harold C. Woodward.

SINCLAIR OIL & GAS COMPANY, DOCKET NOS. G–9291 AND G–9292, ET AL.[1]

ORDER CONDITIONALLY APPROVING RATE SETTLEMENT PROPOSAL, TERMINATING PROCEEDINGS AND PRESCRIBING REFUNDS

(Issued July 1, 1963)*

There is before us for consideration a Petition for Approval of Settlement Proposal and Termination of Proceedings filed on April 8, 1963, by Sinclair Oil & Gas Company (Sinclair) encompassing the rates for 136 of Sinclair's currently effective gas rate schedules.

Comments have been filed by many parties to these proceedings, all of which have been given due consideration.

In summary, the settlement proposal as submitted by Sinclair provides:

(1) Settlement rates, including tax reimbursement, are equal to or less than the Commission's applicable area ceilings, with two exceptions hereinafter discussed;

(2) Sinclair waives the right to file for contractually authorized increased rates until September 1, 1965. Sinclair reserves the right to file for any increased rates, if contractually authorized, up to the applicable area-rate levels determined through area hearings or by amendment of the Commission's Statement of General Policy No. 61–1, or any contractually authorized increase in tax reimbursement.

(3) Amendment of Sinclair's Rate Schedule Nos. 1, 2, 3, 18, 35, 44, 52, 53, 59, 64, 68, 69, 73, 75, 82 and 173 to eliminate any favored nation, price redetermination or periodic price escalation clauses contained therein;

(4) Extension of the make-up periods under the take-or-pay for provisions contained in Rate Schedule Nos. 77 and 78 from the present periods to five years and to the life-of-the-contract, respectively;

(5) Refunds, with interest at the applicable rates, under each rate schedule where collection was made subject to refund, of the difference between the revenues actually collected and those which would have been collected at the settlement rate, in each instance, commencing with January 1, 1962, to April 1, 1963;

(6) Exclusion from the Settlement Proposal of all Permian Basin sales, sales related to previous offers of settlement accepted by the Commission, sales under abandoned properties and five certificate applications covering sales from South Louisiana presently consolidated in the *Union Texas Petroleum, et al.* proceedings, Docket No. G–13221, *et al.*

In support of its proposal, Sinclair states that the settlement rates, refunds, moratorium periods and other provisions thereof, some of which are not specifically noted herein, are in the public interest in that they are reasonable and will provide price stability for a long period of time for natural gas moving in interstate commerce.

With respect to refunds, the parties to the settlement conferences have utilized cost-of-service studies and revenues based on contract rates to determine Sinclair's revenue-cost relationship. These studies indicate that it is appropriate that we require that refunds should be computed for sales made on and after

[1] The additional dockets involved herein are set forth in Appendices A, B and C hereto.

*Order issued August 23, 1963, granting rehearing for purposes of reconsideration, 30 FPC 546.

January 1, 1962. Sinclair proposes, as noted above, that refunds should be made only up to April 1, 1963, but we shall require that refunds should be made up to and including the date of issuance of this order, with interest to be paid on the refunds to the date the refunds are made to the purchasers.

Sinclair sets forth three alternative methods by which refunds would be distributed to its purchasers entitled thereto. Under all three methods the total dollars of refund would be the same. Under each of the methods the total dollar refunds calculated from January 1, 1962, would be distributed to purchasers under formulas which would result in refunds for sales made prior to such date. The proposed distribution methods reflects the alleged invalidity of certain favored-nation triggering rates, or utilizes the Commission's guideline increased rate ceilings or settlement rates, and would be calculated on the "excess" revenues regardless of whether such revenues were collected before or after the "cut-off" date of January 1, 1962. We have considered each of the proposed methods, and do not find any one of them to be feasible or proper in a general settlement of producer rate proceedings. Consequently, we shall hereinafter order Sinclair to make refunds in the same manner as we have provided in other of our recent orders approving general producer rate settlements, that is, that Sinclair refund from January 1, 1962, to the date of issuance of this order, all monies collected subject to refund above the settlement rates, with interest to the date of actual refund.

Exceptions to the applicable area ceilings are proposed by Sinclair with respect to two sales in South Louisiana: one a sale to United Gas Pipe Line Company (United), and the second a sale to Transcontinental Gas Pipe Line Corporation (Transco).[2] The sale to United is made under Sinclair's FPC Gas Rate Schedule No. 197 from the Gibson Field, Terrebonne Parish, Louisiana. Prior to June 20, 1960, this sale was made under a ten-year contract, which was to expire in 1960. On June 20, 1960, Sinclair and United entered into a contract for a twenty-year term, and dedicated additional acreage to the sale, which resulted in increased annual deliveries under this contract by approximately forty per cent. The current rate for gas sold under the renegotiated contract is 23.3¢ per Mcf, while the settlement rate is 18.5¢ per Mcf. The proposed settlement rate therefore exceeds the increased rate ceiling but is below the initial rate ceiling. In view of the above circumstances, we find the settlement rate of 18.5¢ per Mcf for this sale to be proper, and approve the same.

The sale to Transco is made under Sinclair's Rate Schedule No. 78 from the Live Oak Field, Vermilion Parish, Louisiana, where the increased rate of 23.55¢ per Mcf. is proposed to be reduced to 17.75¢ per Mcf. The initial rate under such rate schedule was 16¢ per Mcf plus tax reimbursement. Under the tax reimbursement provisions of the rate schedule, the present tax reimbursement is 1.5¢ per Mcf. Therefore we shall condition our approval of this settlement proposal to provide for a total rate of 17.5¢ per Mcf for this sale.

Sinclair proposed to omit from the settlement the rates for five sales of gas presently being made by it in South Louisiana under temporary certificate authorization. For the reasons set forth in our order issued on April 25, 1963, 29 FPC 837, in *Gulf Oil Corporation, et al.* (Docket No. G–9520, *et al.*) we shall condition our approval of this settlement proposal so as to require Sinclair to reduce its rates under its Rate Schedule Nos. 172, 202 and 213 (which rates exceed our initial rate ceiling) effective as of the date of issuance of this order to 21.25¢ per Mcf at 15.025 psia, and to agree that the rates under such rate schedules, along with the rates charged under its Rate Schedule Nos. 235 and

[2] United and Transco representatives attended and participated in the settlement conferences herein.

236, shall be subject to final determination in the Union Texas proceeding.[3] If, by final order in said proceedings, a lower rate is established than that provided for herein under such schedules, Sinclair shall make refund from the date of this order of the difference between the rates provided for herein and the rate ordered in the Union Texas proceedings. The refund requirements imposed as a condition of this settlement order shall not be construed to affect or limit the positions of the parties in the Union Texas proceeding with respect to refund obligation under temporary authorizations.

Included in the settlement is one permanently certificated sale at 17.5¢ per Mcf in Texas Railroad Commission District No. 3 under Sinclair's FPC Gas Rate Schedule No. 201 with a proposed settlement rate of 17¢ per Mcf. The contract for this sale was dated prior to September 28, 1960. We shall condition our approval of this settlement proposal so as to require Sinclair to reduce its rate for this sale to 16¢ per Mcf in accordance with our determination of the "in-line" prices for this area in our Opinion No. 383, *Texaco Seaboard Inc., et al.*, 29 FPC 593, issued March 27, 1963.

We shall not approve the proposed settlement of the rates under Sinclair's FPC Gas Rate Schedule Nos. 15, 16 and 17 since these rates are by contract related to those of the producer purchasers from Sinclair, the purchasers' rates also being subject to suspension proceedings. Therefore, we shall exclude these sales from the Settlement Proposal.

The settlement proposal includes six sales[4] for which issuance of related permanent certificates is pending. The applications in Docket Nos. CI61–1032 and CI62–1070 involve upward Btu price provisions and are presently consolidated for hearing in the proceedings in Sunray DX Oil Company, *et al.*, Docket No. G–4281, *et al.* relating to Btu adjustment provisions. Accordingly, permanent certificates should be issued in such proceedings and not through the abridged hearing procedure. Also consolidated in the Docket No. G–4281, *et al.* proceedings is Sinclair's application in Docket No. CI61–1137. Since, under the proposed settlement, Sinclair has agreed to eliminate the upward Btu price adjustment provision, the application should be severed and set for abridged hearing. We shall sever this proceeding and set it, together with the remaining applications listed in Appendix B, for abridged hearing indicating that the settlement rates shall be the initial rates.

The foregoing has discussed all of the major comments filed by Long Island Lighting Company (Long Island) Philadelphia Gas Works, Brooklyn Union Gas Company, and Philadelphia Electric Company. Comments were also filed by Public Service Electric and Gas Company and Southern Natural Gas Company. These latter companies indicated support and approval of the settlement proposal. We believe the instant settlement proposal, as herein modified, and in other particulars not specifically noted or set forth herein, meets the criteria previously set forth in other of our recent settlement orders and accordingly we find it to be in the public interest and should be approved as hereinafter provided.

Our action herein should not be construed, nor may it be, as constituting approval of any future rate increase, if any, that may be filed under the subject rate schedules, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate proceedings, involving Sinclair's rates and rate schedules.

---

[3] See Appendix C attached hereto.
[4] See Appendix B attached hereto.

The Commission finds:

The proposed settlement of the subject proceedings on the basis described herein, as more fully set forth in the settlement proposal filed on April 8, 1963, as herein modified, is in the public interest and it is appropriate in carrying out the provisions of the Natural Gas Act that it be conditionally approved and conditionally made effective subject to the modifications hereinafter ordered, and good cause exists for approving the settlement rates, for terminating certain proceedings and providing for refunds.

The Commission orders:

(A) The settlement of these proceedings on the basis of the Settlement Proposal filed April 8, 1963, as herein modified, is approved and made effective subject to the following terms and conditions.

(B) The applicable settlement rates set out in Appendices A and B are approved and such rates, together with those shown on Appendix C, shall be effective as of the date of issuance of this order.

(C) The pending certificate proceedings indicated in Appendix B hereto, shall not be terminated on the basis of the approval of the Settlement Proposal, but shall be determined after hearing in accordance with Section 7 of the Natural Gas Act.

(D) Sinclair shall, over the signature of a responsible officer, file with the Commission, within 30 days from the date of the issuance of this order, an original and one copy of its acceptance or rejection of the terms and conditions of this order, including specifically the requirement for possible future refunds under its FPC Gas Rate Schedule Nos. 172, 202, 213, 235 and 236.

(E) Within 90 days from the date of this order, Sinclair shall make such filings under its rate schedules as are required to make effective the terms of the Settlement Proposal, as modified herein.

(F) Within 90 days from the date of this order, Sinclair shall (1) refund, with interest as specified in each docket computed to the date of actual refund, the difference between the rates collected subject to refund, on and after January 1, 1962 and the related settlement rates to the date of this order; and (2) report to the Commission, in writing, the amount of refunds made to each of its purchasers, showing separately the amount of principal and interest so paid, and the bases used for such determination, together with releases from its purchasers showing receipt of the refunds in conformity with the Settlement Proposal as modified and approved herein.

(G) Docket No. CI61–1137 is hereby severed from the consolidated proceedings in Sunray DX Oil Company, *et al.*, Docket No. G–4281, *et al.* Docket Nos. G–17725, G–17739, G–19890, RI61–34, RI61–264 and RI62-190 are hereby severed from the consolidated proceedings in Docket No. AR61–2, *et al.* Upon full compliance by Sinclair with all the terms and provisions of this order the Section 4(e) proceedings listed in Appendix A hereof and the Section 5(a) proceedings in Docket Nos. G–9291 and G–9292 shall terminate.

(H) This order is without prejudice to any findings or orders which have been or may be made hereafter by the Commission, and is without prejudice to claims or contentions which may be made by Sinclair, the Commission staff, or any affected party hereto, in any proceedings now pending, or hereafter instituted by or against Sinclair or any other companies, person or parties affected by this order.

APPENDIX A

Sinclair Oil & Gas Co.—Docket No. G–9291, G–9292, et al.

Rate schedule number	Area (field)	Purchaser	Docket number		Last firm rate	Rate in effect Jan. 1, 1963	Settlement rate
			Certificate	Sec. 4(e) rate increase			
	TEXAS RR. DISTRICT 1						
186	San Miguel Creek	Transcontinental Gas Pipe Line Corp	G–20146	None	14.189	14.189	14.189
	TEXAS RR. DISTRICT 2						
2	Heyser	Tennessee Gas Transmission Co	G–2888	G–17140	11.02818	15.33333	[1] 15.000
18	Heyser	Natural Gas Pipeline Co. of America	G–2904	G–17994	13.1248	15.33333	[1] 15.000
	TEXAS RR. DISTRICT 3						
44	New Ulm, Columbus and Cecil Noble	Tennessee Gas Transmission Co	G–4676	G–17141	13.2782	15.95016	[1] 15.000
50	Fairbanks	Natural Gas Pipeline Co. of America	G–8539	None	15.000	15.000	15.000
52	Bender	Tennessee Gas Transmission Co	G–8788	G–17141	13.49751	16.16947	[1] 15.000
53	Southeast Tomball	do	G–8801	G–17140	13.49751	16.16947	[1] 15.000
64	Cecil Noble	do	G–8493	G–17142	13.2782	15.95016	[1] 15.000
68	South Hyatt	do	G–8493	G–18693	13.2782	15.95016	[1] 15.000
69	Village Mills	do	G–8493	G–18693	13.2782	15.95016	[1] 15.000
73	Cecil Noble	do	G–8493	G–17142	13.2782	15.95016	[1] 15.000
75	Cecil Noble	do	G–8493	G–17142	13.2782	15.95016	[1] 15.000
82	Cecil Noble	do	G–8493	G–17142	13.2782	15.95016	[1] 15.000
160	Hinkle	Trunkline Gas Co	G–14765	None	10.096	10.096	10.096
188	Springer	United Gas Pipe Line Co	G–19961	None	15.144	15.144	15.144
200	West Nona Mills	Trunkline Gas Co	CI61–237	None	15.000	15.000	15.000
201	Palacios	Florida Transmission Corp	CI61–334	do	17.500	17.500	[2] 16.000
	TEXAS RR. DISTRICT 4						
1	Mustang Island	Tennessee Gas Transmission Co	G–2887	G–19826, RI60–298	12.12268	17.24347	[1] 15.000
3	Donna	do	G–2889	G–19826, RI60–298	12.12268	17.24347	[1] 15.000
35	Edinburg	do	G–2921	G–19826, RI60–298	12.12268	17.24347	[1] 15.000
59	Tobasco	do	G–9077	G–19889	12.12268	17.24347	[1] 15.000
87	San Carlos	Trunkline Gas Co	G–10179	None	12.696	12.696	12.696
91	San Salvador	Tennessee Gas Transmission Co	G–11426	G–19889	11.90337	17.02416	[16] 14.000
146	San Carlos	Trunkline Gas Co	G–13128	None	12.696	12.696	12.696
149	Premont	Coastal States Gas Producing Co	G–13330	do	9.7672	9.7672	9.7672
173	Seeligson	Tennessee Gas Transmission Co	G–2922	G–19826, RI60–298	12.12268	17.24347	[1] 15.000
187	Gyp Hill	do	G–20597	None	14.000	14.000	[18] 14.000

See numbered footnotes at end of appendix C.

APPENDIX A—Continued

Rate schedule number	Area (field)	Purchaser	Docket number		Last firm rate	Rate in effect Jan. 1, 1963	Settlement rate
			Certificate	Sec. 4(e) rate increase			
	TEXAS RR. DISTRICT 6						
95	Joaquin	Southern Natural Gas Co.	G–11229	do	12.500	12.500	12.500
96	Carthage	do	G–11229	do	11.750	11.750	11.750
101	North Lansing	Arkansas Louisiana Gas Co.	G–11229	do	12.554	12.554	12.554
105	Carthage	Texas Gas Transmission Corp.	G–11229	do	11.6288	11.6288	[2] 11.6288
106	North Lansing	Arkansas Louisiana Gas Co.	G–11229	do	12.554	12.554	12.554
108	Waskom	do	G–11229	do	11.7438	11.7438	11.7438
112	Carthage	Mobile Oil Co.	G–11229	do	11.6232	11.6232	11.6232
116	Carthage	United Gas Pipe Line Co.	G–11229	do	10.8876	10.8876	10.8876
175	Good Omen	Lone Star Gas Co.	G–18286	do	14.000	14.000	14.000
211	Henderson	United Gas Pipe Line Co.	CI61–1191	do	11.394	11.394	11.394
212	East Texas	do	CI61–1210	do	10.500	10.500	10.500
220	East Texas	do	CI62–33	do	10.500	10.500	10.500
	TEXAS RR. DISTRICT 9						
47	Sandusky	Lone Star Gas Co.	G–7674	do	14.490	14.490	14.490
	TEXAS RR. DISTRICT 10						
9	Lips	Natural Gas Pipeline Co. of America	G–2895	do	10.84864	10.84864	10.84864
10	West Panhandle	Panhandle Eastern Pipe Line Co.	G–2896	do	10.5896	10.5896	[3] 10.5896
23	West Panhandle	Phillips Petroleum Co.	G–2909	do	3.79649	3.79649	3.79649
25	West Panhandle	do	G–2911	do	3.79649	3.79649	3.79649
27	Panhandle	do	G–2913	do	6.000	6.000	6.000
39	West Panhandle	The Shamrock Oil and Gas Co.	G–2927	RI61–496	10.000	12.000	11.000
86	Quinduno	Natural Gas Pipeline Co. of America	G–10119	RI61–525	12.000	13.000	12.000
93	North Spearman	do	G–11587	RI62–339	16.000	17.000	16.000
109	West Panhandle	Phillips Petroleum Co.	G–11229	RI61–354	11.00	12.00	11.00
144	Farnsworth	Northern Natural Gas Co.	G–12850	None	16.000	16.000	16.000
147	Lips	Natural Gas Pipeline Co. of America	G–13220	do	10.720	10.720	10.720
155	Perryton	Northern Natural Gas Co.	G–14401	RI61–56, RI62–518	15.500	17.500	15.500
161	West Panhandle	El Paso Natural Gas Co.	G–14791	RI63–222	12.000	12.000	12.000
162	Farnsworth	Northern Natural Gas Co.	G–14902	do	16.000	16.000	16.000
164	East Spearman and Horizon Morrow	do	G–16020	do	16.500	16.500	16.500
171	John Creek	do	G–17836	do	16.500	16.500	16.500
181	Perryton	do	G–19036	do	16.500	16.500	16.500
195	Spearman	Natural Gas Pipeline Co. of America	CI60–460	do	16.500	16.500	16.500
217	West Panhandle	F.C. & E.P. Henderson Trust No. 2	G–2924–2925, G–2926–2923	do	11.000	11.000	11.000

	SOUTH LOUISIANA						
58	Palmetto	Transcontinental Gas Pipe Line Corp.	G-9049	G-17725	17.500	23.550	[5] 17.500
66	Bancroft	United Gas Pipe Line Co.	G-8493	None	11.66722	11.66722	[34] 11.66722
78	Live Oak	Transcontinental Gas Pipe Line Corp.	G-9424	G-17739	17.500	23.500	[6] 17.50
97	Duck Lake and Lake Sand	Southern Natural Gas Co.	G-11229	RI61-264	15.000	15.500	[7] 15.3569
167	Timbalier Bay	Tennessee Gas Transmission Co.	G-17104	G-19890	18.500	23.09167	18.500
197	Gibson	United Gas Pipe Line Co.	G-11229	RI61-34	10.497	23.300	18.500
198	Lake Arthur	Texas Gas Transmission Corp.	CI61-76	RI62-190	18.750	19.750	18.750
	NORTH LOUISIANA						
95	Logansport	Southern Natural Gas Co.	G-11229	None	13.820	13.820	13.820
102	Logansport	United Gas Pipe Line Co.	G-11229	do	12.5252	12.5252	12.5252
128	Longstreet	Arkansas Louisiana Gas Co.	G-11229	do	12.8714	12.8714	12.8714
137	Sentell	do	G-12332	do	13.504	13.504	13.504
138	West Lisbon	Texas Gas Transmission Corp.	G-12352	do	18.250	18.250	18.250
196	Calhoun	do	CI60-593	do	18.750	18.750	18.750
207	Calhoun	Arkansas Louisiana Gas Co.	CI61-1073	do	18.750	18.750	18.750
224	Sligo	Texas Eastern Transmission Corp.	CI62-296	do	16.4161	16.4161	16.4161
225	Sligo	do	CI62-297	do	14.750	14.750	14.750
	MISSISSIPPI						
77	Pistol Ridge	United Gas Pipe Line Co.	G-9395	G-19929	20.000	24.000	20.000
99	Soso	do	G-11229	None	9.7931	9.7931	9.7931
	OKLAHOMA PANHANDLE AREA						
22	Guymon Hugoton	Cities Service Gas Co.	G-2908	G-13773	9.8262	13.000	11.000
94	Elmwood	Northern Natural Gas Co.	G-11744, G-15291	RI62-179	15.000	16.000	[9] 15.000
139	Grand Valley	Natural Gas Pipeline Co. of America	G-12464	G-14860, G-17374, G-20282, RI61-290.	16.000	17.000	16.000
140	Grand Valley	do	G-12465	G-15029, G-18271, RI60-286, RI61-460.	16.000	17.000	16.000
152	Mocane	Colorado Interstate Gas Co.	G-13701	RI62-443	15.000	16.000	[9] 15.000
154	Light Gas Area	Panhandle Eastern Pipe Line Co.	G-13807	None	15.000	15.000	15.000
157	Rosston Madison Area	Northern Natural Gas Co.	G-14628	RI62-492	15.000	16.000	[9] 15.000
165	Laverne	Michigan Wisconsin Pipe Line Co.	G-13299	None	17.000	17.000	[9] 17.000
178	Guymon Hugoton	Panhandle Eastern Pipe Line Co.	G-19222	RI61-353, RI62-345.	16.400	17.000	16.400
181	East Camrick	Northern Natural Gas Co.	G-19036	None	16.500	16.500	16.500
182	Laverne	Michigan Wisconsin Pipe Line Co.	G-20057	do	17.000	17.000	17.000
183	Woodward	Cities Service Gas Co.	G-19085	do	16.000	16.000	16.000
204	Woodward Area	Michigan Wisconsin Pipe Line Co.	CI61-691	do	17.000	17.000	[9] 17.000
218	Guymon Hugoton	Panhandle Eastern Pipe Line Co.	CI61-1766	RI62-345	16.800	17.000	16.800
234	Camp Creek, *et al.*	Northern Natural Gas Co.	CI62-1388	None	17.000	17.000	17.000
237	NW. Lovedale	Cities Service Gas Co.	CI63-538	do	16.000	16.000	16.000
238	Camrick Southeast	Natural Gas Pipeline Co. of America	CI63-578	do	17.000	17.000	17.000

See numbered footnotes at end of appendix C.

APPENDIX A—Continued

Rate schedule number	Area (field)	Purchaser	Docket number		Last firm rate	Rate in effect Jan. 1, 1963	Settlement rate
			Certificate	Sec. 4(e) rate increase			
	OKLAHOMA OTHER AREA						
19	Chickasha	Arkansas Louisiana Gas Co	G-2905	do	12.000	12.000	12.000
30	Sholem-Alechem	Lone Star Gas Co	G-2916	RI60-238	11.000	16.800	11.000
45	West Edmond	Cities Service Gas Co	G-4677	None	10.500	10.500	10.500
114	Otstot	Arkansas Louisiana Gas Co	G-11229	do	11.000	11.000	[7] 11.000
142	East Round Hill, *et al.*	Cities Service Gas Co	G-12698	G-20282	12.000	13.000	[10] 12.000
179	Fox	All Star Gas Co	G-19281	None	8.000	8.000	8.000
184	West Enville	Cimarron Transmission Co	G-17017	do	15.500	15.500	[11] 15.500
194	East Salt Fork	Arkansas Louisiana Gas Co	CI60-317	RI63-340	11.000	11.000	11.000
204	Woodward Area	Michigan Wisconsin Pipe Line Co	CI61-691	None	15.000	15.000	[13] 15.000
205	East Durant	Lone Star Gas Co	CI61-949	do	15.000	15.000	15.000
228	Northeast Alden	Natural Gas Pipeline Co. of America	CI62-530	do	12.000	12.000	12.000
	OKLAHOMA CARTER-KNOX						
190	Knox	Lone Star Gas Co	CI60-129	do	16.800	16.800	16.800
	KANSAS AREA						
42	Hugoton	Cities Service Gas Co	G-2930	None	11.00	11.00	[12] 11.00
55	Hardtner and Early	do	G-13568, G-8836	G-20082	12.000	13.000	[12a] 12.000
135	North Harper Ranch	Northern Natural Gas Co	G-12134	RI62-180	15.075	16.000	15.000
141	Stevens	Panhandle Eastern Pipe Line Co	G-12642	RI62-492	15.075	16.000	15.000
150	Hugoton	Northern Natural Gas Co	G-13385	RI61-496	12.000	13.000	[14] 12.000
156	Nichols	Michigan Wisconsin Pipe Line Co	G-14597	RI61-460	15.000	16.000	15.000
169	Hugoton	Northern Natural Gas Co	G-17308	RI62-292	12.000	12.000	[14] 12.000
177	Hugoton	Kansas-Nebraska Natural Gas Co., Inc.	G-18919	None	11.000	11.000	[14] 11.000
219	Vernon North, *et al.*	Wunderlich Development Co	CI62-34	do	5.650	5.650	5.650
226	Hugoton	Colorado Interstate Gas Co	G-2897, G-2898, G-2900.	RI62-216	11.000	12.500	11.000
227	Harper Ranch, *et al.*	Northern Natural Gas Co	CI62-531	None	16.000	16.000	16.000
231	Hugoton	Cities Service Gas Co	CI62-723	do	12.000	12.000	12.000
232	Hugoton	do	G-2930	do	11.000	11.000	11.000
	NEW MEXICO, SAN JUAN BASIN AREA						
4	San Juan Basin	El Paso Natural Gas Co	G-2890, G-10282	do	12.000	12.000	12.000
5	San Juan Basin	do	G-2891	do	12.000	12.000	12.000
6	San Juan Basin	do	G-2892	do	12.000	12.000	12.000
180	Bisti	do	G-18747	do	13.000	13.000	13.000

	COLORADO						
46	Powder Wash	Mountain Fuel Supply Co	G-7310	do	12,000	12,000	12,000
	WYOMING						
230	Sand Draw and Muskrat	North Central Gas Co	G-2906, G-2907	do	9,000	9,000	[2] 9,000
	MONTANA AND WYOMING						
159	Elk Basin	Montana Dakota Utilities Co	G-2931	do	8,000	8,000	8,000

See numbered footnotes at end of appendix C.

APPENDIX B

SINCLAIR OIL & GAS CO.—DOCKET NOS. G–9291 and G–9292, ET AL.

[Pending certificate applications included in proposed settlement]

Rate schedule number	Area (field)	Purchaser	Date of contract	Docket number	Initial price*	Settlement price*
	TEXAS RR. DISTRICT 10					
193	Kiowa Creek, *et al*	Transwestern Pipeline Co	Feb. 4, 1959	G–17979	17	17
	KANSAS					
208	Angell	Panhandle Eastern Pipe Line Co	Dec. 22, 1960	CI61–1137	16	[1] 16
	OKLAHOMA PANHANDLE					
193	Shattuck, *et al*	Transwestern Pipeline Co	Feb. 4, 1959	G–17979	17	17
206	Laverne	Michigan Wisconsin Pipe Line Co	Oct. 17, 1960	CI61–1032	17	[2] 17
233	Mocane	Colorado Interstate Gas Co	Jan. 2, 1962	CI62–1070	17	[2] 17
	OKLAHOMA OTHER AREA					
239	East Doyle	Lone Star Gas Co	Oct. 25, 1962	CI63–603	15	[31] 15

*All rates shown at 14.65 psia and include applicable tax reimbursement.
See numbered footnotes at end of appendix C.

APPENDIX C

Sinclair Oil & Gas Co.—South Louisiana Pending Certificate Applications

[Docket No. G-9291, *et al.*]

Rate schedule number	Purchaser, field, county/parish, State	Date of contract	Docket number [21]	Initial price*	Ordered price**
172	United Gas Pipe Line Co., North Leroy, Vermilion, La	Jan. 29, 1959	G-17917	22.25	21.25
202	Southern Natural Gas Co., St. Gabriel, Iberville & Ascension, La	June 1, 1960	CI61-390	22.05	21.25
213	Trunkline Gas Co., Esther Area, Vermilion, La	Dec. 22, 1960	CI61-1257	21.8	21.25
235	Tennessee Gas Transmission Co., West Delta Block 83, Plaquemines, La	Oct. 18, 1960	CI61-670	20.5	20.5
236	Southern Natural Gas Co., Felice Bayou, Plaquemines, La	Apr. 11, 1958	CI63-463	20.75	20.75

*All Rates Shown at 15.025 psia and include applicable tax reimbursement.
**Price required by this order.

FOOTNOTES TO APPENDIXES A, B, AND C

[1] Sinclair agrees to waiver of favored nations, price redetermination and future rate increases for the remaining term of the contract.

[2] In the event the Commission, in the determination of an area rate for Railroad District No. 3, fixes a new rate, the settlement rate herein is subject to adjustment to such area rate effective as of the date of such determination.

[3] Rate subject to Btu adjustment up to a maximum rate of 11.0¢ per Mcf.

[4] Eliminated by condition.

[5] No production since April, 1962. Abandonment and notice of cancellation of rate schedule filed February 8, 1963.

[6] Sinclair agrees to life of contract make up for gas paid for but not received.

[7] Favored nations clause in contract to be deleted.

[8] Rate subject to Btu adjustment up to a maximum rate of 17¢ per Mcf.

[9] The parties agreed on a rate of 17.00¢ per Mcf plus contract Btu adjustment. However, under the arrangement between Sinclair and others and Buyer, a gas products plant was constructed on the main line field lateral of Michigan Wisconsin with the plant owners compensating Michigan Wisconsin for the reduction in Btu and gas volume due to processing. The agreement here is that the net cost to Michigan Wisconsin at the discharge of the plant cannot exceed 17¢ per Mcf.

[10] Subject to 0.75¢ dehydration charge.

[11] Subject to Btu adjustment and 0.75¢ deduction for desulphurization by Buyer which reduces rate to less than the 15¢ ceiling rate.

[12] Same as footnote 9 except as to rate of 15¢.

[13] No sales being made under this rate schedule. It applies only if Sinclair drills and produces gas at a depth below 3400 feet.

[13a] Docket No. G-20082 is hereby terminated only in so far as it pertains to Rate Schedule No. 55.

[14] Subject to full Btu adjustment.

[15] Upward Btu adjustment to be eliminated from the contract.

[16] Property sold November 16, 1960. See Commission order of April 4, 1961.

[17] Application to abandon service filed January 7, 1963.

[18] Filed application to abandon service and cancellation of rate schedule on October 5, 1962.

[19] Omitted.

[20] Eliminated by condition.

[21] Initial contract price 16.80¢ per Mcf. Temporary authorization received December 14, 1962, on condition price be reduced to 15¢ per Mcf at 14.65 psia. Such authorization accepted December 20, 1962.

[22] Tax reimbursement varies.

[23] Kansas-Nebraska Natural Ga Company, Inc., successor in interest to North Central Gas Company.

[24] The rate shown for Rate Schedule 66 is at 16.7# psia which is equivalent of commodity rate of 10¢ per Mcf at 16.7# psia plus tax reimbursement rate of 1.5¢ per Mcf at 15.025# psia.

[25] Certificate applications presently consolidated in *Union Texas Petroleum et al* proceedings, Docket No. G-13221, *et al.*

NOTE: *Unless otherwise indicated, all rates are expressed in cents per Mcf at contract pressure base and includes, where applicable, tax reimbursement.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP62-265; CALIFORNIA-PACIFIC UTILITIES COMPANY, DOCKET NO. CP62-200

ORDER AMENDING ORDER ADOPTING INITIAL DECISION OF PRESIDING EXAMINER

(Issued July 2, 1963)

On June 6, 1963, El Paso Natural Gas Company (El Paso) filed in Docket No. CP62-265 a petition to amend the Commission's Order Adopting Initial Decision of Presiding Examiner, issued May 16, 1963, 29 FPC 984, in the above-captioned dockets to extend until October 1, 1965, the time within which all facilities thereby authorized shall be constructed and placed into operation. Further, El Paso requests that the Presiding Examiner's Decision, issued April 18, 1963, 29 FPC 985 (which granted the certificate as requested) be corrected to state that El Paso proposes to construct 5,200 horsepower of additional compression, all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

Among the facilities which El Paso proposes to construct in Docket No. CP62-265 are two new compressor stations to be known as the Portland and Albany Compressor Stations. The Portland Compressor Station will consist of three 1,440 horsepower compressor units for a total of 4,320 installed horsepower, and the Albany Compressor Station will consist of one 880 horsepower compressor unit. On page 985 of his initial decision, the Presiding Examiner stated that El Paso's compressor station facilities would consist of approximately 4,400 additional compressor horsepower. El Paso proposes to phase the construction of the foregoing compressor stations so as to match, insofar as possible, the capacity of the pipeline with the market requirements. Thus, the proposed horsepower will be installed in increments during the market build-up period of from two to three years as shown by the record in this proceeding. In view thereof, all of such facilities will not be installed prior to October 18, 1963, the date by which ordering paragraph (C) of the Examiner's initial decision requires completion of construction and placement into operation. El Paso does anticipate, however, that all of the authorized facilities will be constructed and placed into operation prior to October 1, 1965.

The Commission finds:

It is appropriate in carrying out the provisions of the Natural Gas Act that the Order Adopting Initial Decision of the Presiding Examiner issued May 16, 1963, in the above-entitled matters be amended as ordered below.

The Commission orders:

(A) The ordering paragraph of the Order Adopting Initial Decision of Presiding Examiner, issued May 16, 1963, in the above-entitled matters is hereby amended to read as follows:

The initial decision of the Presiding Examiner issued on April 18, 1963, corrected to reflect that El Paso Natural Gas Company proposes to construct compressor facilities totalling 5,200 horsepower, is adopted as the decision of the Commission in these proceedings, effective as of the date of issuance of this order, except that the date when the facilities hereby authorized shall be constructed and placed into operation is hereby fixed as October 1, 1965.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

KANSAS-NEBRASKA NATURAL GAS COMPANY, INC., DOCKET NO. CP63-265

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 2, 1963)

On March 25, 1963, Kansas-Nebraska Natural Gas Company, Inc. (Applicant) filed in Docket No. CP63-265 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing:

(1) the replacement of approximately 30 miles of 10-inch pipeline and 20 miles of 12-inch pipeline from the Casper, Wyoming, compressor station to Douglas, Wyoming, with 50 miles of 12-inch pipeline;

(2) the replacement of approximately 33 miles of 10-inch pipeline with 12-inch pipeline between Lingle, Wyoming, and Mitchell, Nebraska;

(3) the installation of approximately 1000 additional horsepower at the Casper compressor station, and,

(4) Applicant to operate as a permanent facility approximately 8 miles of 3-inch existing line temporarily installed for emergency purposes, from Broadwater, Nebraska, southeast.

Applicant's proposals are more fully set forth in the application.

Applicant states that the proposed facilities are required to provide additional capacity to meet the firm peak market requirements of its western Nebraska and Eastern Wyoming service areas and to replace portions of its existing transmission line which are in poor condition. Applicant states further that the existing 3-inch line near Broadwater was installed during an emergency in order to maintain adequate service to the communities of Lisco, Oshkosh and Lewellen, Nebraska; Applicant believes that said line is now required on a permanent basis in order to meet the requirements of these three communities.

The estimated cost of the proposed facilities is $2,357,000, which cost will be financed by current working capital or by interim bank loans.

Pursuant to due notice, a public hearing was held in Washington, D.C., on June 20, 1963, respecting the matters involved in and the issues presented by the application herein. On May 27, 1963, Montana-Dakota Utilities Co. filed a petition to intervene in this proceeding; however, on May 31, 1963, said petitioner filed a notice of withdrawal of its petition. No other petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Kansas-Nebraska Natural Gas Company, Inc., a Kansas corporation having its principal place of business in Phillipsburg, Phillips County, Kansas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-259 (3 FPC 966).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to

the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Kansas-Nebraska Natural Gas Company, Inc., to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP62-212

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 2, 1963)

On April 25, 1963, Michigan Wisconsin Pipe Line Company (Applicant) filed in Docket No. CP62-212 pursuant to Section 7(c) of the Natural Gas Act a motion to modify an order granting a certificate of public convenience and necessity issued in this docket on July 25, 1962, 28 FPC 205. Applicant wishes to amend the order by seeking authorization to decrease the number of compressor units previously authorized to be supercharged, and to remove and reinstall in another location a certain compressor unit, all as more fully set forth in Applicant's motion

By its order of July 25, 1962, the Commission authorized, among other things, the supercharging of seven compressor engines at Applicant's Wisconsin Station "A" to provide an increase of 2,210 horsepower. Applicant later was granted an extension of time to complete the authorized facilities.

In the meantime, completion of certain loop line facilities authorized in Docket No. G–20572 resulted in some excess horsepower at Applicant's Station 11, as shown in Exhibit No. 37 in that docket. Accordingly, Applicant now proposes that one 1,550 horsepower unit be removed from Station No. 11 and reinstalled at Wisconsin Station "A". Thus the supercharging of only two units in lieu of seven units as authorized in this proceeding will result in a net horsepower addition to Wisconsin Station "A" of 2,010 as compared to the 2,210 horsepower originally granted.

Applicant states that the cost of supercharging engines has increased substantially from that estimated when Applicant filed its original application in this proceeding. To presently supercharge the seven units originally called for would cost in excess of the original estimate by some $80,000, however, if the Commission modifies its order as herein requested, Applicant believes it will underrun its original estimate of $519,350. Consequently, Applicant now requests specifically that (1) the order issuing a certificate of public convenience and necessity issued July 25, 1962, be amended to authorize in lieu of the supercharging of seven units at its Wisconsin Station "A", the supercharging on only two such units which will increase the horsepower of each unit from 1,320 to 1,550, and (2) the removal of one 1,550 horsepower unit from Applicant's Compressor Station No. 11, and its reinstallation and operation at Applicant's Wisconsin Station "A".

Due notice of the filing of the motion to amend and opportunity for hearing thereon has been given by publication in the Federal Register on May 28, 1963 (28 F.R. 5282). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, and the public convenience and necessity require that the Commission's order, issued on July 25, 1962, in Docket No. CP62–212 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order, issued July 25, 1962, in Docket No. CP62–212 be and the same is hereby amended by authorizing Michigan Wisconsin Pipe Line Company to supercharge two compressor units at its Wisconsin Station "A" increasing the horsepower of each such unit from 1,320 to 1,550, and the removal of one 1,550 horsepower compressor unit from Applicant's Station No. 11 and its subsequent reinstallation and operation at the Wisconsin Station "A", all in lieu of the supercharging of seven compressor units at the Wisconsin Station "A" as heretofore authorized by said order, all as hereinbefore described and as set forth in the subject motion to amend.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP62–256

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 2, 1963)

On March 22, 1963, Natural Gas Pipeline Company of America (Applicant) filed in Docket No. CP62–256 an application to amend the Commission's order

THE ARMY LIBRARY
Washington, D.C.

issued February 8, 1963, 29 FPC 278, in the said Docket. The certificate issued authorized Applicant to construct storage facilities providing for a maximum peak hour withdrawal capacity of 43,750 Mcf and increasing the maximum daily withdrawals by 75,000 Mcf to a total of 875,000 Mcf using all three reservoirs at the Herscher and Cooks Mill Fields.

Applicant states that it experienced operational difficulties during January and February 1963 when a number of storage withdrawals wells failed to function at the peak of deliveries and to correct this condition it proposes to construct additional withdrawal facilities as follows:

(1) Eight Galesville injection withdrawal wells in Herscher,

(2) Approximately 2,500 feet of 10-inch and 2,000 feet of 12-inch gathering pipelines.

(3) One additional dehydration unit,

(4) Increase the available turbine horsepower by 1,000 horsepower to a total of 7,500 horsepower at station 201.

The estimated total cost of the proposed facilities is $1,250,000, to be financed upon short term loans.

Due notice of the application has been given with publication in the Federal Register on May 18, 1963 (28 F.R. 5038). No petition to intervene in opposition to the application and no protest to the granting of the same has been received.

The Commission finds:

(1) The certificate heretofore issued by the Commission in this matter on February 8, 1963, should be and hereby is amended by adding to the facilities authorized to be constructed therein the facilities herein before described for the purpose of better service to the public by increasing the peak hour delivery of natural gas from the storage field when needed by the consumers.

The Commission orders:

(A) The Commission's order of February 8, 1963 in Docket No. CP62-256 is amended by adding to the facilities therein authorized and operated, those facilities hereinbefore described.

(B) In all other respects said order of February 8, 1963 in this docket shall remain unchanged and in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP63-267

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued July 2, 1963)

On March 27, 1963, Northern Natural Gas Company (Applicant) filed in Docket No. CP63-267 an application pursuant to Section 7 of the Natural Gas Act for: (1) a certificate of public convenience and necessity authorizing (a) the construction and operation of a new 5,940 horsepower station replacing the existing Grayco Compressor Station, Gray County, Texas, (b) the installation of an additional 1,100 horsepower at the Tate Station, Kearny County, Kansas, (c) the installation of an additional 2,000 horsepower at the Holcomb Station, Finney County, Kansas, and (d) the construction and operation of a side tap near the Pembrook Station, Upton County, Texas; and (2) permission

and approval to abandon said Pembrook Compressor Station. Applicant's proposals are more fully set forth in the application.

Applicant states that the obsolescence and inefficiency of the present Grayco Station has resulted in abnormally high operating and maintenance expense and makes the continued operation of the station extremely hazardous. Four of the 1,320 horsepower units presently at the Pembrook Station will be relocated and installed at the new Grayco Station and a new 660 horsepower unit will be installed to make up the total proposed horsepower of 5,940.

The application indicates that the additional horsepower proposed for the Tate and Holcomb Stations will permit Applicant to accept its gas supply requirements and commitments in the Kansas-Hugoton Field and will result in more efficient operations. Applicant will relocate and install two 550 horsepower units presently installed at the Pembrook Station to supply the proposed additional horsepower at Tate. A new 2,000 horsepower unit will be installed at Holcomb.

Applicant states that upon transfer of the horsepower from Pembrook to the Grayco and Tate Stations, Pembrook Station will be retired. Due to depletion of gas supply in the general area of the Pembrook Station, the volumes formerly compressed at said station will be compressed at the Plymouth Compressor Station also located in Upton County.

Applicant's proposed 2-inch side tap near the Pembrook Station will be utilized to furnish compressor fuel to Phillips Petroleum Company at the latter's Pembrook Gasoline Plant.

Applicant states that none of the subject proposals will result in the abandonment or interruption of any service.

The application shows the total estimated cost for all facilities is $2,348,680. However, due to the reuse of materials and sale of salvageable material the total estimated out of pocket cost is $1,456,000, which cost will be financed from cash on hand and retained earnings.

Pursuant to due notice, a public hearing was held in Washington, D.C., on June 18, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G–280 (3 FPC 967).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) The facilities to be abandoned, as heretofore described, are subject to the jurisdiction of the Commission, and abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(5) Such abandonment by Applicant, as heretofore described, is permitted

by the public convenience and necessity, and an order authorizing and approving same should be issued as hereinafter ordered.

(6) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(7) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Northern Natural Gas Company, to construct, operate and install the proposed facilities, as hereinbefore described, all as more fully described in the application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12 months from the date on which this order issues.

(D) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, all as more fully described in the application in this proceeding, be and the same is hereby granted.

(E) Applicant shall advise the Commission of the date of the abandonment within 30 days of the date thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP63-278

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 3, 1963)

On April 8, 1963, Cities Service Gas Company (Applicant) filed in Docket No. CP63-278, an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities as part of its natural gas transmission system, as more fully set forth in the application, and the sale of natural gas through such facilities to The Gas Service Company (Gas Service) for resale to customers in and about an area adjacent to Forbes Air Force Base.

The estimated cost of the proposed facilities is $3,220, which cost will be financed from treasury cash.

The estimated third year peak day and annual requirements for the area to be served are 2501 Mcf per day and 153,405 Mcf per year.

Pursuant to due notice, a public hearing was held in Washington, D.C., on June 20, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in the First National Building, Oklahoma City 1, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and in the construction and operation thereof as well as the sale of natural gas by Applicant, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities as well as the sale of natural gas, both proposed by Applicant, are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Cities Service Gas Company, to construct and operate certain natural gas facilities, and to sell natural gas for resale, as hereinbefore described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the sale of natural gas shall commence as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within three months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

COLORADO INTERSTATE GAS COMPANY, DOCKET NO. RP64-1

ORDER INSTITUTING INVESTIGATION AND REQUIRING REPORTING OF COST AND REVENUE DATA

(Issued July 3, 1963)

Colorado Interstate Gas Company (Colorado Interstate) is engaged in the transportation of natural gas in interstate commerce and in the sale for resale of natural gas in interstate commerce for ultimate distribution to the public, and therefore is a natural gas company within the Natural Gas Act.

On the basis of data available to the Commission, it appears that the rates, charges, or classifications demanded, observed, charged, or collected in connection with the sales or transportation of natural gas by Colorado Interstate, subject to the jurisdiction of the Commission, and the rules, regulations, practices, and contracts relating thereto, may be unjust, unreasonable, unduly discriminatory or preferential.

Investigations which have been conducted in the past have been characterized by time-consuming and burdensome delays in obtaining cost data. This has proved both costly and inconvenient to all parties concerned. The company itself is most familiar with its own books and records. It is appropriate, therefore, that Colorado Interstate prepare and submit a report of its cost and revenue data for calendar year 1962 as hereinafter prescribed. It is not intended that the submittal of cost and revenue data by the company will be a substitute for the investigative responsibility of the staff nor will it preclude staff examination of the books or records of the company to the extent deemed necessary. It is contemplated that this procedure will obviate in large part the time consumed by the Commission Staff in the investigation of the Company's books and records but should not impose a burden upon the Company since it would make such a study for its own purposes in connection with the investigation.

The Commission finds:

(1) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act, that an investigation be instituted by the Commission, upon its own motion, into and concerning all rates, charges, or classifications demanded, observed, charged, or collected by Colorado Interstate for or in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, and any rules, regulations, practices, or contracts affecting such rates, charges, or classifications.

(2) It is necessary and appropriate, in order to expedite such investigation that Colorado Interstate submit the cost and revenue report hereinafter prescribed.

The Commission orders:

(A) Under authority of Sections 4 (a) and (b), 5, 10, 14, 15 and 16 of the Natural Gas Act an investigation of Colorado Interstate is hereby instituted for the purpose of enabling the Commission to determine whether, with respect to any transportation or sale of natural gas, subject to the jurisdiction of the Commission, made or proposed to be made by Colorado Interstate, any of the rates, charges, or classifications demanded, observed, charged, or collected, or any rules, regulations, practices, or contracts affecting such rates, charges or classifications, are unjust, unreasonable, unduly discriminatory, or preferential.

(B) On or before August 15, 1963, Colorado Interstate shall report to the

Commission cost and revenue data conforming with subsection (f) of Section 154.63 of the Commission Regulations under the Natural Gas Act, (except statements N and P). The data shall utilize calendar year 1962 adjusted for changes in revenues and costs which are known and are measurable with reasonable accuracy at the time of filing and which will become effective within nine months after the base period. The 12 months base period shall be adjusted to eliminate nonrecurring items, (except minor amounts so specified) but this shall not preclude Colorado Interstate from including items clearly designated as such, which, on the basis of existing facts, detailed in the report, it can show will be experienced or from including an appropriate normalizing adjustment, in lieu of a specified nonrecurring item. Working papers prepared in conjunction with the cost and revenue data shall be included in the report submitted and all statements, schedules and working papers shall be prepared in accordance with the classifications provided in the Uniform System of Accounts. Ten sets of the cost and revenue data shall be served upon the Commission, and Colorado Interstate shall simultaneously serve copies of such data upon all of its jurisdictional customers and the State commission of each state in which it does business.

(C) Further orders in this proceeding will specify the dates for any formal hearing under Section 5 of the Natural Gas Act which the Commission on further consideration of the matter deems appropriate and will provide an opportunity for intervention in such hearing by interested parties.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

COLORADO WYOMING GAS COMPANY, DOCKET NO. RP64-2

ORDER INSTITUTING INVESTIGATION AND REQUIRING REPORTING OF COST AND REVENUE DATA

(Issued July 3, 1963)

Colorado Wyoming Gas Company (Colorado Wyoming) is engaged in the transportation of natural gas in interstate commerce and in the sale for resale of natural gas in interstate commerce for ultimate distribution to the public, and therefore is a natural gas company within the Natural Gas Act.

On the basis of data available to the Commission, it appears that the rates, charges, or classifications demanded, observed, charged, or collected in connection with the sales or transportation of natural gas by Colorado Wyoming, subject to the jurisdiction of the Commission, and the rules, regulations, practices, and contracts relating thereto, may be unjust, unreasonable, unduly discriminatory or preferential.

Investigations which have been conducted in the past have been characterized by time-consuming and burdensome delays in obtaining cost data. This has proved both costly and inconvenient to all parties concerned. The company itself is most familiar with its own books and records. It is appropriate, therefore, that Colorado Wyoming prepare and submit a report of its cost and revenue data for calendar year 1962 as hereinafter prescribed. It is not intended that the submittal of cost and revenue data by the company will be a substitute for the investigative responsibility of the staff nor will it preclude staff examination of the books or records of the company to the extent deemed necessary. It is contemplated that this procedure will obviate in large part the time consumed by the Commission Staff in the investigation of the Com-

pany's books and records but should not impose a burden upon the company since it would make such a study for its own purposes in connection with the investigation.

The Commission finds:

(1) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act, that an investigation be instituted by the Commission, upon its own motion, into and concerning all rates, charges, or classifications demanded, observed, charged, or collected by Colorado Wyoming for or in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, and any rules, regulations, practices, or contracts affecting such rates, charges, or classifications.

(2) It is necessary and appropriate, in order to expedite such investigation that Colorado Wyoming submit the cost and revenue report hereinafter prescribed.

The Commission orders:

(A) Under authority of Sections (4) (a) and (b), 5, 10, 14, 15 and 16 of the Natural Gas Act an investigation of Colorado Wyoming is hereby instituted for the purpose of enabling the Commission to determine whether, with respect to any transportation or sale of natural gas, subject to the jurisdiction of the Commission, made or proposed to be made by Colorado Wyoming, any of the rates, charges, or classifications demanded, observed, charged, or collected, or any rules, regulations, practices, or contracts affecting such rates, charges or classifications, are unjust, unreasonable, unduly discriminatory, or preferential.

(B) On or before August 15, 1963, Colorado Wyoming shall report to the Commission cost and revenue data conforming with subsection (f) of Section 154.63 of the Commission Regulations under the Natural Gas Act, (except statements N and P). The data shall utilize calendar year 1962 adjusted for changes in revenues and costs which are known and are measurable with reasonable accuracy at the time of filing and which will become effective within nine months after the base period. The 12 months base period shall be adjusted to eliminate nonrecurring items (except minor amounts so specified), but this shall not preclude Colorado Wyoming from including items clearly designated as such, which, on the basis of existing facts, detailed in the report, it can show will be experienced or from including an appropriate normalizing adjustment, in lieu of a specified nonrecurring item. Working papers prepared in conjunction with the cost and revenue data shall be included in the report submitted and all statements, schedules and working papers shall be prepared in accordance with the classifications provided in the Uniform System of Accounts. Ten sets of the cost and revenue data shall be served upon the Commission, and Colorado Wyoming shall simultaneously serve copies of such data upon all of its jurisdictional customers and the State commission of each state in which it does business.

(C) Further orders in this proceeding will specify the dates for any formal hearing under Section 5 of the Natural Gas Act which the Commission on further consideration of the matter deems appropriate and will provide an opportunity for intervention in such hearing by interested parties.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

FLORIDA GAS TRANSMISSION COMPANY, DOCKET NO. CP63-277

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 3, 1963)

On April 9, 1963, Florida Gas Transmission Company (Applicant) filed an application in Docket No. CP63-277 for a certificate of public convenience and necessity to construct and operate two miles of 4½" O.D. transmission pipeline from a point on its 18-inch line near the City of South Miami, Florida, and to sell gas to its affiliate, Florida Gas Transmission Company, for distribution and resale in the city of South Miami. The cost of construction is estimated to be $24,000. The gas purchase will be made under Florida Gas Transmission Company's FPC Tariff, Rate Schedules G and I, which are on file with the Commission.

The estimated gas requirements for the community to be served under the subject application are as follows:

	M³ Btu		
	1st year	2d year	3d year
Peak day	234	471	652
Annual	87,951	104,621	114,594

The total estimated cost of the transmission and distribution facilities to be constructed by Florida Gas Transmission Company is approximately $696,000.

Pursuant to due notice, a public hearing was held in Washington, D.C., on June 18, 1963, respecting the matters involved in and the issues presented by the application herein. No petition in intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Florida Gas Transmission Company, a Delaware corporation with its principal place of business at Winter Park, Florida, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, will be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof as well as the sale of natural gas by Applicant, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities as well as the sale of natural gas, are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon the Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30 (c) (1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity is hereby issued authorizing Applicant, Florida Gas Transmission Company, to construct and operate natural gas facilities, and to sell up to 652 M²Btu per day of natural gas for resale, as heretofore described, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the sale of natural gas shall commence as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within 9 months from the date on which this order issues.

VILLAGE OF GREENUP, ILLINOIS, DOCKET NO. CP63–157 AND VILLAGE OF TOLEDO, ILLINOIS, DOCKET NO. CP63–158

ORDER ADOPTING INITIAL DECISION OF PRESIDING EXAMINER

(Issued July 3, 1963)*

Syllabus

1. Commission *directs* Trunkline Gas Company, under Section 7(a) of the Natural Gas Act, to establish physical connection of its facilities with facilities proposed to be constructed by applicants, and sell natural gas to applicants. PP. 29; 33.

Orville N. Foreman, *Wilton A. Carr* and *Glen Neal* for Village of Greenup, Illinois.

Orville N. Foreman and *Glen Neal* for Village of Toledo, Illinois.

J. William Via, Jr., and *Winton Hampton* for Trunkline Gas Company.

Agnes Mae Wilson for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

On June 3, 1963, the presiding examiner issued an initial decision herein ordering and directing Trunkline Gas Company, under the provisions of Section 7(a) of the Natural Gas Act, to establish physical connection of its natural gas transmission facilities with the facilities proposed to be constructed and operated by the Village of Greenup, and to sell and deliver up to 752 Mcf of natural gas per day to Greenup and to sell up to 511 Mcf of natural gas per day to Toledo and to deliver Toledo's gas to Greenup for transmission and delivery by the latter to Toledo. No exceptions have been filed to said initial decision.

*Initial decision appears on p. 29.

The Commission finds:

Upon consideration of the entire record in this matter, the initial decision of the presiding examiner should be adopted as the decision of the Commission.

The Commission orders:

The initial decision of the presiding examiner issued herein on June 3, 1963, be and the same is hereby adopted and said decision shall become effective as the decision of the Commission as of the date of issuance of this order.

INITIAL DECISION

ON APPLICATION FOR ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND THE SALE OF NATURAL GAS

(Issued June 3, 1963)

SHRIVER, *Presiding Examiner:* This is a proceeding initiated by the Village of Greenup, Illinois, and the Village of Toledo, Illinois, to secure natural gas service. Each village filed an application with the Commission on December 6, 1962, pursuant to Section 7(a) of the Natural Gas Act seeking an order directing the Trunkline Gas Company, an interstate pipeline, to physically connect its transportation facilities with facilities which the Village of Greenup propose to construct, and to sell and deliver to the applicants their natural gas requirements. The Trunkline Gas Company filed an answer to these applications on January 10, 1963. On January 21, 1963, the villages filed a motion for consolidation, and the proceedings came on for hearing before this Examiner on April 8 and 9, 1963, at which the applicants introduced oral testimony and documentary evidence. No witnesses were produced by Trunkline or by the Staff. The applicants' witnesses were cross-examined by counsel for Trunkline and by Staff counsel.

Each applicant is a village incorporated under the laws of the State of Illinois and is authorized to engage in the local distribution of natural gas to the public. Each is located in Cumberland County, Illinois. The Village of Greenup is principally an agricultural marketing and trading center. Its population is 1470 and it has about 1539 persons in its service area. It owns and operates its water and sewage utilities and a municipal electric distribution system. It has a small shoe manufacturing plant and is currently trying to attract other industry. The village has never defaulted on any of its obligations issued for any of its utilities. The Village of Toledo is located about 200 miles south of Chicago and about 50 miles west of Terre Haute, Indiana. It is the county seat of Cumberland County and is approximately four and a half miles west of the Village of Greenup. Toledo is about a half mile north of the transmission lateral to be constructed by Greenup. Toledo's population is about 1050; it was 905 in 1950 and 1005 in 1960. Two small factories are located in the village. Toledo also owns its own water and sewage utilities. It has never defaulted on any of its bond obligations and presently has a surplus in its bond fund.

The Village of Greenup proposes to interconnect a transmission lateral with facilities of Trunkline at a point about fourteen miles west of the village, to construct a 4-inch lateral from the point of connection to run about 10 miles eastward where a connection will be made for Toledo, and then to continue with a 3-inch lateral from the latter connection about 4 miles further eastwards to Greenup. Greenup also proposes to construct a distribution system to serve customers within the village and others who reside in the vicinity or along the transmission line. Greenup plans to transport the gas needed for its own use as well as that of Toledo through this lateral.

The gas transported for the use of Toledo will be effected pursuant to an agreement between the two villages. Toledo also proposes to construct a distribu-

tion system for service of natural gas to customers within its corporate limits and along the lateral to be constructed from Toledo to a point of interconnection with the transmission lateral to be constructed by Greenup.

No natural gas service is presently available to the villages. Many of their residents now use propane gas. There was testimony at the hearing to indicate that natural gas could be furnished cheaper, and that most propane users would become natural gas customers. In October 1962 the residents of Greenup voted more than three to one in favor of an ordinance for the acquisition, construction, ownership and operation of a municipal gas utility and the issuance of $585,000 Gas Public Utility certificates, bearing six percent interest, payable solely from the revenues of said utility. At a similar special election in Toledo the vote was almost three to one. The ordinance approved by the Toledo voters authorized the issuance of certificates in the amount of $205,000.

In order to establish a basis for the construction, operation and financing of the projects, the villages employed an engineering consultant to make a study, among other things, of the proposed distribution in each village, the potential residential and commercial customers, the daily and annual gas sales that could be expected, the cost of gas to the consumers, the cost of the facilities, and the debt service on each project. This witness testified that the systems would be constructed in accordance with the latest accepted practices and standards of the American Gas Association and the A.S.T.M. He testified that he made a field survey of the villages and the surrounding communities. He stated that there were 695 buildings and 555 bottled gas users within the present limits of Greenup or along the proposed transmission line, the latter being excellent prospects for natural gas. The figures for Toledo were 458 and 367 respectively. He also testified that seventy to eighty percent of the first year anticipated customers of each village had signed up for natural gas and had placed a deposit. He estimated Greenup's peak-day requirements for the first, second and third years of operations at 670 Mcf, 710 Mcf and 752 Mcf, respectively; and the annual requirements for the first, second and third year at 78,900 Mcf, 83,100 Mcf and 87,600 Mcf. The first, second and third year peak-day requirements for Toledo were estimated at 426 Mcf, 466 Mcf and 511 Mcf, respectively; and the annual requirements for the first, second and third years at 51,300 Mcf, 55,800 Mcf and 60,700 Mcf.

After having estimated the volume of gas required by the villages, the engineering consultant determined the gross annual revenue for each and the net annual revenue, after deduction of the cost of the gas and the operating expenses. Based upon a thirty year operation and amortization, a third year allocation of gas, and the issuance of $500,000 of five percent (5%) gas revenue bonds he found the Greenup report showed a debt coverage ratio of 1.98; and based upon a twenty year amortization a 1.62 coverage. For the village of Toledo based on a bond issue of $175,000 and a thirty year amortization he estimated the debt coverage ratio to be 2.35; and based on a twenty year amortization a 1.84 coverage ratio. He was of the opinion that both projects were economically feasible.

The financial consultant for the villages testified that in appraising the feasibility of the projects he had assumed a bond issue of $500,000 for Greenup and $175,000 for Toledo, but would recommend a bond issue of $470,000 for Greenup and $165,000 for Toledo. He was of the opinion that the latter figure for Toledo would cover the construction cost, the bond discount, all contingencies and miscellaneous costs. As to Greenup he stated his figure of $470,000 should be more than enough to cover all costs including possible heat plant conversions. His estimate as revealed by his testimony was as follows:

Cost of construction	$328, 921
Land and right of way	2, 000
Engineering and construction supervision	31, 000

Interest during development (on $470,000 for 18 mo. @ 5%)	$35,250
Bond discount of 10% (figure includes cost of election, expenses of FPC hearings, legal fees and printing bonds)	47,000
Miscellaneous and contingent	25,750
	469,921

The witness testified that it would be more realistic to consider the sum of $47,000 to include 5% bond discount and 5% miscellaneous expenses so that the sum of $25,750 probably would not be needed. The witness was a representative of a securities organization which is committed to buy the bonds of the villages. He also testified that in his opinion both projects were financially sound and feasible.

Trunkline, in its answer to the application of Greenup, challenges the claimed need for a delivery pressure of 300 to 400 psig, and challenges the application of Toledo for non-compliance with Section 7(a) of the Natural Gas Act since Toledo does not seek physical connection with the facilities of Trunkline but with a proposed transmission line to be built by Greenup. Trunkline also questions the economic feasibility of each project. Trunkline makes no representation that the services requested would burden its pipeline service or in any way adversely affect its present customers.

Trunkline's first objection is met by evidence and testimony which was presented at the hearing. The applicants' engineering consultant testified that a 400 psig inlet pressure, which was originally requested, was not needed and that an actual delivery pressure of 225 psig would satisfy the applicants' present requirements. Trunkline made no objection to this change either at the hearing or in its brief.

In its answer to Toledo's application Trunkline states that Toledo does not propose making physical connection with Trunkline's facilities and therefore fails to comply with Section 7(a) of the Natural Gas Act. Trunkline does not state therein why Toledo's application is defective. In its brief, however, Trunkline asserts that under these circumstances Section 7(a) does not empower the Commission to direct Trunkline to make a sale of natural gas to Toledo. Section 7(a) contains no express or implied restrictions as contended for by Trunkline. On the contrary it is plausible to conclude from the language used that the Act contemplates that natural gas companies be required to sell or extend their facilities to neighboring communities or villages irrespective of whether each makes a separate physical connection. To hold otherwise would be incongruous and would mean that the supplier must build a lateral to each village or each would be required to build its own separate lateral, otherwise one community might have service and its neighbor have none. Trunkline's contention accordingly is rejected. The result reached herein is supported in *Texas Eastern Transmission Corporation*, 14 FPC 266, 269 in respect to the Cities of Anna and Jonesboro. See also *Berkshire Gas Company, et al.*, 24 FPC 1041, 1047, and the *City of Monroe, Missouri*, Docket No. CP63-90, and the *City of Perry, Missouri*, Docket No. CP63-91.

Trunkline also asserts in its brief that Greenup will be transporting gas for Toledo in interstate commerce and will need certification pursuant to Section 1 of the Natural Gas Act. But Trunkline fails to show how Greenup would come within the provisions of Section 1. Since the gas with which we are here concerned is moved locally, and by the terms of the transportation agreement between the villages, each will contribute to financing the line and will have an interest and firm right of having its share of gas moved through it, Trunkline's contention is without merit.

As has been said, Toledo will receive its gas through the transmission line to be constructed and owned by Greenup. Pursuant to an agreement entered into between the villages dated December 4, 1962, Toledo has agreed to pay Greenup an annual fee until it has paid—estimated to continue for sixteen years—its share of the cost of the transmission line as well as its share of the annual cost of maintenance and operation, after which the transportation charge will be reduced or dropped to the share of the cost of maintenance and operation only. The agreement is to run for thirty years. Trunkline raises several objections to this agreement but since they are the concern primarily of the villages rather than Trunkline, and do not go to the economic feasibility of the projects, they are not well taken.

There remains the question of economic feasibility. Section 7(a) provides, among other things, that the Commission may direct a natural gas company to establish physical connection with and sell natural gas to any person or municipality engaged or legally authorized to engage in the local distribution of natural gas if it finds such action necessary or desirable in the public interest and no undue burden is thereby placed on the natural gas company.

In determining whether such service is necessary or desirable in the public interest, it is the responsibility of the Commission to satisfy itself whether the pipeline company is the applicants' most appropriate source of supply, whether there is a public need for gas service, and a benefit to be derived therefrom in the applicant's community, whether the proposed project can be financed, and whether it is economically sound.

Greenup and Toledo are relatively near Trunkline's 26-inch pipeline so that Trunkline is a normal source of supply. As already said, the electorate of the villages desire natural gas service and desire that it be delivered through their own municipal systems. The applicants presented evidence at the hearing showing that natural gas was competitive, that it was a convenience over propane, and that it could well result in attracting additional small industry to locate in the villages.

The debt-service coverage rate necessarily varies with the length of the maturity schedule of the bond issue. It is generally considered that a debt-coverage ratio of 1.5 is sufficient to meet the requirements of economic feasibility. *Panhandle Eastern Pipe Line Company, et al.*, 15 FPC 1421, 1428. The amortization schedule is based on the report made by the villages' engineering consultant. There is no reason to doubt the soundness of his report. The debt-service coverage both for Greenup and for Toledo on a 30-year or a 20-year amortization schedule is well within the minimum requirements.

Based on the evidence adduced at the hearing it is concluded that both Greenup and Toledo have a need for natural gas service, that they will derive a benefit therefrom, that these projects can be financed and are economically feasible, and that the villages have sustained the burden of proof required under Section 7(a) of the Natural Gas Act.

FINDINGS AND CONCLUSIONS

Upon consideration of the record and the briefs and arguments of counsel, it is found and concluded, in addition to the findings and conclusions heretofore stated, that:

(1) The Trunkline Gas Company, a Delaware Corporation, having its principal office in Houston, Texas, is a "natural gas company" within the meaning of the Natural Gas Act, as amended, and as heretofore found by the Commission. 9 FPC 721, 737.

(2) The Applicant, Village of Greenup, Illinois, is a municipal corporation legally authorized to construct, own, and operate a local gas distribution system.

(3) The Applicant, Village of Toledo, Illinois, is a municipal corporation legally authorized to construct, own, and operate a local gas distribution system.

(4) It is necessary and desirable in the public interest that the Commission, by order, direct the Trunkline Gas Company to establish physical connection of its natural gas transmission facilities with the facilities proposed to be constructed and operated by the Village of Greenup, Illinois, and direct the sale and delivery of a maximum volume of 752 Mcf of natural gas per day by Trunkline to Greenup for its requirements and direct the sale of a maximum volume of 511 Mcf of natural gas per day to the Village of Toledo, said volume of gas to be delivered by Trunkline to the Village of Greenup at the connection of Trunkline's facilities with Greenup's facilities, to be transported by Greenup for Toledo.

(5) The requirement that the Trunkline Gas Company serve the Village of Greenup and the Village of Toledo as above set forth will not place any undue burden upon it nor require it to enlarge its facilities, nor impair its ability to render adequate service to its existing customers.

(6) The Village of Greenup and the Village of Toledo should be prepared to receive natural gas from the Trunkline Gas Company within one year from the date of the issuance of the order herein, and Trunkline should be prepared to provide that service within that period of time.

ORDER

Wherefore, it is ordered, subject to review by the Commission on appeal, or review on its own motion, as provided in its Rules of Practice, that:

(A) The Trunkline Gas Company be and it is hereby directed to establish physical connection of its natural gas transmission facilities with the natural gas facilities proposed to be constructed and operated by the Village of Greenup, and to sell and deliver up to 752 Mcf of natural gas per day to Greenup and to sell up to 511 Mcf of natural gas per day to Toledo and to deliver Toledo's gas to Greenup for transmission and delivery by the latter to Toledo, all as hereinbefore described and as more fully set forth in the applications, as amended, in Docket Nos. CP63–157 and CP63–158.

(B) The Village of Greenup and the Village of Toledo shall be prepared to receive natural gas from the Trunkline Gas Company within one year from the date of issuance of this order, in accordance with Section 157.20(b) of the Commission's Regulations.

(C) Trunkline shall report to the Commission in writing the date of commencement of service to the Village of Greenup and the Village of Toledo within ten days thereof.

HARRY C. SHRIVER,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

M. J. MITCHELL, DOCKET NO. G–19999

ORDER CONDITIONALLY ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICE OF CHANGE AND CONTRACT AMENDMENT, REQUIRING REFUNDS, AND TERMINATING PROCEEDING

(Issued July 3, 1963)

On May 15, 1963, M. J. Mitchell (Mitchell) submitted an Offer of Settlement, pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure, in the above-designated proceeding, which relates to the jurisdictional

sale of natural gas by Mitchell, under its FPC Gas Rate Schedule No. 2, to Tennessee Gas Transmission Company (TGT), from the Agua Dulce Field, Nueces County, Texas (Railroad Commission District No. 4). The increased rate of 17.24347¢ per Mcf, at 14.65 psia, became effective subject to refund on April 2, 1960.

Under the terms of the offer, Mitchell proposes to delete the favored-nation, price redetermination and periodic escalation provisions from the rate schedule involved, and to establish a settlement rate of 15.0¢ per Mcf, inclusive of present tax reimbursement for the remaining term of the contract.

In support of its offer, Mitchell cites the deletion of the favored-nation, price redetermination and periodic escalation provisions from its gas purchase contract with TGT, and states that such provisions were important elements of consideration required by Mitchell under the contract for the long-term commitment of its gas reserves to the performance of the contract. TGT has concurred in the offer, and has agreed to execute the contract amendment provided for therein. No answers or protests to the offer have been received.

Since the proposed settlement rate of 15.0¢ per Mcf, including present tax reimbursement, at 14.65 psia, is acceptable under the provisions of the Second Amendment to the Commission's Statement of General Policy No. 61–1, issued December 20, 1960, 24 FPC 1107, as amended by Order No. 264, issued March 27, 1963, 29 FPC 589, for jurisdictional sales of natural gas in Texas Railroad Commission District No. 4, it is believed that the public interest will best by served by accepting Mitchell's proposed settlement as hereinafter set forth. As a condition of this order we will require that Mitchell refund all amounts collected in excess of 15.0¢ per Mcf in Docket No. G–19999.

However, we desire to make it clear that acceptance of the offer of settlement shall not be construed as approval of any future increased rate proposed by Mitchell.

The Commission finds:

The proposed settlement of the above-designated proceeding, on the basis described herein, as more fully set forth in the Offer of Settlement filed by Mitchell with the Commission on May 15, 1963, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The Offer of Settlement filed by Mitchell with the Commission on May 15, 1963, is hereby approved in accordance with the provisions of this order.

(B) Mitchell shall file, within 30 days from the date of issuance of this order, a notice of change providing for the 15.0¢ per Mcf rate, including present tax reimbursement, specified in its offer of settlement and a contractual amendment to its FPC Gas Rate Schedule No. 2, which Mitchell shall execute with TGT in conformity with Mitchell's offer of settlement in all respects. Both the notice of change and the contractual amendment shall be submitted in accordance with Part 154 of the Commissions' Regulations under the Natural Gas Act.

(C) Within 30 days from the date of issuance of this order, Mitchell shall refund to TGT all amounts collected under its FPC Gas Rate Schedule No. 2 in Docket No. G–19999 in excess of the settlement rate of 15.0¢ per Mcf, together with simple interest at the rate of 7% per annum, from the date of receipt of such excess amounts by Mitchell to the date of refund. Mitchell shall bear all costs incidental to the making of such refunds.

(D) Within 45 days from the date of issuance of this letter, Mitchell shall report to the Commission in writing the details of its calculations resulting in

refunds ordered pursuant to paragraph (C) above, together with a copy of a release from TGT with respect to such refunds.

(E) Upon notification by the Secretary of the Commission that Mitchell has complied with the terms and conditions of this order, the rate and charge of 15.0¢ per Mcf at 14.65 psia, including present tax reimbursement, specified in the Offer of Settlement, shall be effective as of the date of issuance of this order, the above-designated proceeding shall be deemed terminated, and Mitchell's refund obligation with respect to the above-designated proceeding shall be deemed discharged.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP63-261

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 3, 1963)

On March 22, 1963, Northern Natural Gas Company (Applicant), filed in Docket No. CP63-261 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of measuring and regulating facilities necessary to make sale and delivery of natural gas from its integrated pipeline system to the City of Iraan, Pecos County, Texas.

The application states that due to depletion of its present gas supply, the City of Iraan has requested Northern to deliver gas from the 6-inch line which runs approximately two miles from the city limits. The City of Iraan proposes to furnish its own line to transport the gas into the city and to reimburse Northern for the construction of its facilities.

Applicant proposes to construct and operate measuring and regulating facilities at an estimated cost of $7,280. It is estimated that the City of Iraan will require third year daily and annual maximum quantities of 640 Mcf and 90,000 Mcf, respectively. Applicant states that such volumes will have a negligible effect on its system capacity and gas supply, and will not significantly effect its operating revenues or operating expenses.

Pursuant to due notice a public hearing was held in Washington, D.C., on June 20, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-280 (3 FPC 967).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c) (1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Northern Natural Gas Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP63-262

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July, 3, 1963)

On March 22, 1963, Northern Natural Gas Company (Applicant), filed in Docket No. CP63-262 an application of a "budget-type" nature pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of field compression facilities located on gathering systems during the calendar year 1963, all as more fully set forth in the application

Applicant states that it has numerous gathering systems connecting various sources of gas supply to its mainline system, and from time to time it becomes necessary to install compression facilities on these systems in order to maintain mainline design pressures. Applicant proposes to locate these small field stations between the point where gathering has been completed and prior to delivery into the mainline facilities. Such installations will enable it to reduce upstream gathering system pressures in accordance with its contractual obligations to producers, and also to take into its existing gathering facilities increased volumes

of gas resulting from additional well connections. Such installations will not result in any increase in system salable capacity.

Applicant's request extends only through calendar year 1963, and it estimates that a maximum of $850,000 will be required for these stations and that no single project will cost over $500,000, all of which will be financed from cash on hand and from funds generated from its operations.

Pursuant to due notice, a public hearing was held in Washington, D.C., on June 20, 1963, respecting the matters involved in and the issues presented by the application herein. No protest to the granting of the application or petition to intervene has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation with its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the certificate issued hereinafter and the rights granted thereunder be conditioned as follows: (a) construction and expenditures shall be limited to the remainder of the calendar year 1963; (b) total expenditures shall not exceed a maximum of $850,000, with no single project exceeding a cost of $500,000; and (c) Applicant shall file with the Commission within 60 days after expiration of the authorization issued hereinafter, a statement showing the actual installed cost, the description, and the location of each project constructed.

(6) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(3), and (e) of Section 157.20 of such Regulations.

(7) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Northern Natural Gas Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and rights granted thereunder are conditioned upon Applicant's compliance with the following: (a) construction and expenditures shall be limited to the remainder of the calendar year 1963; (b) total expenditures shall not exceed a maximum of $850,000, with no single project exceeding a cost of $500,000; and (c) Applicant shall file with the Commission within 60 days after expiration of the authorization issued herein, a statement showing the actual installed cost, the description, and the location of each project constructed.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are further conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(3), and (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP63–228

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 3, 1963)

On February 18, 1963, Transcontinental Gas Pipe Line Corporation (Applicant) filed an application pursuant to Section 7 (c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction of a cryogenic in-ground liquified natural gas (LNG) storage facility, having a capacity of 1,000,000 Mcf and a peak day deliverability of 200,000 Mcf (at 14.7 psia), and for sales of LNG storage service to seven of its existing customers. On April 17, 1963, the Applicant supplemented its application so as to accept four (4) conditions designed to insure protection of its other customers. The storage facility will be located adjacent to Transco's existing main pipeline in the Hackensack Meadows near Carlstadt, New Jersey (about 8 miles west of New York City). The estimated cost of the project is $11,800,000.

The facility will be used to (1) liquify natural gas, (2) store the natural gas in the liquid state during off-peak periods, and (3) vaporize and send out the natural gas during peak periods. Gas from the storage facility will be sold only to customers contracting for LNG storage service. The storage facility gas will actually be delivered at points downstream from the storage facility thereby making available equivalent capacity upstream from the storage facility.

The seven customers to receive this service and the volumes of gas contracted for are as follows:

	Storage capacity volume—Mcf	Peak-day deliverability Mcf	Contracted days' use of demand
Atlanta Gas Light Co	125,000	25,000	5
Delaware Power & Light Co	15,000	2,000	7.5
Elizabethtown Con. Gas Co	84,000	21,000	4
Piedmont Natural Gas Co	72,000	12,000	6
Public Service Electric & Gas Co	600,000	120,000	5
South Jersey Gas Co	10,000	2,000	5
United Gas Improvement Co	50,000	10,000	5
Total	[1] 956,000	[1] 192,000	

[1] Since the delivery capacity is 200,000 Mcf per day and the total storage capacity is 1,000,000 Mcf, 8,000 Mcf of delivery capacity and 44,000 Mcf of storage capacity are available for allocation.

Pursuant to due notice, a public hearing was held in Washington, D.C., on June 11, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene in opposition to, or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30 (c) (1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Transcontinental Gas Pipe Line Corporation, a Delaware corporation with its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (2), (c) (3), (c) (4), and (e) of Section 157.20 of such Regulations.

(6) The conditions set forth in the Applicant's supplement of April 17, 1963, are in the public convenience and necessity and therefor the certificate should be subject to the specific conditions stated in paragraphs (E), (F), (G) and (H) as hereinafter ordered.

(7) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c) (1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Transcontinental Gas Pipe Line Corporation, to construct and operate certain natural gas facilities, as hereinbefore described, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (2), (c) (3), (c) (4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in operation as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within 30 months from the date on which this order issues.

(D) Applicant shall submit to the Commission annual reports in a form satisfactory to the Commission showing the pertinent operating data and the

experienced associated costs for each of the three years after the first full injection and withdrawal cycle.

(E) Unless and until the liquified natural gas facility certificated hereby has operated for one full injection and withdrawal cycle (i.e., the injection and withdrawal for any purpose of 1,000,000 Mcf of natural gas), Applicant shall not transfer on its books from construction work in progress to gas plant in service the costs of the said facility; nor shall Applicant claim such costs at rate base or include any revenues under Rate Schedule LG–A in any rate proceeding unless and until the said full cycle is completed.

(F) In any rate proceeding instituted after the liquified natural gas facility certificated hereby has been transferred to gas plant in service, should the "test period" (as presently defined in the Commission's Regulations) or any part thereof fall prior to the commencement of the full service of 192,000 Mcf per day authorized herein, Applicant shall nevertheless reflect revenues and costs based upon such full service.

(G) Applicant shall not in any rate proceeding attempt to assess against any other class of service any deficiency in revenues under Rate Schedule LG–A below the cost of service, associated with the certificated facility, of rendering the service certificated herein, prepared in the manner utilized in Exhibit P (ii) to the application herein.

(H) Applicant shall amend its proposed Rate Schedule LG–A as contained in Exhibit P (i) to its application herein, to restrict the availability of the liquified natural gas service to customers served under other rate schedules contained in Applicant's FPC Gas Tariff Volume No. 1, except ACQ and PS rate schedules. Such an amendment shall not prejudice Applicant's right to propose liquified natural gas service to others in the future.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

PACIFIC GAS & ELECTRIC COMPANY, PROJECT NO. 178

ORDER DETERMINING NET CHANGE IN ACTUAL LEGITIMATE ORIGINAL COST AND PRESCRIBING ACCOUNTING THEREFOR

(Issued July 5, 1963)

Pacific Gas & Electric Company, Licensee for Project No. 178,[1] at various times filed statements pursuant to Section 4.1 of the Commission's Regulations under the Federal Power Act, claiming for the period from January 1, 1941 through December 31, 1954, project additions and retirements resulting in (1) a $156,887.88 net increase in project cost over the previously determined amount of actual legitimate cost of the project, $2,113,996.48 as of December 31, 1940,[2] and (2) a resulting total claimed actual legitimate original cost of the project as of December 31, 1954, of $2,270,884.36. The claimed net increase of $156,887.88 results from claimed and recorded project gross additions and retirements totaling $221,763.05 and $64,905.17, respectively, and a debit adjustment of $30.00, and is more specifically shown in the attached schedule.

---

[1] The project is located on the Kern River in Kern County, California, and lands of the United States within Sequoia National Forest. It may be described, generally, as Licensee's Kern Canyon project. Overall, the project includes one hydroelectric generating unit and a number of transmission lines. The license for the project was issued pursuant to Section 4(d) of the Federal Water Power Act and is by its terms effective for a period of 50 years commencing April 30, 1925.

[2] See Commission order issued February 26, 1948 (7 FPC 407).

The Commission's staff completed a field examination of the books and records of Licensee and other data for the purpose of ascertaining the correctness of the claimed and recorded project costs.

Staff analysis of Licensee's provisions for project depreciation has not been completed, and the staff recommends that the Commission defer for future consideration and determination the amount of accrued depreciation applicable to inservice project properties for the period subsequent to April 30, 1925, the effective date of the license for Project No. 178. The Commission by order dated March 28, 1932 (Twelfth Annual Report of the Federal Power Commission, page 112) found the project reserve for depreciation to be $71,753.37 as of April 30, 1925.

Following that examination, an agreement, subject to Commission approval was reached between staff and Licensee's representatives with respect to certain proposed adjustments involving a reduction of $13,072.00 in claimed project cost for the period January 1, 1941, through December 31, 1954, and the accounting disposition thereof. The adjustments represent unrecorded retirement of right-of-way and access road outside project boundary in the amounts of $490.00 and $12,582.00, respectively, and are to be disposed of as shown in the following adjusting journal entry:

		Debit	*Credit*
101 (100.1)[3]	Electric plant in service, nonproject	$12,582.00	
121 (110)	Nonutility plant	490.00	
101 (100.1)	Electric plant in service, project No. 178		$13,072.00

[3] Numerical account designations enclosed in parentheses are to the Commission's Uniform System of Accounts effective January 1, 1937.

After giving effect to the above adjustments, the Commission's staff recommends and Licensee, by letter of February 2, 1962, confirming its agreement to the proposed adjustments, accounting disposition and resulting project cost for Project No. 178 (Kern Canyon), concurs that the Commission determine: (1) the net increase or change in the actual legitimate orignal cost of the Kern Canyon project during the period from January 1, 1941, through December 31, 1954, to be $143,815.88, comprised of gross additions $209,181.05, gross retirements of $65,395.17, and a debit adjustment of $30.00; and (2) the resulting actual legitimate original cost of the Kern Canyon project as of December 31, 1954, to be $2,257,812.36, classified by primary plant accounts of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees as shown in the attached schedule.

The California Public Utilities Commission was advised by letter of this Commission dated June 27, 1962, of the proposed adjustments, including the accounting disposition and resulting project costs, all as recommended by the Commission's staff and agreed to by the Licensee as set forth above. By letter of July 11, 1962, the California Commission indicated that it had no objection thereto.

The Commission finds:

(1) Licensee, by its tentative agreement to the proposed adjustments including the accounting disposition and the resulting project costs, and its letter dated February 2, 1962, and the California Public Utilities Commission, by its letter dated July 11, 1962, have obviated the necessity for notice and opportunity to protest provided in Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act.

(2) The foregoing adjustments, including the accounting disposition, are reasonable and appropriate for the purposes of the Federal Power Act, and therefore, should be approved and directed as hereinafter provided.

(3) The net increase or change in the actual legitimate original cost of Project No. 178 (Kern Canyon) from January 1, 1941, through December 31, 1954, is $143,815.88 and the resulting actual legitimate original cost of the project as of December 31, 1954, is $2,257,812.36, all classified by primary plant accounts of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act as shown in the attached schedule.

(4) It is necessary and appropriate for the purposes of the Federal Power Act that the determination of the accrued depreciation applicable to inservice project properties of Project No. 178 for the period subsequent to April 30, 1925, be reserved for future Commission consideration as hereinafter provided.

The Commission orders:

(A) The provisions of Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act are hereby waived for the purposes of this order.

(B) The foregoing adjustments including the accounting disposition, as proposed by the staff and agreed to by the Licensee, are hereby approved and directed to be made by the Licensee.

(C) Licensee, to the extent that it has not already done so, shall establish and maintain control and detailed plant accounts for Project No. 178, showing the debit amount of $143,815.88 as the net increase or change in the project cost for the period January 1, 1941 through December 31, 1954; and the total debit balance of $2,257,812.36 as the actual legitimate original cost of the project as of December 31, 1954, all as more specifically shown in the attached schedule classified by primary plant accounts of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(D) Licensee shall within 90 days from the issuance of this order file with the Commission five certified copies of its adjusting journal entries showing compliance with this order, by submitting three copies to the Commission and two copies to its Regional Accountant in San Francisco.

(E) The matter of Commission determination of the accrued depreciation applicable to inservice project properties of Project No. 178 for the period subsequent to April 30, 1925, is hereby expressly reserved for future Commission consideration and decision.

PROJECT NO. 178 (KERN CANYON), PACIFIC GAS & ELECTRIC CO., ACTUAL LEGITIMATE ORIGINAL COST

Account Number	Account Title	Original cost as of Dec. 31, 1940: As approved [1]	Reclassification [2]	As reclassified	Changes from Jan. 1, 1941 through Dec. 31, 1954: As claimed	Adjustments	As adjusted	Allowed cost as of Dec. 31, 1954
	INTANGIBLE PLANT							
301	Organization	$2,873.14	($2,873.14)					
302	Franchises and consents	174.19		$174.19	($174.19)		($174.19)	
	Total intangible plant	3,047.33	(2,873.14)	174.19	(174.19)		(174.19)	
	HYDRAULIC PRODUCTION PLANT							
320	Land and land rights	41,116.99		41,116.99	(300.00)	($490.00)	(790.00)	$40,326.99
321	Structures and improvements	210,205.33		210,205.33	7,410.83		7,410.83	217,616.16
322	Reservoirs, dams, and waterways	1,414,877.12	2,873.14	1,417,750.26	68,069.09		68,069.09	1,485,819.35
323	Water wheels, turbines, and generators	279,131.54		279,131.54	8,890.04		8,890.04	288,021.58
324	Accessory electric equipment	33,626.60		33,626.60	39,375.62		39,375.62	73,002.22
325	Miscellaneous power plant equipment	4,063.65		4,063.65	(104.30)		(104.30)	3,959.35
326	Roads, railroads, and bridges	3,882.56		3,882.56	16,793.83	(12,582.00)	4,211.83	8,094.39
	Total hydraulic production plant	1,986,903.79	2,873.14	1,989,776.93	140,135.11	(13,072.00)	127,063.11	2,116,840.04
	TRANSMISSION PLANT							
340	Land and land rights	473.00		473.00	10.00		10.00	483.00
341	Clearing land and rights-of-way	320.41		320.41				320.41
342	Structures and improvements				2,864.45		2,864.45	2,864.45
343	Station equipment	87,801.84		87,801.84	13,497.36		13,497.36	101,299.20
344	Towers and fixtures							
345	Poles and fixtures	8,603.86		8,603.86	140.16		140.16	8,744.02
346	Overhead conductors and devices	19,984.51		19,984.51	53.84		53.84	20,038.35
349	Roads and trails				418.17		418.17	418.17
	Total transmission plant	117,183.62		117,183.62	16,983.98		16,983.98	134,167.60
	GENERAL PLANT							
370	Land and land rights	173.27		173.27				173.27
378	Communication equipment	6,688.47		6,688.47	(57.02)		(57.02)	6,631.45
	Total General Plant	6,861.74		6,861.74	(57.02)		(57.02)	6,804.72
	Total cost of project	2,113,996.48		2,113,996.48	156,887.88	(13,072.00)	143,815.88	2,257,812.36

( ) Denotes credit.

[1] Per Commission order issued Feb. 26, 1948, 7 FPC 407.

[2] Per reclassification and original cost studies of electric plant, approved by Commission order issued Feb. 27, 1950, 9 FPC 545.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP63-234

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 5, 1963)

On February 19, 1963 Panhandle Eastern Pipe Line Company (Applicant) filed in Docket No. CP63-234 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities at a new delivery point upon its pipeline system for the purpose of selling a supply of natural gas to Illinois Power Company for resale and delivery for residential and commercial consumption in Boody, Illinois.

The estimated total cost of the proposed facilities which will consist of line taps with metering and regulating station is $14,300, which cost will be financed from funds on hand.

The estimated third year requirements are 105 Mcf on peak days and the rates will be those under the rate schedules presently applicable to sales to Illinois Power Company annually, respectively 8,002 Mcf.

Pursuant to due notice, a public hearing was held in Washington, D.C., on June 19, 1963, respecting the matters involved in and issues presented by the application herein. No protest to the granting of the application or petition to intervene has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and the Commission render a decision herein pursuant to Section 1.30 (c) (1) of its rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 17, 1945, in Docket No. G-254 (3 FPC 1081).

(2) The facilities hereinbefore described, as more fully described in the application are to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereby by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued is hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30 (c) (1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Panhandle Eastern Pipe Line Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

PUBLIC UTILITY DISTRICT NO. 1 OF COWLITZ COUNTY, WASHINGTON, PROJECT NO. 2213

ORDER APPROVING REVISED PROJECT EXHIBITS AND ADJUSTING ANNUAL CHARGES

(Issued July 5, 1963)

On September 17, 1959, Public Utility District No. 1 of Cowlitz County, Washington, licensee for Project No. 2213, filed for Commission approval revised Exhibit J and K drawings showing the project area and boundary. On September 14, 1959, the licensee filed Exhibit F for the project which does not require Commission approval.

The project, known as the Swift No. 2 Project, is located on the Lewis River, navigable waters of the United States, in Skamania and Cowlitz Counties, Washington.

The effect of approval of the exhibits will be to show in the license, for the first time since its issuance, May 1, 1956, the lands of the United States occupied by the project, totalling 21.97 acres. We shall also at this time fix the annual charge for the use thereof at the amount of $52.73.

The Commission finds:

(1) The following described revised exhibits conform to the Commission's rules and regulations and should be approved as part of the license for the project:

Exhibit J (FPC No. 2213–14)—Project Area and Project Boundary—General Map.

Exhibit K, sheets 1 through 4 (FPC Nos. 2213–15 through 18)—Project Area and Project Boundary—Power Canal and Forebay.

(2) The annual charges for recompensing the United States for the occupancy of lands of the United States by the project are reasonable as hereinafter fixed and specified.

The Commission orders:

(A) The revised exhibits described in finding (1) above are hereby approved as part of the license for Project No. 2213.

(B) Article 26 of the license for the project, as amended, is hereby further amended to read as follows:

Article 26. The Licensee shall pay to the United States the following annual charges:

(i) Effective as of January 1, 1959, for the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge in accordance with the provisions of Part 11 of the Commission's regulations, in effect from time to time. The authorized installed capacity for such purpose is 93,300 horsepower.

(ii) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands, exclusive of those used for transmission line right-of-way, $52.73, effective as of May 1, 1956.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Federal Power Act and failure to file such an application shall constitute acceptance of this order. In acknowledgment of the acceptance of this order, it shall be signed for the Licensee and returned to the Commission within 60 days from the date of its issuance.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

SIERRA PACIFIC POWER COMPANY, DOCKET NO. E-7100

ORDER AUTHORIZING THE ISSUANCE OF DEBENTURES AND COMMON STOCK

(Issued July 5, 1963)

Sierra Pacific Power Company (Applicant), a corporation organized under the laws of the State of Maine and doing business in the States of California and Nevada, with its principal business office at Reno, Nevada, filed an application May 27, 1963, as amended June 7, 1963 for an order, pursuant to Section 204 of the Federal Power Act, authorizing it to issue and sell at competitive bidding $8,000,000 principal amount of new Debentures, ——% Series due 1988 and to issue and sell 172,341 additional shares of Common Stock par value $3.75.

Applicant proposes to issue the new Debentures maturing July 1, 1988, under an Indenture, to be dated as of July 1, 1963, with The National Shawmut Bank of Boston as Trustee. The new Debentures will be unsecured, but the Indenture will contain provisions restricting the Company in respect of the creation of specified new liens, and the Company will convenant not to obligate itself with respect to any unsecured funded indebtedness in excess of 65% of total capitalization and unless it meets certain earnings requirements. The Debentures will carry a sinking fund, designed to retire approximately 50% of the Debentures prior to maturity.

On July 11, 1963, Applicant proposes to invite sealed, written bids for the purchase of the Debentures. Copies of the terms and conditions relating to the bids will be made available by Applicant. All bids, must be in writing, in duplicate, on the form of bid furnished by Applicant and are to be for the purchase of the entire issue of Debentures. Each bid is to specify, among other things, (1) the coupon rate of the Debentures, which is to be a multiple of ⅛ of 1%, (2) the price (exclusive of accrued interest) which shall be not less than 100% nor more than 102¾% of the principal amount thereof and (3) that accrued interest from July 1, 1963 to the date of payment will be paid by the Purchasers.

Unless postponed, all bids for the purchase of the proposed issuance of the Debentures are to be delivered to Applicant at 49 Federal Street, Eighth Floor, Boston, Massachusetts, at 11:00 A.M., Eastern Daylight Saving Time, on Wednesday, July 17, 1963. The terms and conditions relating to the bids provide that the Applicant may return or reject all bids on the Debentures or may exclude

individual bids for certain specified reasons. Of those bids not so rejected or excluded, Applicant will accept that bid for the Debentures which provides the lowest "cost of money" to the Applicant, to be determined as provided in the terms and conditions relating to bids for the Debentures. Each bid for the Debentures must be accompanied by a certified or official bank check or checks aggregating $200,000 payable in Boston Clearing House funds to the order of the Company.

Applicant also requests that the bidding requirement of Section 34.1a (b) requiring that there be at least one week between the publishing of the notice of Public Invitation for Bids for the Debentures and the acceptance of a bid be waived to the extent necessary to allow a six day period so that scheduling can be arranged for opening of bids on Wednesday to give maximum selling opportunities to underwriters.

Applicant proposes to offer the additional shares of Common Stock to its Common Stockholders of record at the close of business of July 9, 1963, the offering to expire at 3:30 P.M., Eastern Daylight Saving Time, July 29, 1963. Rights to subscribe for the additional Common Stock will be evidenced by transferable subscription warrants.

The subscription price per share, Applicant states, will be not less than 90% of the average of the bid prices of the Common Stock of the Applicant in the over-the-counter market as published by the National Quotation Bureau, Inc., for the business day next preceding the fixing of said subscription price by Applicant's Board of Directors, and the new shares will be offered pursuant to preemptive rights of the Common Stockholders on the basis of one share for each ten shares of Common Stock held of record, with an over-subscription privilege subject to allotment among those who exercise the additional subscription privilege proportionately to the number of shares subscribed through the exercise of rights.

The application states that no underwriting fees or commissions will be paid in connection with the proposed issuance and sale of Common Stock.

The net proceeds to be received by Applicant from the issuance and sale of the Debentures and Common Stock, an estimated $13,200,000 to $13,400,000, will be used for the following purposes: to redeem $3,340,000 principal amount of Debentures, 5⅝%, 1985, which redemption will require a cash outlay of $3,581,-419; and to reduce outstanding bank loans[1] incurred for construction purposes, which loans are expected to aggregate approximately $12,000,000 at the time of the sale of the new Debentures.

According to the application, expenditures for construction in 1963 will amount to approximately $14,503,300 of which $11,891,800 will be for the Electric Department. Of this amount approximately $4,381,500 will be spent on generating equipment, $1,688,000 on transmission lines and substations, $2,122,100 on extensions and improvement to distribution facilities, $1,959,100 for other distribution and transmission improvements and additions, and $1,741,100 for general plant and equipment.

Written notice of the application has been given to the Public Service Commission of Nevada and the Public Utilities Commission of California, and to the Governor of each of those States. Notice has also been given by publication in the Federal Register on June 7, 1963 (28 F.R. 5624) stating that any person desiring to be heard or to make any protest with reference to the application should file a petition or protest on or before June 24, 1963, with the Federal Power Commission, Washington 25, D.C. No protest, petition or request to be heard in opposition to the granting of the application has been received.

---

[1] These notes were issued pursuant to authorization granted by Commission order issued August 16, 1962, Sierra Pacific Power Company Docket E–7042 (28 FPC 335).

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission, as heretofore described and set forth in the Commission's order issued August 16, 1962, *Sierra Pacific Power Company*, Docket No. E–7042 (28 FPC 335).

(2) The proposed issuance of Debentures and Common Stock, as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issue here involved is regulated by a State commission within the meaning of Section 204(f) of the Federal Power Act; and the proposed issuance of Debentures and Common Stock, as described above is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(4) The proposed issuance of Common Stock, as described above, is exempt from the competitive bidding requirements of Section 34.1a of the Commission's Regulations under the Federal Power Act by reason of Paragraph 34.1a(a)(1) thereof.

(5) The proposed issuance of Debentures and Common Stock, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility, and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

(6) The proposed six day period between publication of the Notice of Public Invitation for Bids for the Debentures and the opening of bids is reasonable.

The Commission orders:

(A) The proposed issuance of Debentures and Common Stock as referred to above upon the terms and conditions and for the purposes specified in the application, is authorized, subject to the provisions of this order.

(B) The proposed issuance and sale of Debentures at competitive bidding in the manner set forth in the application shall not be consummated until:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(k)(3) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(k)(4) of those Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.

(ii) The Commission, by further order, shall have approved the price to be received by Applicant for the proposed issuance of Debentures and the interest rate thereof.

(C) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost or any other matter whatsoever now pending or which may come before this Commission.

(D) A six day "period of public invitation for bids" as defined in Section 34.1a(b) of the Regulations under the Federal Power Act is hereby approved.

(E) This authorization shall expire unless the transactions hereby authorized are consumated within 90 days from the date of issuance of this order.

(F) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect of any securities to which this order relates.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP63-92

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 5, 1963)

On October 10, 1962, as supplemented on October 15, 1962, United Gas Pipe Line Company (Applicant) filed in Docket No. CP63-92 an application pursuant to Section 7(c) of the Natural Gas Act authorizing the transportation and delivery of natural gas for Texas Eastern Transmission Corporation (Texas Eastern) from Castor to West Monroe, Louisiana, all as more fully set forth in the application, as supplemented.

The application indicates that it is necessary for Texas Eastern to make interim arrangements for the transportation of gas from Castor to West Monroe pending commencement and completion of its proposed line between such points authorized in Docket No. CP61-203. Applicant states that it has available capacity on its existing pipeline facilities between Castor and West Monroe and, therefore, is able to render the proposed service without the construction of any additional facilities.

The transportation service is to be rendered pursuant to an agreement, dated October 4, 1962, between Applicant and Texas Eastern, on file with the Commission as United's Rate Schedule X-14. Said agreement provides for the transportation of a maximum daily quantity of 55,000 Mcf of natural gas; however, upon request from Texas Eastern, Applicant may, at its option, from time to time, transport on a temporary basis gas in excess of such amount. The rate for such service is 36.2¢ per Mcf per month.

By letter dated November 9, 1962, Applicant was issued a temporary certificate authorizing the subject transportation service.

Pursuant to due notice, a public hearing was held in Washington, D.C., on June 18, 1963, respecting the matters involved in and the issues presented by the application, as supplemented, herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 10, 1942, in Docket No. G-232 (3 FPC 863).

(2) The subject transportation and delivery of natural gas by Applicant hereinbefore described, as more fully described in the application in this proceeding, will be interstate commerce, subject to the jurisdiction of the Commission, and such transportation and delivery are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereof.

(4) The subject transportation and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

(6) The certificate hereinafter issued to Applicant should be made subject to the following conditions:

That any adjustment in T–1 and T–3 rates resulting from the rate proceedings in Docket Nos. RP61–18 and RP63–1, will be paralleled by a corresponding adjustment in the Texas Eastern rate so that the relationship upon which the Texas Eastern rate has been established will be maintained at all times.

(7) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, United Gas Pipe Line Company, to transport and deliver natural gas to Texas Eastern as hereinbefore described, all as more fully described in the application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

(C) The certificate issued to Applicant by paragraph (A) above is hereby made subject to the following condition:

That any adjustment in T–1 and T–3 rates resulting from the rate proceedings in Docket Nos. RP61–18 and RP63–1, will be paralleled by a corresponding adjustment in the Texas Eastern rate so that the relationship upon which the Texas Eastern rate has been established will be maintained at all times.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

THE WASHINGTON WATER POWER COMPANY, PROJECT NO. 204

ORDER DETERMINING NET CHANGE IN ACTUAL LEGITIMATE ORIGINAL PROJECT COST AND PRESCRIBING ACCOUNTING THEREFOR

(Issued July 5, 1963)

Washington Water Power Company, Licensee for Project No. 204 (Grangeville),[1] from time to time filed statements, pursuant to Section 4.1 of the

[1] The project is situated on the South Fork of the Clearwater River, in Idaho County, Idaho, near the town of Grangeville, Idaho, and may be described generally as the Grangeville hydroelectric project. The license, authorizing the construction, operation and maintenance of the project was issued to the Grangeville Electric Light and Power Company for a period of 50 years commencing January 19, 1923. By order issued October 19, 1928, effective January 1, 1928, the Commission authorized the transfer of the license to the

[*Continued on page 51.*]

Commission's Regulations under the Federal Power Act, claiming for the period from January 1, 1937, through December 31, 1960, project additions, retirements, and an adjustment resulting in (1) a net increase in the cost of the project of $71,146.67 over the previously determined amount of actual legitimate original cost of the project, $255,255.02 as of December 31, 1936,[2] and (2) a total claimed actual legitimate original cost of the project of $326,401.69 as of December 31, 1960. The claimed net increase of $71,146.67 results from claimed gross additions of $124,716.29, gross retirements of $53,569.63, and a debit adjustment of $.01, as more specifically shown in the attached schedule.[3]

The Commission's staff made a field examination of the books and records of Licensee and other data for the purpose of ascertaining the correctness of the claimed and recorded project cost changes and resulting project cost as of December 31, 1960.

Following that examination the staff, subject to Commission approval, proposed certain reclassifications within project plant accounts which were concurred in by representatives of the Licensee, by letter of October 9, 1961. These proposed adjustments consist of the reclassification within project plant accounts of $21,811.93 as of December 31, 1936, and of $6,006.23 for the period from January 1, 1937, through December 31, 1960. They would not result in any change in the claimed net increase of $71,146.67 in project cost for the above period nor in the resulting claimed project cost as of December 31, 1960, of $326,401.69.

The items of project cost comprising the proposed reclassifications within project plant accounts as of December 31, 1936, involve: reclassification to water wheels, turbines and generators of overhead costs, $584.77, formerly classified as accessory electric equipment; reclassification to structures and improvement of the cost of a measuring cable, $173.12, formerly classified in the reservoir account; and reclassification from distribution to transmission plant costs of $21,054.04 applicable to a transmission line rebuilt in 1936, a step-up powerhouse substation, and a transmission line from Licensee's Grangeville substation to the powerhouse. The items of project cost comprising the proposed reclassifications within project plant accounts from January 1, 1937, through December 31, 1960, include: reclassification from distribution to production plant, structures and improvements of the cost of $221.77, associated with an electric feeder line to operators' cottages; and reclassification from distribution to transmission plant of costs of $5,427.45 applicable to changes in capacity in Licensee's step-up substation at the powerhouse in 1942 and 1949, and costs of $357.01 in 1937 for clearing right-of-way for the afore-mentioned transmission line rebuilt in 1936.

Staff analysis of Licensee's provisions for project depreciation has not been completed, and the staff recommends that the Commission defer for future consideration and determination the amount of accrued depreciation applicable to inservice project properties of Project No. 204.

The Washington Utilities and Transportation Commission and the Idaho Public Utilities Commission were advised by letters of this Commission dated April 16, 1962, of the staff's proposed adjustments and resulting project cost.

[*Footnote No. 1 Continued from page 50.*]

Inland Power and Light Company, and by order issued June 20, 1930, the Commission authorized the transfer of the license from Inland Power and Light Company to Chelan Electric Company. The Commission authorized the transfer of license from Chelan Electric Company to Washington Water Power Company by order adopted July 20, 1937, effective July 31, 1937.

[2] See Commission order issued December 28, 1949 (8 FPC 1409).

[3] During the period from January 1, 1937 through December 31, 1960, Licensee recorded upon its books of account and reflected in its filed statements of claimed cost changes a credit adjustment of $1,835.06, representing items previously disallowed as project costs by the Commission's order issued December 28, 1949 (8 FPC 1409).

The Washington Utilities and Transportation Commission, by letter dated August 23, 1962, and the Idaho Public Utilities Commission, by letter dated September 4, 1962, have indicated no objection thereto.

The Commission finds:

(1) Licensee, by its agreement to the proposed adjustments, the Washington Utilities and Transportation Commission, by its letter of August 23, 1962, and the Idaho Public Utilities Commission, by its letter of September 4, 1962, have obviated the necessity for the notice and opportunity to protest provided in Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act.

(2) The foregoing adjustments as proposed by the staff and agreed to by Licensee are reasonable and appropriate for the purposes of the Federal Power Act, and therefore should be approved and directed as hereinafter provided.

(3) The net increase or change in project cost of Licensee's Project No. 204 (Grangeville) for the period from January 1, 1937, through December 31, 1960, is $71,146.67, comprised of gross additions of $124,716.29, gross retirements of $53,569.63, and a debit adjustment of $.01, and the resulting actual legitimate original cost of the project as of December 31, 1960, is $326,401.69; all as more specifically shown in the attached schedule.

(4) It is necessary and appropriate for the purposes of the Federal Power Act that the determination of the accrued depreciation applicable to inservice project properties of Project No. 204 be reserved for future Commission consideration as hereinafter provided.

The Commission orders:

(A) The provisions of Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act are hereby waived for the purposes of this order.

(B) The foregoing adjustments, as proposed by the staff and agreed to by the Licensee are hereby approved and directed to be made by the Licensee.

(C) Licensee, to the extent that it has not already done so, shall establish and maintain control and detailed project plant accounts, showing a debit amount of $71,146.67 as the net increase or change in the actual legitimate original cost of Project No. 204 for the period from January 1, 1937, through December 31, 1960, and the total debit balance of $326,401.69 as the actual legitimate original cost of the project as of December 31, 1960, all as more specifically shown in the attached schedule classified by primary plant accounts of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(D) Licensee shall file with the Commission within 90 days from the issuance of this order, five certified copies of the adjusting entries, two of which are to be submitted to the Federal Power Commission, Regional Accountant in San Francisco, showing compliance with this order.

(E) The matter of Commission determination of the accrued depreciation applicable to inservice project properties of Project No. 204 is hereby expressly reserved for future Commission consideration and determination.

PROJECT NO. 204 (GRANGEVILLE), THE WASHINGTON WATER POWER CO., SUMMARY BY DETAILED PLANT ACCOUNTS OF PROJECT COSTS AS OF DEC. 31, 1936, RECLASSIFICATION THERETO, CLAIMED CHANGES FOR THE PERIOD FROM JAN. 1, 1937 THROUGH DEC. 31, 1960, RECLASSIFICATION THERETO, AND ALLOWED COST AS OF DEC. 31, 1960

Account		Original cost as of Dec. 31, 1936			Changes from Jan. 1, 1937 through Dec. 31, 1960			Allowed cost as of Dec. 31, 1960
Number	Title	As allowed [1]	Reclassifications	As reclassified	As claimed	Reclassifications	As reclassified	
	INTANGIBLE PLANT							
301	Organization	$250.00		$250.00				$250.00
	HYDRAULIC PRODUCTION PLANT							
320	Land and land rights	251.60		251.60	$136.87		$136.87	388.47
321	Structures and improvements	25,305.59	$173.12	25,478.71	11,348.48	$221.77	11,570.25	37,048.96
322	Reservoirs, dams, and waterways	187,082.99	(173.12)	186,909.87	30,630.21		30,630.21	217,540.08
323	Water wheels, turbines, and generators	16,007.10	584.77	16,591.87	17,277.72		17,277.72	33,869.59
324	Accessory electric equipment	2,865.91	(584.77)	2,281.14	4,218.67		4,218.67	6,499.81
325	Miscellaneous power plant equipment	191.39		191.39	387.96		387.96	579.35
326	Roads, railroads, and bridges				644.80		644.80	644.80
	Total hydraulic production plant	231,704.58	0	231,704.58	64,644.71	221.77	64,866.48	296,571.06
	TRANSMISSION PLANT							
340	Land and land rights		1,223.14	1,223.14				1,223.14
341	Clearing land and rights-of-way		1,406.82	1,406.82		357.01	357.01	1,763.83
343	Station equipment		3,755.73	3,755.73		5,427.45	5,427.45	9,183.18
344	Towers and fixtures		8,918.64	8,918.64				8,918.64
346	Overhead conductors and devices		5,749.71	5,749.71				5,749.71
	Total transmission plant		21,054.04	21,054.04		5,784.46	5,784.46	26,838.50
	DISTRIBUTION PLANT							
350	Land and land rights	2,629.96	(2,629.96)		357.01	(357.01)		
352	Station equipment	3,755.73	(3,755.73)		5,427.45	(5,427.45)		
354	Poles, towers, and fixtures	8,918.64	(8,918.64)		169.60	(169.60)		
355	Overhead conductors and devices	5,749.71	(5,749.71)		36.57	(36.57)		
359	Services				15.60	(15.60)		
	Total distribution plant	21,054.04	(21,054.04)	0	6,006.23	(6,006.23)	0	0
	GENERAL PLANT							
378	Communication equipment	2,246.40		2,246.40	495.73		495.73	2,742.13
	Total cost of project	255,255.02	0	255,255.02	71,146.67	0	71,146.67	326,401.69

[1] By Commission order issued Dec. 28, 1949 (8 FPC 1409).

( ) Denotes credit

737-370—60——7

PROJECT NO. 204 (GRANGEVILLE), THE WASHINGTON WATER POWER CO., RECLASSIFICATIONS OF COST AS OF DEC. 31, 1936, AND OF THE RECORDED AND CLAIMED CHANGES IN THE PROJECT PLANT ACCOUNTS FOR THE PERIOD FROM JAN. 1, 1937 THROUGH DEC. 31, 1960

Number	Account	Reclassifications					
		Allowed cost as of Dec. 31, 1936			Changes from Jan. 1, 1937 through Dec. 31, 1960		
	Title	Overhead on generators and miscellaneous	13 K.V. step-up substation at power plant and transmission line to Grangeville	Total	Cottage feeder line	13 K.V. step-up substation at power plant and transmission line to Grangeville	Total
	HYDRAULIC PRODUCTION PLANT						
321	Structures and improvements	$173.12		$173.12	$221.77		$221.77
322	Reservoirs, dams, and waterways	(173.12)		(173.12)			
323	Water wheels, turbines, and generators	584.77		584.77			
324	Accessory electric equipment	(584.77)		(584.77)			
	Total hydraulic production plant				221.77		221.77
	TRANSMISSION PLANT						
340	Land and land rights		$1,223.14	1,223.14			
341	Clearing land and rights-of-way		1,406.82	1,406.82		$337.01	337.01
343	Station equipment		3,755.73	3,755.73		5,427.45	5,427.45
344	Towers and fixtures		8,918.64	8,918.64			
346	Overhead conductors and devices		5,749.71	5,749.71			
	Total transmission plant		21,054.04	21,054.04		5,784.46	5,784.46
	DISTRIBUTION PLANT						
350	Land and land rights		(2,629.96)	(2,629.96)		(357.01)	(357.01)
352	Station equipment		(3,755.73)	(3,755.73)		(5,427.45)	(5,427.45)
354	Poles, towers, and fixtures		(8,918.64)	(8,918.64)	(169.60)		(169.60)
355	Overhead conductors and devices		(5,749.71)	(5,749.71)	(36.57)		(36.57)
359	Services				(15.60)		(15.60)
	Total distribution plant		(21,054.4)	(21,054.04)	(221.77)	(5,784.46)	(6,006.23)
	Total reclassifications						

( ) Denotes credit.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

WEST TEXAS UTILITIES COMPANY AND COMISION FEDERAL DE ELECTRICIDAD, DOCKET NO. E-6489

ORDER AUTHORIZING TRANSMISSION OF ELECTRIC ENERGY TO MEXICO AND SUPERSEDING PREVIOUS AUTHORIZATION

(Issued July 5, 1963)

West Texas Utilities Company (West Texas), incorporated under the laws of the State of Texas, with its principal place of business at Abilene, Texas, filed an application on April 17, 1963, as supplemented June 3, 1963, requesting authorization, pursuant to Section 202(e) of the Federal Power Act, to transmit electric energy from the United States to Mexico in an amount not to exceed 6,400,000 kwh per year at a maximum transmission rate of 800 kw. The authorization requested above would supersede that previously granted by the Commission's order issued July 2, 1959, 22 FPC 3, in the above-entitled docket. On June 3, 1963, Comision Federal De Electricidad, a corporate entity existing under the laws of the Republic of Mexico and successor corporation to Compania de Luz y Fuerza de Ojinaga (Luz y Fuerza), filed a joinder in the subject application.

West Texas will transmit the electric energy over its transmission lines in Texas to a point on the Texas side of the Rio Grande River opposite Ojinaga, Mexico, from which Comision Federal De Electricidad will transmit such energy to the international boundary between the United States and Mexico over the facilities which Luz y Fuerza is now authorized to operate as permittee under its Presidential Permit signed by the President of the United States on August 26, 1941, and amended on November 10, 1958, by the Chairman of the Federal Power Commission. Comision Federal De Electricidad, as Luz y Fuerza's successor, has applied concurrently for authorization to operate and maintain such facilities by an amendment of the aforesaid Presidential Permit in Docket No. IT-5657, as amended.

By the previously-mentioned order, West Texas and Luz y Fuerza were authorized to transmit from the United States to Mexico electric energy in an amount not exceeding 4,000,000 kwh per year at a rate of not in excess of 500 kw. According to the application, this present authorization is not adequate to meet the present and anticipated electric energy requirements of Comision Federal De Electricidad.

The electric energy hereinafter authorized to be transmitted will be sold in accordance with the terms of a contract between West Texas and Comision Federal De Electricidad, dated January 15, 1963, to provide that such energy may be furnished at any rate of supply desired by Comision Federal De Electricidad up to a maximum contract load of 800 kw.

Written notice of the application has been given to the Railroad Commission of Texas and to the Governor of that State. Notice of the application has also been given by publication in the Federal Register on May 7, 1963 (28 F.R. 4601), stating that any person desiring to be heard or to make any protest with reference to the application should, on or before May 17, 1963, file with the Federal Power Commission, Washington 25, D.C., a petition or protest in accordance with the Commission's Rules of Practice and Procedure. No protest or petition or request to be heard in opposition to the granting of the application has been received.

( ) Denotes credit.

The Commission finds:

The proposed transmission of electric energy from the United States to Mexico as limited herein and as hereinafter authorized will not impair the sufficiency of electric supply within the United States and will not impede the coordination in the public interest of facilities subject to the jurisdiction of the Commission.

The Commission orders:

(A) The Applicants are authorized to transmit electric energy from the United States to Mexico in accordance with the terms and conditions set forth in the application and subject to the provisions of this order.

(B) The electric energy which the Applicants are hereby authorized to transmit from the United States to Mexico shall be in an amount not in excess of 6,400,000 kwh per year at a transmission rate not to exceed 800 kw; the energy to be transmitted over the facilities specified in the Presidential Permit signed by the President of the United States on August 26, 1941, as amended by the Amendment thereto, signed by the Chairman of the Federal Power Commission on November 10, 1958, Docket No. IT-5657.

(C) The authorization herein granted may be modified from time to time or terminated by further order of the Commission, but in no event shall such authorization extend beyond the date of termination or expiration of the Presidential Permit, as amended, referred to in Paragraph (B) above.

(D) The Applicants shall conduct all operations pursuant to the authorization herein granted in accordance with the provisions of the Federal Power Act and pertinent rules, regulations or orders issued by the Commission.

(E) West Texas shall provide for the installation and maintenance of adequate metering equipment to measure the flow of all energy transmitted from the United States to Mexico pursuant to the authority herein granted; and shall make, keep and preserve full and complete records with respect to the movement of such energy; and shall furnish, in triplicate, with respect to such transmission of electric energy, reports annually on or before February 15, showing the kw hours delivered, the maximum kw of transmission, and the consideration received therefor during each month of the preceding calendar year.

(F) This authorization to transmit electric energy from the United States to Mexico shall not be transferable or assignable, but in the event of the involuntary transfer of the facilities used for such transmission by operation of law (including such transfers to receivers, trustees, or purchasers under foreclosure or judicial sale) said authorization shall continue in effect temporarily for a reasonable time thereafter, pending the making of an application for permanent authorization and decision thereon, provided notice is promptly given in writing to the Commission accompanied by a statement that the physical facts relating to sufficiency of supply, rates, and nature of use remain substantially the same as before the transfer.

(G) This authorization shall be without prejudice to the authority of any State, State regulatory commission, or the Republic of Mexico for the exercise of any lawful authority vested in the State, State regulatory commission, or the Republic of Mexico over the Applicants.

(H) This authorization is without prejudice to the authority of this Commission, or any other regulatory body, with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission, or any other regulatory body, and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

(I) Nothing in this order shall be deemed to constitute authorization or approval of any transmission of energy by means of the facilities (covered by the aforesaid Presidential Permit, as amended, and Amendment thereto) by which the exportation herein authorized is accomplished by anyone other than the party designated in such duly issued Permit or Amendment.

(J) Concurrently with the issuance of this order, the Amendment, signed by the Chairman of the Federal Power Commission on July 3, 1963, to the Presidential Permit signed by the President of the United States on August 26, 1941, as amended, all as referred to in Paragraph (B) above, shall be issued and a copy thereof transmitted by the Secretary to Comision Federal De Electricidad.

(K) The authorization herein granted shall supersede that heretofore granted by the aforementioned order of the Commission issued July 2, 1959 in the above docket.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

KANSAS-NEBRASKA NATURAL GAS COMPANY, INC., DOCKET NO. CP63–229

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 8, 1963)

On February 15, 1963, Kansas-Nebraska Natural Gas Company, Inc. filed in Docket No. CP63–229, an application for a certificate of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act authorizing the construction and operation of pipelines and other facilities to enable it to purchase and transport natural gas in Syracuse area of Hamilton and Greeley Counties, Kansas, to its Scott City Compressor Station, and to construct and operate pipeline enlargements on its system; in northern Nebraska.

The proposed facilities just mentioned are more particularly described as consisting of a 1,000 horsepower field compressor station and approximately 80 miles of various diameter field lines in the Syracuse Area and 48 miles of pipelines extending to the Scott City Compressor Station where it will connect with Applicant's transmission system. The estimated cost of these facilities is $2,241,000. The facilities proposed in northern Nebraska are to consist of approximately 43.4 miles of 8-inch pipeline, 17.5 miles of 6-inch pipeline, 3.5 miles of 4-inch pipeline and 9.5 miles of 3-inch pipeline at an estimated cost of $826,500.

The purpose of the proposed facilities in the Syracuse, Kansas area is to enable Applicant to gather and to purchase gas supplies in the area from wells which become available as new gas reserves are developed. The purpose of the new facilities in northern Nebraska is to assure adequate pressure and improve service to a number of towns and communities on Applicant's northeastern Nebraska system; all as more fully described in the application.

Applicant was issued a temporary certificate by letter from the Commission dated April 25, 1963 only on that part of the application involving pipeline enlargements and improvements in northern Nebraska.

Pursuant to due notice, a public hearing was held in Washington, D.C., on June 18, 1963, respecting the matters involved in and the issues presented by the application herein. No protest to the granting of the application or petition to intervene in opposition thereto has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30 (c) (1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Kansas-Nebraska Natural Gas Company of Phillipsburg, Kansas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G–259 (3 FPC 966).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Kansas-Nebraska Natural Gas Company, Inc., to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Sections 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G–13221, ET AL.

ORDER DENYING APPEAL FROM PRESIDING EXAMINER'S RULING

(Issued July 8, 1963)

On June 18, 1963, the Presiding Examiner in the above entitled proceeding transmitted to us, pursuant to Section 1.28 of the Commission's Rules of Practice and Procedure, an appeal by all of the producer-applicants in said proceed-

ing from his ruling excluding certain evidence offered by the producers. For the reasons hereinafter set forth we shall deny such appeal.

The appeal is from an interlocutory procedural ruling of the Presiding Examiner excluding as evidence various types of presentations of producer costs, cost-of-service, return, trends in costs, trends in production, value of gas intrinsically and comparatively, industry and individual-company needs, geological, economic, and other factors which were deemed relevant by the producers. The evidence was excluded by the examiner primarily upon the basis of prior Commission and Court decisions cited by him in his transmittal of the appeal. The examiner found that extraordinary circumstances existed justifying the referral of the appeal in that "the producers will be in a state of uncertainty until the conclusion of these proceedings and the Commission's decision thereon, a year or more away, as to the proper interpretation to be given to *Skelly Oil Co.*" He further noted that the progress of the proceeding would not be delayed by the referral and that the net result would be to make another aspect of the "Commission's pricing policy definite and clear to the industry and to the public."

We do not perceive that a decision by the Commission on the limited issue here presented is appropriate at this time. The matter more properly should be included in the decision by the Commission upon the merits in this case; an offer of proof has been made by the producers in the proceeding and a judgment determination upon the propriety of the proffered evidence could properly be made in the ultimate decision of the proceedings.[1]

Questions relating to the admissibility or exclusion of evidence during the course of a hearing must, of course, be determined initially by the presiding officer. These rulings, when properly excepted to, are subject to our review prior to the issuance of a final decision. To examine on appeal every interlocutory ruling made by a presiding officer with respect to the admissibility of proferred evidence would require piece-meal examination of voluminous exhibits and testimony proferred. We are of the opinion that it is a much better practice to review such material at a time when it can be considered in relation to all other evidence in the record to enable us to determine whether, in our opinion, the presiding examiner has ruled correctly in accordance with our previous decisions.

With respect to the instant case, we are of the opinion, that we have set forth in our previous opinions in *Skelly Oil Company, et al.*, Docket No. G–18638, *et al.*,[2] *Texaco Seaboard, Inc., et al.*, Docket No. CI61–118, *et al.*,[3] and *El Paso Natural Gas Company, et al.*, Docket No. G–17849, *et al.*,[4] sufficient guidelines with respect to the types of evidence which will be considered by us in certificate proceedings involving initial price determinations to enable rulings upon the admissibility of evidence.

The Commission orders:

The Appeal by the independent producers in the above entitled proceeding from the rulings, of the Presiding Examiner, excluding certain offered evidence, is hereby denied.

---

[1] It is to be hoped, contrary to the apparent expectation of the Presiding Examiner, that the proceeding will be concluded in a shorter time than "a year or more."

[2] Opinion No. 362, issued August 30, 1962, 28 FPC 401, 411.

[3] Opinion No. 383, issued March 27, 1963, 29 FPC 593.

[4] Opinion No. 390, issued June 19, 1963, 29 FPC 1175.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G-13221, ET AL.; GRARIDGE CORPORATION (OPERATOR), ET AL., DOCKET NO. G-19246, ET AL.; HUMBLE OIL & REFINING COMPANY, DOCKET NOS. G-14967, G-15227, G-17349, G-17570, G-17772, G-18547, G-18714, G-18715, G-18716, G-19800, G-20019, CI60-96, CI60-177, CI60-531, CI60-623, CI61-397, CI61-425, CI61-1176, CI62-69, CI63-635, CI62-70, CI63-455, CI63-755

ORDER GRANTING MOTIONS FOR RECONSIDERATION

(Issued July 8, 1963)

Humble Oil & Refining Company (Humble) and certain interested interveners,[1] (Movants), submitted on April 11, 1963 a settlement agreement and a motion for severance of twenty-two of the Humble dockets listed above from the consolidated certificate proceeding, Union Texas Petroleum, *et al.* Docket No. G-13221, *et al.* and one Humble docket (CI63-455) from the consolidated proceeding, Graridge Corporation (Operator), *et al.* Docket No. G-19246, *et al.* The motion also requested the expeditious issuance of permanent certificates of public convenience and necessity according to the applications as modified by the settlement agreement in each of the dockets except Docket No. CI63-635. The agreement proposes that the sale in Docket No. CI63-635 continue under temporary authorization.

Answers in opposition to this motion were filed on April 22, 1963 by the Pennsylvania Public Utility Commission (Pennsylvania), Alabama Gas Corporation (Alabama Gas) and the Memphis Gas, Light and Water Division of the City of Memphis, Tennessee (Memphis). Transcontinental Gas Pipeline Corporation (Transco), a purchaser from Humble, on May 13, 1963, filed a statement objecting to the date on which the proposed moratorium would end and on the same date, the Philadelphia Electric Company filed a letter with the Secretary objecting to the treatment proposed for Docket No. CI63-635. The Public Service Commission of New York, on April 26, 1963, filed a response to the motion. Because of the opposition by parties and without passing on the merits of the settlement proposal, on May 21, 1963, we issued an order denying the motion.[2]

On May 31, 1963, Memphis filed a withdrawal of objection and on June 6, 1963, Pennsylvania filed an "Amended Answer" to the Humble, *et al.* motion withdrawing its objection. Alabama Gas, on June 10, 1963, filed a letter with the Secretary requesting that its Answer of April 22, 1963, be considered a statement of position and not be considered an objection to the settlement proposal of Humble, *et al.*

On June 7, 1963, Humble filed an application for rehearing and reconsideration of our order of May 21, 1963,[3] and on June 12, 1963, the Eastern Seaboard Interveners[4] filed a motion for reconsideration of the same order.

---

[1] The Brooklyn Union Gas Company, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, Philadelphia Gas Works Division of the United Gas Improvement Company, Public Service Electric and Gas Company, South Jersey Gas Company, The United Gas Improvement Company, the New England Distributors group, the East Ohio Gas Company, Hope Natural Gas Company, Lake Shore Pipe Line Company, New York State Natural Gas Corporation, The Peoples Natural Gas Company, and The River Gas Company.

[2] *Humble Oil & Refining Company, et al.*, Docket No. G-14967, *et al., Order Denying Motion For Severance, For Approval Of Settlement Agreement and For Issuance of Permanent Certificates and Request for Prompt Determination.* [Not reported.]

[3] This application is treated as a motion for reconsideration. Our Order of May 21, 1963, *supra*, was not a final order.

[4] See footnote 1.

The settlement agreement provides the following:

(1) In respect to the Humble Rate Schedules listed in paragraphs (2), (3), (4), and (5) below, a moratorium on rate increase filings from April 1, 1963 through March 31, 1968; except that such filings may be made (1) prior to April 1, 1968 to the extent that the maximum statutory suspension period under Section 4(e) of the Natural Gas Act may be extended beyond 5 months or the Commission may hereafter be authorized to lengthen such suspension period, and (2) at any time for reimbursement of one-half the amount of increased State or Federal taxes or payments in lieu of taxes, provided that such increase does not exceed the reimbursement to which Humble is entitled by contract.

(2) Permanent certification at settlement rates of 20.625¢ per Mcf [5] inclusive of tax reimbursement, for gas delivered pursuant to Humble's Rate Schedules Nos. 136 (G–15227), 148 (G–17349), 152 (G–17772), 158 (G–18547), 163 (G–18714), 164 (G–18715), 165 (G–18716), 168 (G–19800), 169 (G–20019), 234 (CI60–177), 238 (CI60–623), 246 (CI61–397), 247 (CI61–425), 269 (CI61–1176), 274 (CI60–531), and 280 (CI62–70).

(3) Permanent certification at settlement rates of 19¢ per Mcf, inclusive of reimbursement for payments under Section 6(a)(9) of the Outer Continental Shelf Lands Act,[6] for gas delivered pursuant to Humble's Rate Schedule Nos. 241 (CI60–96) and 304 (CI62–69).

(4) Permanent certification at a rate of 19.5¢ per Mcf inclusive of tax reimbursement for gas delivered pursuant to Humble's FPC Gas Rate Schedule No. 323 (CI63–755).

(5) Permanent certification at contractual initial rates of 18.70¢, 20.25¢ and 14.25¢ per Mcf, inclusive of tax reimbursement, for gas delivered pursuant to Humble's Rate Schedules Nos. 135 (G–14967), 149 (G–17570) and 314 (CI63–455), respectively.

(6) Prospective upward or downward adjustment of settlement rates according to any applicable area rate or rates determined in Area Rate Proceeding, Docket No. AR61–2.

(7) Collection of the increased rates now in effect subject to refund in Docket Nos. RI62–82,[7] RI62–393,[8] RI63–94,[9] to be continued and the increased rate filed for but under suspension in Docket No. RI63–172 [10] to be collected, subject to further orders of the Commission in those suspension dockets.

(8) Extension of the make-up period for gas paid for but not taken in any case (except Docket No. CI63–635) where the contract provides a lesser make-up period.

(9) Full refunds to be paid on all amounts collected by Humble in excess of the proposed settlement rate of 20.625¢ per Mcf for gas purchased under Humble's Rate Schedules Nos. 274 and 269. In both instances sales are being made under temporary authorizations subject to refund of amounts above the rate required by public convenience and necessity down to a floor of 20¢.

(10) Interest on the refundable amounts at 7% per annum to accrue through March 31, 1963.

(11) Continuance of the temporary authorization issued in Docket No. CI63–635 at the 21.25¢ per Mcf conditioned rate pending the determination of a just and reasonable rate for such sale, either in Docket No. AR61–2 or in any other

---

[5] All volumes expressed at 15.025 psia.
[6] 67 Stat. 462.
[7] Related to Supplement No. 5 to Humble's FPC Gas Rate Schedule No. 135.
[8] Related to Supplement No. 4 to Humble's FPC Gas Rate Schedule No. 149.
[9] Related to Supplement No. 6 to Humble's FPC Gas Rate Schedule No. 135.
[10] Related to Supplement No. 6 to Humble's FPC Gas Rate Schedule No. 314.

proceeding under Sections 4 or 5 of the Natural Gas Act in which a just and reasonable rate determination applicable to such sales may be made. The 21.25¢ price shall not be changed prior to January 1, 1967, except for changes in tax reimbursement to which Humble is contractually entitled.

In general, we agree with Movants that the settlement would serve the public interest. However, we have reservations with regard to certain aspects of this package settlement. We cannot approve of the provisions described in paragraph (11) above concerning Docket No. CI63–635. As we said in our order issued April 10, 1963, rejecting the MCN proposal[11] in this proceeding, "The public interest requires that permanent certificates be issued as soon as is administratively feasible after hearing."[12] The hearing has commenced as to all of these Humble dockets and it would not be proper to postpone indefinitely the issuance of a permanent certificate in Docket No. CI63–635. Alabama Gas in its filings concerning this proposed settlement and our staff in the earlier MCN proposal both took the position that indefinite postponement of permanent certification is undesirable. Staff also stated its position on the record in the Union Texas Petroleum proceedings. While New York does not oppose this treatment in states in its response [page 3]:

> * * * the New York Commission does not object to this treatment of CI63–635, as part of a package under which Humble's rates will be immediately reduced by over $1,300,000 annually and a five year rate filing moratorium will be effected. This is not to say that New York *endorses* the treatment proposed for this sale, or that it would withhold opposition were similar treatment proposed outside of a package arrangement of such import. [Emphasis in original.]

New York then states that a permanent certificate at a rate above 20.625¢ per Mcf with moratorium and make-up or 20¢ per Mcf without moratorium and make-up would be "totally unacceptable" and "would necessitate our vigorous objection". The Philadelphia Electric Company, in its letter to the Secretary *supra*, also objects to the treatment proposed for Docket No. CI63–635.

Accordingly, we must reject that part of the package settlement proposal insofar as it fails to dispose of the application in Docket No. CI63–635. We recognize, however, that a settlement of all of these Humble applications would be in the public interest. A package settlement which would be acceptable to us would include the issuance of a permanent certificate in Docket No. CI63–635 upon terms similar to those accorded to the majority of the other Humble applications, *i.e.* a total initial rate of 20.625¢ per Mcf, subject to the moratorium provisions of section 1 of the settlement agreement and the take or pay make-up provisions of section 4 of the settlement agreement.

Since, as noted above, we approve of most of the proposal but we cannot approve of the entire settlement as proposed it would serve no useful purpose to sever these Humble dockets from the Union Texas Petroleum, *et al.* proceeding at this time. Any order approving this settlement proposal must be conditioned to provide for issuance to Humble of a permanent certificate of public convenience and necessity in Docket No. CI63–635 under the terms set forth above.

Any such order must also be conditioned to provide for interest on the amounts to be refunded to accrue through the last day of the month in which the proposal was filed (April 30, 1963).

---

[11] *Socony Mobil Oil Company, Inc., Continental Oil Co. and Newmont Oil Company*, Dockets Nos. G–17625, G–17649 and G–17765, respectively.

[12] *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al. Order Denying Motions to Sever and Rejecting Settlement Proposal*, 29 FPC 734 at page 736.

We recognize that the settlement as herein conditioned may not be acceptable to the parties. Accordingly, we shall afford the parties an opportunity to respond within fifteen days of the date of this order in the event they may find the conditioned proposal unacceptable. If Humble and the other parties do not object to the proposed conditions, we shall, by further action, sever the above-captioned Humble Dockets from the Union Texas Petroleum, *et al.* and Graridge Corporation (Operator), *et al.* proceedings and issue certificates as described above after the required statutory hearing. By using this procedure, should Humble or any other party decline to accept the settlement as modified, the Union Texas Petroleum, *et al.* proceeding will not be delayed and Humble's 22 dockets will remain a part thereof.

Transco, as noted above, objects to the date of the end of the moratorium period because it fears that since the moratoria in other settlement agreements concerning its suppliers end less than six months prior to the date proposed by Humble, *et al.*, Transco may not be in a position to pass on Humble's prospective rate increases immediately. We feel that an otherwise acceptable settlement agreement should not be rejected because of these circumstances. First of all, Transco's fears are based upon speculation as to circumstances 5 years in the future. Secondly, and more importantly, Section 154.66 of the Commission's Regulations provides for changes in tariff during a suspension period *for good cause shown.* Should the circumstances which Transco fears actually occur it would be free to make such application for special permission at that time.

The Commission finds:

(1) The Settlement Agreement filed by Humble Oil & Refining Company, *et al.* on April 11, 1963, as proposed to be modified above, would be in the public interest.

(2) Parties to the above-captioned Humble dockets should be allowed 15 days from the date of this order to object in writing to the above-proposed disposition of these Humble proceedings.

The Commission orders:

The motions for reconsideration of the Commission's order of May 21, 1963, in *Humble Oil & Refining Company,* et al., Docket No. G–14967, *et al.*, filed by Humble on June 7, 1963, and the Eastern Seaboard Intervenors on June 12, 1963, are hereby granted for the limited purpose of affording the parties to these Humble dockets an opportunity to file objections to our proposed disposition of these proceedings.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

UTAH POWER & LIGHT COMPANY, PROJECT NOS. 20, 472, 486, 597, 665, 671, 696, 703, 713, AND 1744

ORDER DETERMINING AND DIRECTING ESTABLISHMENT AND MAINTENANCE OF AMORTIZATION RESERVES

(Issued July 8, 1963)

This is an amortization reserve proceeding pursuant to Section 10(d) of the Federal Power Act[1] involving ten hydroelectric projects owned and operated

[1] Section 10(d) provides "[t]hat after the first twenty years of operation, out of surplus earned thereafter, if any, accumulated in excess of a specified reasonable rate of return

[*Continued on page 64.*]

by Utah Power & Light Company; specifically licensed Project Nos. 20 (Soda), 472 (Oneida), 486 (Logan), 597 (Stairs), 665 (Santaquin), 671 (Alpine), 696 (Upper American Fork), 703 (Paris), 713 (Upper Mill Creek), and 1744 (Weber). It was initiated by the staff through a comprehensive field examination of the books, records and other data of the licensee, Utah Power & Light Company.

Staff proposes that the Commission, pursuant to Section 10(d) of the Act and Article 17 of the license for Project No. 20, as amended, Article 18 of the respective licenses for Projects Nos. 472, 486, 597, 665, 671, 696, 703, and 713, as amended, and Article 22 of the license for Project No. 1744 determine: the amount of Licensee's "surplus earnings" from Project No. 20 for the period from October 31, 1944 through December 31, 1958, to be credited to Account 264, Amortization Reserve-Federal,[2] to be $171,346.79; the amounts of Licensee's "surplus earnings" from Project Nos. 472, 486, 597, 665, 671, 696, 703, and 713 for the period from June 1, 1947 through December 31, 1958, to be credited to Account 264 to be $76,157.97, $5,789.80, $4,988.26, $2,877.64, $3,303.00, $9,265.91, $2,008.91, and $2.053.39, respectively; and the amount of Licensee's "surplus earnings" from Project No. 1744 for the period from January 1, 1958 through December 31, 1958, to be credited to Account 264 to be $898.30.

Article 18 of the respective licenses for Project Nos. 472, 486, 597, 665, 671, 696, 703, and 713, as amended by Commission order issued June 12, 1961, *Utah Power & Light Company*, 25 FPC 1131, provides as follows:

> After the first twenty (20) years of operation of said project under this license, namely, after May 31, 1947, six (6) percent per annum shall be the specified rate of return on the net investment in the project for determining surplus earnings of the project for the establishment and maintenance of amortization reserves, pursuant to Section 10(d) of the Act; one-half of the project surplus earnings, if any, accumulated after the first twenty years of operation under the license, in excess of six (6) per cent per annum on the net investment, shall be set aside in a project amortization reserve account as of the end of each fiscal year, provided that, if and to the extent that there is a deficiency of project earnings below six (6) per cent per annum for any fiscal year or years after the first twenty years of operation under the license, the amount of such deficiency shall be deducted from the amount of any surplus earnings accumulated thereafter until absorbed, and one-half of the remaining surplus earnings, if any, thus cumulatively computed, shall be set aside in the project amortization reserve account; and the amounts thus established in the project amortization reserve account shall be maintained therein until further order of the Commission.

Article 17 of the license for Project No. 20, as amended by Commission order issued June 12, 1961, incorporates the same provision as Article 18 of the respective licenses for Project No. 472, *et al.*, as amended, with one exception. Article 17 specifies the date of October 30, 1944 as the date after which Project No. 20 is to enter its amortization reserve period.

[*Footnote No. 1 Continued from page 63.*]

upon the net investment of a licensee in any project or projects under license, the licensee shall establish and maintain amortization reserves, which reserves shall, in the discretion of the Commission, be held until the termination of the license or be applied from time to time in reduction of the net investment. Such specified rate of return and the proportion of such surplus earnings to be paid into and held in such reserves shall be set forth in the license."

[2] Account references are to account numbers and titles prescribed in the Commission's revised Uniform System of Accounts for Public Utilities and Licensees effective January 1, 1961.

Article 22 of the license for Project No. 1744 provides as follows:

> After the first twenty (20) years of operation of the project under this license, namely, after December 31, 1957, six (6) percent per annum shall be the specified rate of return on the net investment in the project for determining surplus earnings in accordance with the provisions of Section 10(d) of the Act, for the establishment and maintenance of amortization reserves to be held until the termination of the license, or, in the discretion of the Commission, to be applied from time to time in reduction of the net investment in the project, and one-half of all surplus earnings in excess of six (6) percent per annum received in any calendar year shall be paid into and held in such amortization reserves.

Project No. 20 was placed in commercial operation on October 31, 1924, and therefore entered the amortization reserve at the beginning of its twenty-first year of operation, October 31, 1944. Operation of Project Nos. 472, 486, 597, 665, 671, 696, 703, and 713 commenced under license as of June 1, 1927, making the initial dates of the respective amortization reserve periods for those projects June 1, 1947. Project No. 1744 began operation under license as of January 1, 1938 and entered its amortization reserve period on January 1, 1958.[3]

Project Nos. 20, 472, and 703 are located within the State of Idaho. Project Nos. 486, 597, 665, 671, 696, 713, and 1744 are located within the State of Utah. Licensee operates the foregoing ten projects as an integral part of its interconnected electric utility system which includes other hydroelectric generating plants not under Commission license, steam electric generating plants, an internal combustion generating plant, and a network of transmission and distribution facilities. Licensee also receives a portion of its electric energy requirements through purchase arrangements and power pooling or interchange arrangements with other utility systems. The electric energy generated by Licensee's projects is transmitted and distributed in Licensee's system with energy from its other sources of supply. Licensee's utility operations are conducted in southeastern Idaho, northern, central, and southeastern Utah, and western Wyoming.

Consistent with Licensee's method of physical operation of the above projects, its accounts, books and records do not show any particular earnings specifically associated therewith or derived thereform. The same is true of Licensee's other generating or purchased power resources. In these circumstances, staff proposes that the Commission determine Licensee's respective "surplus earnings" from Project Nos. 20, 472, 486, 597, 665, 671, 696, 703, 713, and 1744 as follows:

(1) Impute to the project during the respective fiscal periods concerned herein the particular earned rate of return which Licensee derived from its electric department utility operations as a whole during that period when computed in accordance with applicable precedents of this Commission;

(2) In the given fiscal period, determine the dollar excess, if any, of the project earnings, computed by applying the particular imputed earned rate of return to the average project net investment during the same period, over the project

[3] The license for Project No. 20 was issued pursuant to Section 4(d) of The Federal Water Power Act and became effective as of July 5, 1923 for a period of 50 years. The licenses for Project Nos. 472, 486, 597, 665, 671, 696, 703 and 713 were issued pursuant to Section 4(d) of the Water Power Act and each became effective June 1, 1927 for a period terminating June 30, 1970. The license for Project No. 597 was issued originally to Utah Light and Traction Company and was subsequently transferred to the present licensee, Utah Power & Light Company. The license for Project No. 1744 was issued pursuant to Section 4(e) of the Federal Power Act and became effective January 1, 1938 for a period terminating June 30, 1970. Project No. 20 was unconstructed when licensed, whereas Project Nos. 472, 486, 597, 665, 671, 696, 703, 713, and 1744 were in operation when licensed.

specified return, computed by applying the 6% specified rate of return to the average project net investment for the same period; such excess to be considered Licensee's "surplus earnings" during the particular period.

The following tabulations show the "surplus earnings" of the ten projects during the amortization reserve periods covered by the staff's examination computed in this manner, and the portions of such earnings to be credited to the respective amortization reserves for the various projects:

PROJECT NO. 20 (SODA)

Period	Surplus earnings	Credits to account 264
Oct. 31, 1944 to Dec. 31, 1944	$8,488.94	$4,244.47
1945	36,555.81	18,277.91
1946	93,729.01	46,864.51
1947	53,323.14	26,661.57
1948	26,382.50	13,191.25
1949	12,533.11	6,266.56
1950	35,590.75	17,795.38
1951	2,117.65	1,058.88
1952	3,608.58	1,804.29
1953	5,983.01	2,991.51
1954	8,331.12	4,165.56
1955	13,592.69	6,796.35
1956	17,591.33	8,795.67
1957	18,279.18	9,139.59
1958	6,586.67	3,293.34
Total	342,693.49	171,346.79

PROJECT NO. 472 (ONEIDA)

Period	Surplus earnings	Credits to account 264
June 1, 1947 to Dec. 31, 1947	$26,181.55	$13,090.78
1948	22,172.92	11,086.46
1949	10,529.06	5,264.53
1950	29,901.61	14,950.81
1951	1,778.26	889.13
1952	3,023.61	1,511.81
1953	5,021.35	2,510.68
1954	7,005.63	3,502.82
1955	11,414.53	5,707.27
1956	14,697.93	7,348.97
1957	15,158.75	7,579.38
1958	5,430.66	2,715.33
Total	152,315.86	76,157.97

PROJECT NO. 486 (LOGAN)

Period	Surplus earnings	Credits to account 264
June 1, 1947 to Dec. 31, 1947	$2,563.96	$1,281.98
1948	2,078.02	1,039.01
1949	928.12	464.06
1950	2,471.74	1,235.87
1951	139.62	69.81
1952	226.16	113.08
1953	350.89	175.45
1954	452.52	226.26
1955	676.48	338.24
1956	778.97	389.49
1957	701.94	350.97
1958	211.15	105.58
Total	11,579.57	5,780.80

PROJECT NO. 597 (STAIRS)

Period	Surplus earnings	Credits to account 264
June 1, 1947 to Dec. 31, 1947	$2,061.75	$1,030.88
1948	1,685.15	842.58
1949	755.40	377.70
1950	2,008.82	1,004.41
1951	112.00	56.00
1952	177.99	89.00
1953	275.60	137.80
1954	362.58	181.29
1955	536.51	268.26
1956	693.53	346.77
1957	923.58	461.79
1958	383.55	191.78
Total	9,976.46	4,988.26

PROJECT NO. 665 (SANTAQUIN)

Period	Surplus earnings	Credits to account 264
June 1, 1947 to Dec. 31, 1947	$960.79	$480.40
1948	811.25	405.63
1949	404.33	202.17
1950	1,179.94	589.97
1951	69.58	34.79
1952	119.17	59.59
1953	199.24	99.62
1954	275.26	137.63
1955	440.59	220.30
1956	554.38	277.19
1957	551.78	275.89
1958	188.92	94.46
Total	5,755.23	2,877.64

PROJECT NO. 671 (ALPINE)

Period	Surplus earnings	Credits to account 264
June 1, 1947 to Dec. 31, 1947	$1,174.37	$587.19
1948	981.11	490.56
1949	462.94	231.47
1950	1,318.51	659.26
1951	78.58	39.29
1952	132.70	66.35
1953	217.97	108.99
1954	300.43	150.22
1955	486.24	243.12
1956	619.01	309.51
1957	620.00	310.00
1958	214.07	107.04
Total	6,605.93	3,303.00

PROJECT NO. 696 (UPPER AMERICAN FORK)[4]

Period	Surplus earnings	Credits to account 264
June 1, 1947 to Dec. 31, 1947	$2,245.61	$1,122.81
1948	1,938.14	969.07
1949	874.51	437.26
1950	2,262.36	1,131.18
1951	127.45	63.73
1952	204.44	102.22
1953	644.50	322.25
1954	1,317.75	658.88
1955	2,142.08	1,071.04
1956	2,807.82	1,403.91
1957	2,914.00	1,457.00
1958	1,053.11	526.56
Total	18,531.77	9,265.91

[4] The Lower American Fork power plant of Project No. 696 was shut down and abandoned on December 23, 1954 and dismantled and retired in 1957 and 1958. The net investment in this plant was excluded from the staff's study for the year 1955, and thereafter. The plant was excluded from the project by Commission order, effective August 1, 1958, *Utah Power & Light Company*, 20 FPC 444.

PROJECT NO. 703 (PARIS)

Period	Surplus earnings	Credits to account 264
June 1, 1947 to Dec. 31, 1947	$701.72	$350.86
1948	589.95	294.98
1949	278.15	139.08
1950	789.37	394.69
1951	47.53	23.77
1952	81.20	40.60
1953	133.58	66.79
1954	184.83	92.42
1955	299.76	149.88
1956	382.71	191.36
1957	390.90	195.45
1958	138.05	69.03
Total	4,017.75	2,008.91

PROJECT NO. 713 (UPPER MILL CREEK)[5]

Period	Surplus earnings	Credits to account 264
June 1, 1947 to Dec. 31, 1947	$1,459.73	$729.87
1948	1,165.13	582.57
1949	332.47	166.24
1950	370.36	185.18
1951	21.68	10.84
1952	35.73	17.87
1953	61.78	30.89
1954	91.09	45.55
1955	147.83	73.92
1956	183.61	91.81
1957	178.02	89.01
1958	59.28	29.64
Total	4,106.71	2,053.39

[5] The Lower Mill Creek power plant of Project No. 713 was shut down and abandoned on April 6, 1949 and dismantled and retired in 1953 and 1954. The net investment in this plant was excluded from the staff's study for the year 1950, and thereafter. The plant was excluded from the project by Commission order, effective September 1, 1954, *Utah Power & Light Company*, 13 FPC 1421.

PROJECT NO. 1744 (WEBER)

Period	Surplus earnings	Credits to account 264
1958	$1,796.59	$898.30

In developing Licensee's yearly actual earned rate of return, the staff derived earnings base for the Company's entire electric department operations for any given year is based upon average of beginning and end-of-year balances of electric plant in service (original cost), less related book reserves for depreciation and for amortization of limited-term electric investments, less customers' advances for construction, and less contributions in aid of construction, similarly averaged, plus an allowance for working capital; the last being computed on the basis of a cash allowance equal to one-eighth of cash operating expenses (exclusive of purchased power and net interchange power expenses) for the particular year concerned, plus average balances of materials and supplies and prepayments, less average available advance collections of Federal and State income taxes exclusive of tax accruals attributable to Licensee's rapid expensing of certain of its utility plant investment for Federal and State income tax purposes.

Following this procedure, the staff also excluded for earnings base purposes the balance in Licensee's Account 114, Electric Plant Acquisition Adjustments.

In determining net electric department operating income, the staff excluded, as a revenue deduction, all annual charges for amortization of Licensee's investment classified in Account 114.

Staff treatment of Licensee's Federal income taxes reflects a normalization of the amounts of income taxes deferred by Licensee pursuant to Section 168 of the Internal Revenue Code of 1954, for the years for which such deferrals were recorded, in determining Licensee's net electric department operating income. Deferred State income taxes were treated in the same manner as deferred Federal income taxes.[6]

Upon the conclusion of the staff examination, conferences were held between the staff and representatives of Licensee at which agreement, subject to Commission approval, was reached as to the respective amounts of the "surplus earnings" of the ten projects, as well as the portions of such earnings to be credited to Licensee's Account 264, as indicated above. Licensee, by letter dated April 4, 1962, confirmed its agreement in the above matter and concurs that the Commission determine the amounts of "surplus earnings" to be credited to Account 264, as set forth above.

The Public Utilities Commission of Idaho and the Public Service Commission of Utah were separately advised by letters of this Commission dated December 7, 1962, of the staff recommendations herein. By letters dated December 19, 1962 and December 31, 1962, the foregoing respective Commissions indicated their lack of objection to those recommendations.

As presented, the staff recommendations herein include the recommendation that any Commission determination of Licensee's "surplus earnings" as set forth above be made conditionally subject to revision in the event that certain charges by Electric Bond and Share Company and/or its affiliated service companies entered in Licensee's Plant accounts during the years 1937 through 1958 and in Licensee's operating expense accounts during the period from October 31, 1944 through December 31, 1958 are determined hereafter to violate the Commission's "no profits to affiliates" rule. The staff analysis of Licensee's operations and earnings did not include a complete examination of the facts underlying the charges by Electric Bond and Share Company and/or its service company affiliates, as to whether such charges include as a part thereof a profit element or whether Electric Bond and Share Company and/or its service company affiliates and Licensee are "associated companies" within the meaning of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

While the treatment herein of deferrals of income taxes conforms to our Uniform System of Accounts and certain prior Commission precedents and is accepted for the purposes of this determination of surplus earnings, we do not necessarily endorse such treatment in principle and reserve the right to reexamine such treatment in future determination of project surplus earnings. We approve the instant determination for past periods inasmuch as any change in Commission policy would not be made retrospectively.

The Commission finds:

(1) The Federal Power Act [Section 10(d)] and more specifically Article 17 of the license for Project No. 20, as amended, and Article 18 of the respective licenses for Project Nos. 472, 486, 597, 665, 671, 696, 703, and 713, as amended, require that Licensee establish and maintain amortization reserves with respect to those projects wherein

> one-half of the project surplus earnings, if any, accumulated after the first twenty years of operation under the license, in excess of six (6) percent

[6] Licensee does not claim or record deferred income taxes arising from liberalized depreciation permitted under Section 167 of the Internal Revenue Code.

per annum on the net investment, shall be set aside in a project amortization reserve account as of the end of each fiscal year * * * and the amounts thus established * * * shall be maintained * * * until further order of the Commission.

(2) The Federal Power Act [Section 10(d)] and more specifically Article 22 of the license for Project No. 1744 require that Licensee establish and maintain amortization reserves with respect to that project wherein

> [A]fter the first twenty (20) years of operation of the project under this license . . . six (6) percent per annum shall be the specified rate of return on the net investment in the project for determining surplus earnings * * * for the establishment and maintenance of amortization reserves to be held until the termination of the license, or, in the discretion of the Commission, to be applied * * * in reduction of the net investment * * * and one-half of all surplus earnings in excess of six (6) percent per annum received in any calendar year shall be paid into * * * such amortization reserves.

(3) The first twenty years of operation of Project Nos. 20 and 1744 under license ended as of October 30, 1944 and December 31, 1957, respectively; and the first twenty years of operation of Project Nos. 472, 486, 597, 665, 671, 696, 703, and 713 under license ended as of May 31, 1947.

(4) The computation of Licensee's respective "surplus earnings" from Project Nos. 20, 472, 486, 597, 665, 671, 696, 703, 713, and 1744, subsequent to those dates, and the portions thereof to be credited to Account 264, in the manner as proposed by the staff, all as described above, is reasonable and appropriate for the purposes of the Federal Power Act and the Commission licenses here concerned.

(5) For the periods commencing October 31, 1944, June 1, 1947, and January 1, 1958, all ending as of December 31, 1958, Licensee's respective surplus earnings for the above projects, on an annual basis, are as set forth in tabular form in the recitals above, as well as the portions thereof required to be set aside for the projects in Account 264, Amortization Reserve-Federal.

(6) As of December 31, 1958, the credit balances required to be maintained by Licensee in Account 264, Amortization Reserve-Federal, for the ten projects are as follows: Project No. 20—$171,346.79; Project No. 472—$76,157.97; Project No. 486—$5,789.80; Project No. 597—$4,988.26; Project No. 665—$2,877.64; Project No. 671—$3,303.00; Project No. 696—$9,265.91; Project No. 703—$2,008.91; Project No. 713—$2,053.39, and Project No. 1744—$898.30.

(7) Licensee's concurrence in the staff recommendations herein, and the lack of objection thereto by the Public Utilities Commission of Idaho and the Public Service Commission of Utah, obviate the necessity for any public hearings in this matter prior to Commission action in accordance with those recommendations, as hereinafter provided.

(8) It is necessary and appropriate for the purposes of the Federal Power Act and the Commission licenses here concerned that the Commission reserve for future consideration the matter of revision of the respective amounts of Licensee's "surplus earnings" and the portions thereof required to be credited to Account 264 to reflect such adjustments therein as may be necessary: (a) if Licensee's payments to Electric Bond and Share Company and/or the latter's service company affiliates as described above are determined to include a profit element; and (b) if Licensee and Electric Bond and Share Company and/or the latter's service company affiliates are determined to be associated companies within the meaning of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

The Commission orders:

(A) Licensee shall credit to Account 264, Amortization Reserve-Federal, by charge to Account 216, Unappropriated Earned Surplus, the amount of $171,346.79

for the period from October 31, 1944 through December 31, 1958, for Project No. 20; the amounts of $76,157.97, $5,789.80, $4,988.26, $2,877.64, $3,303.00, $9,265.91, $2,008.91, and $2,053.39 for the period from June 1, 1947 through December 31, 1958, for Project Nos. 472, 486, 597, 665, 671, 696, 703, and 713, respectively; and the amount of $898.30 for the period from January 1, 1958 through December 31, 1958, for Project No. 1744, all as shown in the above tabulations.

(B) Licensee shall, within 90 days from the issuance of this order, file three certified copies of its journal entries recording the above credits.

(C) The respective amounts of Licensee's "surplus earnings" from Project Nos. 20, 472, 486, 597, 665, 671, 696, 703, 713, and 1744 and the portions thereof required to be credited to Account 264 as determined herein are expressly subject to revision as set forth in finding (8) above.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

COMMUNITY PUBLIC SERVICE COMPANY, DOCKET NO. E-7102

ORDER AUTHORIZING ISSUANCE OF FIRST MORTGAGE BONDS

(Issued July 11, 1963)

Community Public Service Company (Applicant), incorporated under the laws of the State of Texas and doing business as a qualified foreign corporation in the State of New Mexico, with its principal place of business at Forth Worth, Texas, filed an application on May 27, 1963, as amended on June 19 and 28, 1963, for an order, pursuant to Section 204 of the Federal Power Act, authorizing the issuance of $13,000,000 maximum principal amount of First Mortgage Bonds, Series G, due 1993, to be sold at competitive bidding.

Applicant proposes to issue the Bonds under an Indenture of Mortgage and Deed of Trust, dated as of November 1, 1944, from Applicant's predecessor, Community Public Service Company, a Delaware corporation (Community Delaware),[1] to City National Bank and Trust Company of Chicago, Trustee, as heretofore supplemented and as to be further supplemented by a proposed Eighth Supplemental Indenture, to be dated as of July 1, 1963, from Applicant to Continental Illinois National Bank and Trust Company of Chicago, successor Trustee.

On or about July 16, 1963, Applicant proposes to invite sealed, written bids for the purchase of the Bonds by newspaper publication and by distribution of a Public Invitation for Bids, which will set forth the terms and conditions relating to bids, together with a Form of Bid and a form of Purchase Contract. Each bid, whether by a single bidder or by a group of bidders, must be on the Form of Bid furnished by Applicant and must be for the purchase of all the Bonds. Each bid shall specify, among other things, (1) the coupon rate of the Bonds, which shall be a multiple of ⅛ of 1%; (2) the price, exclusive of accrued interest, to be paid to Applicant for the Bonds, which shall not be less than 100% or more than 102¾% of the principal amount of the Bonds; and (3) that accrued interest on the Bonds from July 1, 1963, to the date of payment therefor and delivery thereof will be paid to Applicant.

---

[1] The merger of Community Delaware into Applicant was authorized by Commission order issued April 24, 1963, *Community Public Service Company*, Docket No. E-7084, 29 FPC 829. Under the terms of the merger, Applicant acquired all the assets and assumed all the liabilities of Community Delaware.

Unless postponed, each bid for the purchase of the Bonds, whether by a single bidder or a group of bidders, must be presented to Applicant at 90 Broad Street, 19th Floor, New York, New York, before 11 a.m., New York Time, on July 23, 1963. Unless Applicant shall reject all bids, which it reserves the privilege to do, or shall exclude the bid of any bidder or any group of bidders for reasons specified in the statement of terms and conditions set forth in the Public Invitation for Bids, Applicant will accept the bid which shall result in the lowest annual cost of money to Applicant.

Each bid for the purchase of the Bonds must be accompanied by a certified or official bank check or checks in the aggregate amount of $400,000, payable in New York Clearing House funds.

Applicant will apply the proceeds, estimated to be in the net amount of $12,939,136, to be obtained from the proposed issuance and sale of Series G Bonds to (1) redeem two series of its First Mortgage Bonds now outstanding, namely, $2,850,000 principal amount of Series E Bonds, 5⅜%, due 1987, and $4,950,000 principal amount of Series F Bonds, 5¼% due 1991[2]; (2) retire its bank loans now outstanding in the principal amount of $2,500,000[3]; and (3) pay, in part, for its 1963 construction program. Applicant proposes to redeem its Series E and Series F Bonds as of August 30, 1963, and estimates that as of that date the aggregate redemption costs of these two series of Bonds, including principal, accrued interest, and premium, will be $8,301,135. Applicant also anticipates that as of July 23, 1963, the date of the proposed sale of the Series G Bonds, the aggregate principal amount of its outstanding bank loans will be $3,500,000. The 1963 construction program of Applicant is expected to require $5,739,000, of which amount $5,645,000 will be allocated to electric plant and $94,000 to gas plant. The major item of that program is $4,802,000 for electric transmission and distribution facilities, which are needed to meet substantial increases in the electric requirements of Applicant's customers, particularly in the residential and commercial classifications, and to serve several industrial customers recently added to Applicant's electric system.

Applicant represents that if the best bid received by it for the purchase of $13 million principal amount of the proposed Series G Bonds would result in a cost of money so high that there would be no economic justification for refunding Applicant's Series E and Series F Bonds, then in that event Applicant will not redeem its Series E and Series F Bonds and will issue and sell $5 million principal amount only of the proposed Series G Bonds and will apply the proceeds from such sale to retire its bank loans and to pay, in part, for its 1963 construction program, all as referred to above.

Written notice of the application has been given to the Texas Railroad Commission and to the New Mexico Public Service Commission and to the Governor of each of those States. Notice of the application was also published in the Federal Register on June 11, 1963 (28 F.R. 5695), stating that any person desiring to be heard or to make any protest with reference to the application should on or before June 24, 1963, file with the Federal Power Commission, Washington 25, D.C., petitions or protests. No petition or protest or request to be heard in opposition to the granting of the application has been received.

---

[2] The Commission authorized Community Delaware to issue the Series E Bonds by orders issued May 16 and 28, 1957, *Community Public Service Company*, 17 FPC 718, 767, and the Series F Bonds by orders issued May 17 and June 7, 1961, *Community Public Service Company*, 25 FPC 970, 1108.

[3] The bank loans are evidenced by short-term unsecured promissory notes which Community Delaware was authorized to issue, to provide funds for utility plant construction, by Commission order issued December 14, 1962, *Community Public Service Company*, Docket No. E-7071, 28 FPC 1019.

The New Mexico Public Service Commission, by order issued June 14, 1963, authorized Applicant to issue and sell $13 million maximum principal amount of Bonds in the manner and for the purposes as indicated in the recital above.

The Commission finds:

(1) Applicant, a Texas corporation, is a public utility within the meaning of Section 204 of the Federal Power Act subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued April 24, 1963, *Community Public Service Company*, Docket No. E–7084. (28 FPC 829).

(2) The proposed issuance and sale of Bonds, as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issue here involved is regulated by a State commission within the meaning of Section 204(f) of the Act, and the proposed issuance of securities, is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(4) The proposed issuance of Bonds, as hereinafter authorized, will be for a lawful object, within the corporate purposes of the Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by the Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

(5) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) The proposed issuance of Bonds, upon the terms and conditions and for the purposes specified in the application, as described above, is hereby authorized, subject to the provisions of this order.

(B) The proposed issuance and sale of Bonds at competitive bidding shall not be consummated until:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h) of these Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegram as contemplated by Section 34.9 of the Regulations;

(ii) The Commission shall have approved the price to be received by Applicant for the Bonds and the coupon rate thereof, by a further order.

(C) This authorization shall expire unless the transaction hereby authorized is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of costs, or any other matter whatsoever which is now pending or which hereafter may come before this Commission.

(E) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect of any securities to which this order relates.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

MONTANA-DAKOTA UTILITIES CO., DOCKET NO. E-7105

ORDER AUTHORIZING THE ISSUANCE OF PROMISSORY NOTES

(Issued July 11, 1963)

Montana-Dakota Utilities Co. (Applicant) incorporated under the laws of the State of Delaware and doing business in the States of Minnesota, Montana, North Dakota, South Dakota and Wyoming, with its principal business office at Minneapolis, Minnesota, filed an application on June 10, 1963, as supplemented on June 17, 1963, for authority, pursuant to Section 204 of the Federal Power Act, to issue unsecured Promissory Notes in the aggregate principal amount of $10,000,000, outstanding at any one time. Each of the proposed Notes will be dated as of the dates of their respective issue, which will be not later than December 31, 1963; will mature not more than one year after their respective dates of issue and not later than December 31, 1964; and, will bear interest at the prime commercial bank rate in effect in New York City at the time of each borrowing.

Applicant proposes to issue the Notes to the First National City Bank of New York. Through separate agreements between this bank and the Northwestern National Bank of Minneapolis and the First National Bank of Minneapolis, the two Minneapolis banks will each have a 25% participation in each note. The application indicates that none of the Notes proposed to be issued will be resold to the general public and no finder's fee or other negotiation fee, commission or remuneration will be paid in connection therewith to any third person.

Applicant states that the proceeds to be obtained from the proposed issuance of Notes will be used to provide temporary financing for part of the cost of Applicant's 1963 construction program, estimated at $15,000,000, which is divided between additions to Applicant's electric facilities in the amount of $6,700,000 and additions to Applicant's gas facilities amounting to $7,800,000, with approximately $500,000 in facilities common to both gas and electric departments. The principal item in the electrical program is $2,082,000 for the completion of the 66,000 kw generating unit addition to the R.M. Heskett station near Mandan, North Dakota, scheduled to be completed in late 1963 at a total cost of $10,298,000. The principal items in Applicant's gas program are 100.5 miles of 12-inch transmission main from Riverton Dome oil field in Fremont County, Wyoming to the Rairdon Junction near Worland, Wyoming compressor station, estimated cost $3,267,100; 5.4 miles of 6-inch transmission lateral to Worland, Wyoming from the Riverton transmission main, estimated to cost $128,900; 11.7 miles of 3-inch and 2-inch transmission lateral from Underwood, North Dakota lateral to Riverdale, North Dakota estimated to cost $127,000; and a 2,640 hsp compressor station at Lovell, Wyoming to transport Riverton Dome gas to market or storage estimated to cost $951,600. Applications for certification of these gas items are now pending before this Commission in Docket Nos. CP63-110 and CP63-310.

Written notice of the application has been given to the Minnesota Railroad and Warehouse Commission, the Montana Board of Railroad Commissioners, the North Dakota Public Service Commission, the South Dakota Public Utilities Commission, and the Wyoming Public Service Commission, and to the Governor of each of those States. Notice of the application was also published in the Federal Register on June 22, 1963 (28 F.R. 6472), stating that any person desiring to be heard or to make any protest with reference to said application

should file a petition or protest, on or before July 8, 1963, with the Federal Power Commission, Washington 25, D.C. No protest, petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission, as heretofore described and set forth in the Commission's order issued April 26, 1962, *Montana-Dakota Utilities Co.*, Docket No. E-7027, 27 FPC 844.

(2) The proposed issuance of Promissory Notes, as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issue here involved is regulated by a State commission within the meaning of Section 204(f) of the Act; and the proposed issuance of Promissory Notes, as described above, is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(4) The proposed issuance of Promissory Notes in the aggregate principal amount of $10,000,000, all as described above, will be in excess of 5% of the par value of the other securities of Applicant, and, therefore, will not be exempt by virtue of Section 204(e) of the Act from the requirements of Section 204(a) of the Act.

(5) The proposed issuance of Promissory Notes, described above, will be exempt from the competitive bidding requirements of Section 34.1a of the Commission's Regulations under the Federal Power Act by reason of Paragraph 34.1a(a)(2) thereof.

(6) The proposed issuance of Promissory Notes, as hereinafter authorized, will be for a lawful object, within the corporate purposes of the Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by the Applicant of service as a public utility, and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

The Commission orders:

(A) The proposed issuance of Promissory Notes by the Applicant, in an aggregate principal amount of not to exceed $10,000,000, at any one time outstanding, upon the terms and conditions and for the purposes set forth in the application, is hereby authorized, subject to the provisions of this order.

(B) None of the proposed Notes shall be issued to obtain funds for the payment of the cost of construction for the gas facilities described in applications in Docket Nos. CP63-110 and CP63-310 prior to the issuance of certificates of convenience and necessity in accordance with the Natural Gas Act.

(C) This authorization is expressly conditioned upon the final maturity of all Notes to be issued pursuant thereto, being not later than December 31, 1964.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuations, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission.

(E) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect to any securities to which this order relates.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

AMERICAN LOUISIANA PIPE LINE COMPANY, DOCKET NO. G–18419; MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NOS. G–12292, G–17512 AND RP60–9

ORDER DENYING APPLICATIONS FOR REHEARING AND ORAL ARGUMENT, AND GRANTING MOTION

(Issued July 12, 1963)

On June 14, 1963, applications for rehearing of the Commission's Opinion No. 387 and accompanying order issued May 16, 1963, 29 FPC 932, in this proceeding, were filed jointly by American Louisiana Pipe Line Company (American Louisiana), Michigan Wisconsin Pipe Line Company (Michigan Wisconsin), and Michigan Consolidated Gas Company (Michigan Consolidated), who also request oral argument; and by North Central Public Service Co. (North Central). On June 17, 1963, an application for rehearing of the said Opinion was filed by Michigan Gas and Electric Company (Michigan Gas).

Michigan Wisconsin also filed a separate motion requesting the deletion of paragraph (K) of the order of the aforesaid Opinion No. 387, or in the alternative, for rehearing. We shall dispose of this motion by this order.

We conclude that, as set forth more fully hereinafter, the applications for rehearing and request for oral argument should be denied. The aforesaid motion, however, should be granted, for the reasons stated subsequently.

American Louisiana, *et al.* in their joint application object solely to our requiring American Louisiana to revert to a cost-of-service form of rate in lieu of the demand-commodity rate it filed in this proceeding. The numerous arguments advanced to support this objection are sufficiently answered by Opinion No. 387, and need not be repeated.

North Central's application objects solely to the Commission's approving the examiner's OS–1 (overrun service) rate of 30 cents per Mcf in lieu of the 26-cent OS–1 rate proposed by Michigan Wisconsin. North Central requests that we approve, without further hearing, an OS–1 rate of 27.85 cents per Mcf, the level of the commodity component of Michigan Wisconsin's approved ACQ–1 rate. However, as we point out in Opinion No. 387, Michigan Wisconsin's OS–1 and other rates represent our considered opinion of a reasonable accommodation of the conflicting interests presented in this case. The particular interests advanced by North Central are not sufficiently weighty to warrant disturbing the rate pattern which we have found proper and which all the other parties now seemingly accept.

Michigan Gas in its application advances two objections. First, it requests that we require Michigan Wisconsin to reduce its rates to reflect any reductions in American Louisiana's rates that may result from American Louisiana's use of the cost-of-service form of rate required by Opinion No. 387, as described above. Second, Michigan Gas contends that our allowing Michigan Wisconsin to increase its billing demand units for the off-peak months permits Michigan Wisconsin an unjustified $1,700,000 rate increase.

Michigan Gas' request described first above is without merit. Our requiring Michigan Wisconsin to reduce its rates to reflect reductions in American Louisiana's rates resulting from American Louisiana's employing a cost-of-service form of rate would amount to putting Michigan Wisconsin also on a modified form of cost-of-service rate. This would not be justified in principle, as the discussion in Opinion No. 387 shows, nor would it be warranted as a practical matter. For

if we were to provide for such possible reductions in Michigan Wisconsin's rates, we would in fairness also have to provide for possible increases therein, and the consequent uncertainty in Michigan Wisconsin's rates to its numerous customers would be incompatible with the intended, definite character of the demand-commodity and other rates its tariff presently prescribes.

The basic fallacies underlying Michigan Gas' second objection above are detailed in Opinion No. 387, and the immaterial variations to its arguments appearing in the company's application warrant neither discussion, nor any change in our conclusions rejecting this objection.

Michigan Wisconsin's motion that we delete paragraph (K) of the order accompanying Opinion No. 387 should be granted. Paragraph (K) requires Michigan Wisconsin to "pass on to its customers all refunds received from American Louisiana in Docket No. G–18419 prior to the issuance" of Opinion No. 387. But as Michigan Wisconsin correctly points out, the Commission's staff, in arriving at Michigan Wisconsin's costs of service on which the rates approved in this proceeding were based, computed the cost of American Louisiana's gas to Michigan Wisconsin on the basis of American Louisiana's reduced cost of service which in turn was agreed to by the parties and approved by the Commission. The reduced cost of gas from American Louisiana, therefore, is already reflected in the refunds which Michigan Wisconsin has made and will make to its customers. Paragraph (K) is thus redundant and should be deleted.

The Commission further finds:

(1) The assignments of error and grounds for rehearing set forth in the above-described applications present no factual or legal considerations which were not considered by the Commission when it issued its Opinion No. 387, or which having now been considered, warrant any change in or modification of the said Opinion. Nor do they justify granting Michigan Wisconsin's request for oral argument.

(2) Michigan Wisconsin's above-described motion to delete paragraph (K) of the order accompanying Opinion No. 387 should be granted.

The Commission orders:

(A) The applications for rehearing of American Louisiana Pipe Line Company, *et al.* and North Central Public Service Co., filed herein on June 14, 1963, and of Michigan Gas and Electric Company filed herein on June 17, 1963, are hereby denied. American Louisiana's request for oral argument is also denied.

(B) In accordance with Michigan Wisconsin's motion filed June 14, 1963, paragraph (K) of the order accompanying Opinion No. 387 is hereby deleted and has no force or effect.

OPINION NO. 393

EL PASO NATURAL GAS COMPANY, DOCKET NO. G–16235; PACIFIC NORTHWEST PIPELINE CORPORATION, DOCKET NO. G–16237 AND COLORADO INTERSTATE GAS COMPANY, DOCKET NO. G–16904

OPINION AND ORDER GRANTING AND DENYING CERTIFICATES

(Issued July 12, 1963)*

Syllabus

1. In future proceedings Commission will require record support for market evidence lacking here. P. 84.

*Initial decision appears on P. 107. Rehearing denied by order issued September 4, 1963, 30 FPC 643.

2. On basis of gas available from additional California production and from Transwestern, there will not be a deficiency in firm peak-day gas requirements for California market until 1968, and in annual requirements until after 1968. P. 85.
3. While building the Rock Springs Line would result in a large amount of unused capacity in the future, there is no good reason to perpetuate such excess potential capacity. P. 85.
4. Since evidence shows less costly ways of supplying gas to California, certification of Rock Springs would be contrary to Commission obligation to make gas available to consumers at lowest reasonable rates. P. 88.
5. Commission *discusses* argument advanced that certification of project would stimulate exploration for additional gas reserves in Wyoming. P. 90.
6. Whether a proposed project involves a wastefully circuitous route is not a question of pattern formed by pipeline on a map, but rather of overall economy—Commission *finds* route is not wastefully circuitous. P. 91.
7. In concluding certificate should be denied, Commission *finds*, (1) there is no immediate need for new pipeline to California; (2) other ways of bringing gas to California appear to be less costly; (3) there is no need to preserve indefinitely the cheap expandibility of Transwestern's system at cost of California consumers; and (4) other alternatives provide further expandibility as protection to California market needs. P. 92.
8. Commission *issues* certificate of public convenience and necessity covering temporarily authorized facilities; denies applications for abandonment and for certificates of public convenience and necessity in proceeding arising under Section 7, of the Natural Gas Act. Pp. 93–94.

Commissioner Morgan *dissenting*.

George D. Horning, Jr., C. Frank Reifsnyder, Patrick G. Sullivan, Allen R. Grambling, Edward G. Najaiko, Malcolm T. Dungan, Gregory H. Harrison and *Charles V. Shannon* for El Paso Natural Gas Company.

Leon M. Payne and *Charles E. McGee* for Pacific Northwest Pipeline Corporation.

James L. White, John Fleming Kelly, Henry F. Holland and *Baxter F. Holland* for Colorado Interstate Gas Company.

Jacob Goldberg and *E. A. Stansfield* for Plateau Natural Gas Company.

E. A. Stansfield for Public Service Company of Colorado.

E. A. Stansfield for Colorado-Wyoming Gas Company.

James W. McCartney, Daniel C. Arnold, Rayborne Thompson, J. Evans Atwell and *Thomas Vance McMahan* for Transwestern Pipeline Company.

Harry P. Letton, Jr., J. David Mann, Jr. and *Arthur B. Edgeworth* for Southern California Gas Company.

Milford Springer, Joseph R. Rensh, Robert M. Olsen, J. David Mann, Jr. and *Arthur B. Edgeworth* for Southern Counties Gas Company of California.

Arthur B. Edgeworth for Pacific Lighting Gas Supply Company.

Stanley Mosk, Roderick B. Cassidy and *Franklin G. Campbell* for Public Utilities Commission of the State of California.

Richard H. Peterson, F. T. Searls and *Malcom H. Furbush* for Pacific Gas and Electric Company.

Rollin E. Woodbury, John R. Bury and *William E. Marx* for Southern California Edison Company.

Robert Arnebergh, Robert W. Russell and *Arthur Karma* for the City of Los Angeles.

Charles S. Rhyne, Herzel H. E. Plaine, Edward D. Means, Jr., Robert S. Wham and *Donald E. Kelley* for the City and County of Denver.

C. Hayden Ames for San Diego Gas & Electric Company.

Charles H. Ross, Charles C. McDugald and *Kenneth W. Wagner* for Natural Gas Pipeline Company of America.

Gerald H. Trautman for Richfield Oil Company, Standard Oil Company of California, Oil Producers Agency of California, Golden Bear Oil Co., Lloyd Corporation, Ltd., National Oil Company, Mt. Diablo Co., Bonmac Oil Company, Atlas Royalties, Inc., MacGreghar and Company, Petroleum Supply Company, and Frank Goldman.

Gordon D. Hinds and *J. Parker Connor* for the City of Pueblo, Colorado.

Justin R. Wolf and *Charles A. Case, Jr.*, for Northwest Natural Gas Company.

Joseph S. Jones, B. Z. Kastler, Jr., John W. Scott and *Louis L. DaPra* for Mountain Fuel Supply Company.

Edward F. Richards for Utah Gas Service Company and Utah Gas Fuel Company.

John C. Gibbs, Ishier Jacobson, Rueben Goldberg and *Bernard M. Fischman* for Citizens Utilities Company.

Clinton C. Cornelius for Utah-Wyoming Coal Operators Association.

Jerome McGrath, Robert E. Lee Hall and *Welly K. Hopkins* for National Coal Association, United Mine Workers of America, and Fuels Research Council, Inc.

P. L. Jones for Natural Gas Company of Southern Utah.

Donald Hacking and *John B. Kugler* for Utah Public Service Commission.

F. T. Henry and *Louis Johnson* for the City of Colorado Springs, Colorado.

John B. Wright for Raton Natural Gas Company.

Duke W. Dunbar, Henry E. Zarlengo and *Jacob Goldberg* for the Public Utilities Commission of the State of Colorado.

Thomas O. Miller for Public Service Commission of Wyoming.

Fred M. Standley, Alfred P. Whittaker and *Frederick G. Von Huben* for New Mexico Public Service Commission.

Dean C. Mabry for the City of Trinidad, Colorado.

R. Clyde Hargrove, Harold Leventhal, H. S. Littman, Jack Werner and *L. R. Pankonien* for California Gas Transmission Co. and Tennessee California Gas Transmission Co.

John J. O'Connell, Robert E. Simpson and *Frank P. Hayes* for Washington Utilities and Transportation Commission.

John B. Kugler for Idaho Public Utilities Commission.

Robert Y. Thornton and *Lloyd G. Hammel* for the Public Utility Commissioner of Oregon.

John F. Raper for Wyoming Public Service Commission.

Richard W. Sabin for Oregon Public Utility Commissioners.

A. Pratt Kesler for Utah Public Service Commission.

Gabe Hoffenberg for Nevada Public Service Commission.

C. Louis Knight for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

SWIDLER, Chairman:

This is the second Commission decision in these extended certificate proceedings under Section 7 of the Natural Gas Act, among the most complex and difficult proceedings in FPC history. Applications were originally filed by El Paso Natural Gas Company and Pacific Northwest Pipeline Corporation on September 10, 1958, and by Colorado Interstate Gas Company (CIG) on November 7, 1958. The proposed project is intended to supply additional gas to the California market and the Rocky Mountain region. The principal facility to be constructed

is a pipeline from Green River, Wyoming, near Rock Springs in the same State, across Utah and Nevada to the California border. CIG also proposes to build additional facilities including a pipeline extending south of Denver in Colorado and to abandon most of its defective line from Denver to Bivins, Texas. After hearing, the Commission originally approved the proposed project in a decision issued December 27, 1960, 24 FPC 1137, but later granted rehearing. After the second hearing the presiding examiner issued a decision December 18, 1962, generally denying the applications, and it is upon numerous exceptions filed to this latest decision that the proceedings are now before us again.

Procedural and Factual Background

The principal facilities involved are shown on the attached map. CIG has a large pipeline system extending generally northwestward from the Ragoton Field in Kansas and Oklahoma and from the Panhandle Field in Texas to Denver, Colorado. It also has a pipeline extending north of Denver into Wyoming and then west to Green River, Wyoming where it interconnects with El Paso's pipeline that was formerly the line of Pacific Northwest. CIG proposes to construct and operate (1) a new transmission pipeline from Denver south to its Bivins compressor station in the Texas Panhandle; (2) facilities for tying into its system gas reserves in Oklahoma, Kansas and Wyoming; (3) a 34-inch line extending from its Green River compressor station in Wyoming 155 miles to Provo, Utah, where it will interconnect with the proposed line of El Paso's; and (4) a number of compressor stations and appurtenant facilities. CIG seeks authorization to sell to El Paso volumes up to a maximum of 237,712 Mcf per day at Green River and to transport for El Paso from Green River to Provo up to a maximum of 475,424 Mcf per day.[1] CIG also seeks to abandon the greater part of its existing Bivins-Denver line.

El Paso's pipeline system has a somewhat ambiguous status. In addition to its two lines extending from the Permian Basin in southeastern New Mexico and Texas to the California border with a connection to the San Juan Basin in northeastern New Mexico and Colorado, in December of 1959 El Paso acquired the assets of Pacific Northwest including the line extending from the San Juan Basin to the Canadian border. The Commission's order approving the merger[2] was vacated by the Supreme Court which held that the Commission should have awaited the decision in an antitrust suit brought in the Federal District Court in Utah.[3] Recently, the antitrust suit has been dismissed by the District Judge; the United States has appealed; and the proceeding is now before the Supreme Court on petition for affirmance.[4]

In the present proceeding El Paso proposes to construct a 34-inch diameter pipeline from its interconnection with CIG at Provo to the California border near Las Vegas, Nevada, to transport up to 475,424 Mcf per day through this line and to sell the gas to Southern California Gas Co. and Southern Counties Gas Co. (Southern California Companies). El Paso seeks to abandon a Pacific Northwest sale of gas to CIG at Green River with a contract demand of 117,500 Mcf. Since this gas flows east and south to Denver, the effect of the proposals here would be to reverse the flow in Colorado's Wyoming line so that the gas will move westward from Denver to Green River.

---

[1] The pressure base used in this opinion is 14.73 psia unless otherwise specified.

[2] *Pacific Northwest Pipeline Corp., et al.*, 22 FPC 1091, 23 FPC 350.

[3] *California* v. *F.P.C.*, 369 U.S. 482 (April 30, 1962). Whatever its status we shall refer to the San Juan to Canada pipeline as Pacific Northwest.

[4] *United States* v. *El Paso Natural Gas Co.*, No. 94, October Term 1962, jurisdiction noted May 24, 1963, 373 U.S. 390; [District Court reversed and "divestiture" ordered by opinion delivered April 6, 1964, 376 U.S. 651.]

El Paso and CIG estimate that their portions of the proposed construction will cost $58,685,000 and $92,829,566 respectively, or a total of $151,514,566. Under temporary authorization CIG has already constructed some of the facilities consisting of various field laterals and compressor stations with an estimated cost of $9,253,308. These are needed for CIG's present service and we shall certificate them permanently as provided below.

There are other pipelines serving or proposing to serve the California market. Most important is Transwestern Pipeline Company which now delivers gas to Pacific Lighting Gas Supply Company at the California border. Pacific Lighting in turn delivers the gas to the Southern California Companies which transport the gas to the market area. Transwestern's 30-inch diameter main line extends from Roswell, New Mexico, across that State and Arizona to connect with Pacific Lighting near Topock, Arizona. From Roswell it has a lateral extending to the Panhandle-Hugoton-Anadarko area and a lateral extending to the Permian Basin area. The installed capacity of the system is 350,000 Mcf/d and the optimum capacity 640,000 Mcf/d. Applications are pending to utilize the additional capacity available in the Transwestern pipeline. Also, it should be noted, Pacific Gas Transmission Company (PGT) has a pipeline extending from the Canadian border to an interconnection with Pacific Gas & Electric Co. (PG&E) at the Northern boundary of California. Furthermore, at the time of the hearing subsidiaries of Tennessee Gas Transmission Company, in Docket No. CP61–172, *et al.*, had proposed the Pemex Project consisting of a pipeline to extend from near the Texas Gulf Coast through Mexico to California and to transport gas to be purchased from the producers by Southern California Edison Co. (Edison).[5]

In the present proceedings the Commission conditionally approved the Rock Springs project by order issued December 27, 1960, 24 FPC 1137. It found that the project would provide a new and necessary long-term gas supply for the rapidly expanding California market, would give that market direct access to El Paso's new and developing gas fields in Wyoming and would enable El Paso to make fuller use of its Northwest Division facilities at a higher load factor with resulting economies. The Commission conditioned its certificates on the approval by the California Commission of the Southern California Companies' part of the project, including its proposed markets.

On December 28, 1960, the Public Utilities Commission of California issued a decision authorizing the Southern California Companies to construct a pipeline between the California-Nevada border and Newberry, California, for transporting the gas towards the market. The California Commission, however, found that the Rock Springs Project was not needed for several years and that the median in forecasts was 1968. The California Commission conditioned its approval by requiring the applicants to obtain from El Paso a new supply contract so as to eliminate the need for a rate increase as a result of the project, to reduce the period before the project is economically feasible and to provide a load-building period. Subsequently, new agreements were made between the various parties to the project. Under them initial deliveries would commence on January 1, 1964, and would increase to the maximum of 475,424 Mcf per day on January 1, 1965. CIG would charge El Paso for gas sold a demand and commodity rate amounting to about 27 cents at 85 percent load factor, and for gas transported a 56-cent demand and 2.15-cent commodity rate. El Paso's price to the Southern

[5] Tennessee was permitted to intervene in the reopened proceeding on the basis of the competing Pemex proposal, but this proposal was withdrawn and the Gulf Pacific Pipeline proposal in Docket No. CP63–223 was subsequently filed. This new application proposes a pipeline wholly in the United States and transportation of gas not only for Edison, but also for the City of Los Angeles Department of Water and Power.

California Companies after January 1, 1965, would amount to 37.9 cents per Mcf at 100 percent load factor and 39.6 cents per Mcf at an 85-percent load factor.

On June 6, 1961, the California Commission issued a supplemental opinion and order in which it found that the applicants had fulfilled the conditions of the prior order and provided that the certificate previously issued be made applicable to the revised project. Edison and Richfield Oil Company petitioned the Supreme Court of California for a writ of review which was denied January 31, 1962, and a subsequent petition for certiorari was denied by the Supreme Court of the United States (*Southern California Edison Co.* v. *P.U.C. of California*, 371 U.S. 231).

Several interveners filed petitions with this Commission for rehearing of the opinion of December 27, 1960, contending that the new contracts would materially alter the proposals and complaining that the examiner had refused to permit questioning of witnesses regarding alternative routes. On February 21, 1961, the Commission granted rehearing without limitation. Since some question has arisen as to the scope and effect of the subsequent proceedings, we shall refer briefly to our orders relating to them.

On June 22, 1961, the Commission granted a motion for an early hearing. The order stated that "movants request that the hearing be limited to matters relating to the proposed changes." While the Commission found that the hearing should be "limited as hereinafter ordered", the order broadly provided that the proceedings be reopened and "a public hearing with respect to the Rock Springs project, as conditionally authorized by this Commission by order issued December 27, 1960, be held . . . ." The order issued August 25, 1961, 26 FPC 432, reflected the breadth of the rehearing. It said that in the order of June 22, 1961, we took notice of the request "that the hearing be limited to matters related to the proposed changes. Our order, however, while encompassing such changes, did not so limit the hearing."

The order of June 22, 1961, provided that El Paso and CIG file a complete statement of changes in the project. The order of July 21, 1961 (26 FPC 175), provided that the issues should encompass alternate routes and facilities. The order of August 25, 1961 (26 FPC 432), stated that the altered and changed requirements for gas and the rates should be considered in relation to the project's economic feasibility and parties should be permitted to present evidence on changes in reserve estimates. In its order of September 13, 1961 (26 FPC 488), the Commission deemed it necessary that El Paso offer evidence to show whether the project would be economically feasible if Southern California Edison Company should cease to be a customer of Southern California Gas Company because, as the Commission said, it appeared that Edison was seeking other sources of gas supply. In the order of November 2, 1961 (26 FPC 687), the Commission indicated that economic feasibility, financial feasibility and proposed rates were among the relevant issues. On March 22, 1962 (27 FPC 597), it reaffirmed that alternative gas supply possibilities using existing pipelines, by means of exchange arrangements or otherwise, was definitely an issue and on March 23, 1962 (27 FPC 600), it noted its responsibility to consider the impact of the construction upon present and future rates, whether the ultimate consumer would be adversely affected, and the policy of the antitrust laws.

The order of February 7, 1962 (27 FPC 321, 322) stated:

> We have attempted by our orders to confine the proceedings to those matters which resulted from the modifications in the proposals as a consequence of the decisions of the California Commission. In the conduct of the hearing the examiner shall limit testimony to evidence pertinent and relevant to such matters.

While we did not want the second proceedings to be repetitious, our orders do not limit the issues that are presented to us now upon the basis of the whole record including that in the prior proceedings.

The rehearing began on July 24, 1961 and concluded on April 26, 1962. On May 17, 1962 (following the ruling of the Supreme Court in the antitrust proceeding), we denied motions to omit the intermediate decision and required the examiner to make special findings (1) as to the excess pipeline capacity, if any, available to serve California and (2) as to whether the record was sufficient for a decision on the merits assuming that Pacific Northwest be reconstituted as a separate corporation. On June 14, 1962, the examiner issued such findings.

On the question of excess capacity he considered the market requirements of the Southern California Companies, the existing and potential supply of gas and the supply available from the Rock Springs Project and set forth figures that showed a supply deficiency in certain years without the Rock Springs gas but considerable excesses using this gas. On the Pacific Northwest question the examiner concluded that the record was insufficient to show that a reconstituted company would build El Paso's portion of the line or enter into appropriate contracts with the Southern California Companies or CIG. In any case it would be legally impossible, the examiner thought, to issue a certificate to a new Pacific Northwest without an application.

After the exchange of briefs the examiner issued his principal decision on December 18, 1962, proposing that the applications for the Rock Springs Project be denied. Among his reasons were that: the route is circuitous; there is no adequate gas supply in the vicinity of Green River; the project would increase the cost of gas in the Rocky Mountain area and would fail to render complete service to this area; there is no justification for the divided ownership of the Provo line; the El Paso project is of doubtful economic feasibility, and is hopelessly uneconomic if the Edison load is eliminated; and the purchase of Rock Springs gas by the Southern California Companies is economically infeasible since there is no market therefor except for future sales as boiler fuel. Accepting the market estimates of these companies, he found that when he took the peak day supply of gas available from the existing facilities of El Paso and Transwestern plus production in California plus repressuring gas available from oil fields in California there was an excess of peak day supplies available through the year 1967–68, but a deficiency in the years 1968–1969 and 1969–1670 without any consideration of Rock Springs gas. He found, however, that El Paso and Transwestern with further development of their systems could supply enough additional gas to assure excess capacity through the year 1969–1970, the last year considered.

On annual requirements he found that for an average year taking the existing and potential capacity of existing systems, but excluding Rock Springs, there would be an excess supply in every year studied except the first and the last, 1963 and 1970. For a cold year he found deficiencies in 1963, 1969, and 1970. Without the Edison load he found substantial excesses in both average and cold years. He concluded that even with the Edison load there is a want of a market for the Rock Springs gas except for some industrial sales in 1969 and 1970.

The examiner did not find it necessary to decide whether the proposed project would violate the policy of the antitrust laws, in view of his rejection of the project for other reasons.

As to the argument that Pacific Northwest would be "put on its feet", the examiner found that the Rock Springs Project was not designed to provide assistance to Pacific Northwest and there is nothing to be gained by attempting to cure one undernourished system by creating another one.

The examiner proposed that a certificate be issued to CIG for the facilities already temporarily authorized. He proposed denying the application of CIG in other respects and denying the applications of El Paso and Pacific Northwest.

El Paso on January 22, 1963, and CIG on January 24, 1963, filed motions to terminate the intervention of subsidiaries of Tennessee Gas Transmission Company[6] on the ground that the application for the Pemex project had been withdrawn.[7] On February 1, 1963, Tennessee Subsidiaries and Gulf Pacific filed a motion that Gulf Pacific be admitted as a party intervener herein. Both of these motions were denied by our order of February 14, 1963. The proceedings are now before us on the numerous exceptions[8] filed in January of 1963.

Before proceeding with a discussion of the issues, we may note that the following interveners support the project, at least in part: the Southern California Companies, Los Angeles, Colorado Springs, Public Service Company of Colorado, Colorado-Wyoming Gas Co., The Pueblo and Fuel Company, Washington Commission, Wyoming PSC, Oregon PUC, Idaho PUC, Nevada PSC. The following oppose the project: Colorado PUC, Denver, Tennessee Subsidiaries, Edison, the Oil Companies,[9] Transwestern and our staff.

For the reasons set forth below we are of the opinion that the applications for the Rock Springs Project must be denied upon the evidence in this record. We are granting CIG certificates for the facilities already constructed under temporary authorization.

Consideration of the Proposed Project

In our opinion the record shows that the proposed Rock Springs gas is not needed at this time for the proposed service to the California market. The record also shows that other methods of serving the California market appear to be more economical and that the project has certain additional weaknesses, including the inability to render complete service to the Rocky Mountain area.

(a) *The sufficiency of markets in California.*—The main evidence relating to the need for additional gas in California was submitted by the Southern California Companies as summarized in their Exhibit 290. There were objections by the Commission staff to the figures used in the Exhibit on the ground that there was no support for them in the record, but the examiner determined that for the purposes of this decision the requirements set forth in this Exhibit were a not unreasonable forecast of the future needs of the California markets. We agree with this finding, but we would emphasize that in any future proceedings we will require the supporting market evidence lacking here.

The examiner also found that the supply showing in the Exhibit did not include all the gas available. The Exhibit indicates that without the Rock Springs gas there will be a deficiency in the annual requirements this year and a deficiency in the firm peak day requirements by 1964. However, we conclude, as did the examiner, that the Exhibit did not take into account the substantial

---

[6] California Gas Transmission Company and Tennessee California Gas Transmission Company (Tennessee Subsidiaries).

[7] In Docket No. CP61-172, *et al.*, the Tennessee Subsidiaries had applied for a proposed project to transport gas purchased by Edison in Texas, through Mexico to California.

[8] CIG, El Paso, the Southern California Companies, the Tennessee Subsidiaries, Denver, Nevada PSC, Wyoming PSC, Colorado Springs, Oregon PUC, Idaho PUC, Washington Commission, Transwestern, Public Service Company of Colorado, Colorado Wyoming Gas Co., Pueblo Gas and Fuel Co., and the staff of FPC.

[9] Richfield Oil Corporation, Standard Oil Company of California, Oil Producers Agency of California, Golden Bear Oil Co., Lloyd Corporation, Ltd., National Oil Company, Atlas Royalties, Inc., McGreghar Land Company, Petroleum Supply Company, Mt. Diablo Co., Bonmac Oil Company, and Frank Goldman.

amounts of existing capacity and gas supplies available from Transwestern. See below, p. 86. In addition, the amount of California gas currently being used for repressuring for oil production which will become available during the next five years was substantially understated. We recognize that there are no existing contractual commitments which guarantee the availability of all of this gas to Southern California customers, but we are convinced by the evidence that this production will be available to Southern California if and when it needs it and should be considered by us in examining the needs and supplies of the California market. We are also aware that the growth in annual requirements includes industrial sales where fuel oil may well prove to be preferable on the basis of competitive prices. This is especially important in view of the fact that the smog season does not include the months when peak firm requirements are reached.

On the basis of additional California production and the additional gas available from Transwestern with a minimum of new facilities we conclude that there will not be a deficiency in the firm peak day gas requirements until 1968. This is the same conclusion as that reached by the examiner and the California Commission. We conclude, as did the examiner, there will be no deficiency in the supplies to meet annual requirements until after 1968.

We find, therefore, that evidence of a need for this gas in about five years has been submitted, but, as we discuss below, we are not convinced by the evidence that the Rock Springs Project is the best or the most economic means of filling these future needs of the California market. As there will be no need for firm gas prior to 1968 above that available through minimum expansion of Transwestern and optimum use of El Paso's existing system, it does not appear that the necessity for bringing additional gas to California is so pressing as to justify our certificating this project without first exploring the possibility strongly suggested by the record that there are better ways of meeting California's needs for more natural gas.

(b) *Alternative means of serving California.*—The most important respect in which this project fails to meet the requirements of the public convenience and necessity is revealed in the evidence showing that other means of supplying the California market would probably be less costly. The principal evidence on this question was presented by Transwestern, although some evidence was introduced by El Paso and the staff. We shall discuss some of the alternative proposals below but before doing so make the general observation that these alternatives involve the use of existing facilities with additional compression, extensions and looping, rather than an entirely new pipeline. It is a question, then, of comparing the cost of transporting additional gas by these alternative means with the Rock Springs price of 37.9 cents per Mcf at 100 percent load factor. For this purpose the incremental costs of the alternative methods are more significant than the rolled-in costs, which would apply to the whole volume of gas already being transported over the alternative route in question because we are comparing alternative costs of supplying *additional* gas to California. In any case, we note that savings are shown even on the basis of rolled-in costs, which we quote. Of course, we are aware that building the Rock Springs line would result in a large amount of unused capacity available in the future, but there seems to be no good reason to perpetuate a status of excess potential capacity.

Also relevant to these comparisons is that CIG would sell gas to El Paso at a price unjustifiably lower than its other wholesale prices. In this respect the examiner finds that in designing its rate to El Paso, CIG employed a 3.75 cents per Mcf differential in the commodity factor in favor of El Paso as against its general service customers. In developing its rate CIG used a zone-gate allocation

method [10] by which the rates were computed as though the sales were made in Zone 1 and transportation costs were added for the sale to El Paso in Zone 2. In making the allocation in Zone 1, CIG imposed the differential in favor of the pipeline customers (including El Paso) as against the general service customers. The net effect of the differential is to allocate 1.6 cents per Mcf less cost to El Paso or approximately $1,000,000 a year.

The record shows no cost justification for the differential other than that CIG has offered a similar differential in the past to its pipeline customers, in order, apparently, to avoid controversies between the customers in northern Colorado and Wyoming and those in the Denver area.[11] We do not think that the history of CIG's rates based on considerations not relevant to the El Paso sale justifies extending the differential to El Paso as against the Rocky Mountain customers.[12] Thus in making comparisons, which are, of course, based on estimates only, it would be proper to consider that El Paso's price for its sale in California is 37.9 plus 1.6 cents per Mcf or 39.5 cents per Mcf.

Some of the alternative means of delivering gas to California are as follows:

(1) One alternative route, concerning which there is considerable record evidence, involves the use of Transwestern's pipeline, which now receives gas from the Panhandle area and the Permian Basin area and delivers it to Pacific Lighting. Transwestern's presentation as to this route is based on several alternative assumptions. Those in which it includes an additional 15 percent capacity to conform to its rate schedules [13] are, we believe, most valid for the purpose of comparison although this additional capacity slightly increases its cost. On this basis Transwestern presented evidence showing that with an additional investment of $2,253,000 its existing capacity could be increased from 350,000 Mcf/d to 402,500 Mcf/d and that with a further investment of $30,277,000 the system would be increased to its optimum of 640,000 Mcf/d.[14] For this 237,500 Mcf/d of additional gas there would result an incremental cost of 24.06 cents per Mcf and a "rolled-in" cost of 33.94 cents per Mcf at 100 percent load factor for the period 1964–1967 including an assumed purchased gas cost of 16.75 cents per Mcf reflecting its average cost of gas. Since Transwestern's system is located in proximity to large natural gas fields, we do not doubt that a gas supply will be available.

(2) Transwestern has also produced evidence showing that it could either transport 237,500 Mcf/d of CIG's gas to California, or alternatively that it could transport both CIG's gas and the additional 237,500 Mcf/d from El Paso.

Under the first assumption investment of $2,253,000 would be necessary, as before, to add the 15 percent peaking capacity and $35,650,000 would be required to construct a necessary 40-mile 22-inch pipeline to interconnect with CIG and to build additional compressor stations. This would result in incremental costs of

---

[10] An allocation method the Commission rejected in *Tennessee Gas Transmission Co.*, 27 FPC 202 (1962).

[11] See *Colorado Interstate Gas Co.*, 11 FPC 324, 361 (1952).

[12] See Natural Gas Act, Sections 4(b), 5(a), 7(e); compare Robinson Patman Act, 15 USC § 13 providing that it shall be unlawful to discriminate in price where the effect may be substantially to lessen competition or tend to create a monopoly.

[13] Under Rate Schedules CDQ–1 and LX of Transwestern's FPC Gas Tariff, First Revised Volume No. 1 the buyer, Pacific Lighting, is entitled to take 115 percent of the contract demand quantity, which is the average daily quantity of gas for which buyer has contracted to purchase. The contract demand quantity is 300,000 Mcf/d as set forth in Transwestern's service agreement with Pacific Lighting, so that Transwestern is obligated to deliver 345,000 Mcf/d to Pacific Lighting.

[14] The designed capacity of Transwestern's existing system is 350,000 Mcf/d, but it is actually capable of delivering 370,000 Mcf/d at 800 psig or over 400,000 Mcf/d at a lesser pressure without any additional construction.

transportation of 8.09 cents per Mcf for the additional 237,500 Mcf and rolled-in costs of transportation of 17.50 cents per Mcf at 100 percent load factor.

Under the second assumption, Transwestern showed that with an additional plant investment of $84,318,000 the whole 475,000 Mcf/d Rock Springs volumes could be transported through its system and there would be still available the 15 percent peaking capacity. This would include the 40-mile connection with CIG in Texas, a 108-mile connection with El Paso in the San Juan Basin, and additional compression and looping. On this basis, and at 100 percent load factor, the incremental transportation cost for the period 1964 through 1967 would be 8.46 cents per Mcf for the 475,000 Mcf of additional gas and the total transportation cost for the Transwestern contract demand and Rock Springs volumes would average 15.64 cents per Mcf for the period 1964 through 1967, declining to 14.41 cents in the latter year.

Transwestern does not include cost of purchased gas on these two assumptions but suggests using the price the Commission allowed in the Aneth Field of 17.7 cents per Mcf. *El Paso Natural Gas Co., et al.*, 23 FPC 369, 375. This assumption is conservatively high, for our area producer price in the Panhandle area of Texas and Oklahoma is 17 cents and in the Permian Basin is 16 cents (24 FPC 818, 820). Considering the Rock Springs price of 37.9 cents per Mcf at 100 percent load factor (and even more clearly after adding the 1.6 cents per Mcf representing CIG's discriminatory differential), it can be seen that effectuation of either of Transwestern's proposals should result in substantial savings to customers in California.

Using the proposed amount of Rock Springs gas of 475,000 Mcf/d, the annual saving would be $1,733,750 for each 1-cent price differential at 100 percent load factor (475,000 Mcf/d x 365 x .01). According to its evidence, if Transwestern transported all of the Rock Springs gas, its incremental price would be 8.46 cents plus 17.7 cents or 26.36 cents. The Rock Springs price is 37.9 plus the unjustified CIG differential of 1.6 or 39.5 cents at 100 percent load factor. The 13.14-cent difference would thus represent an approximate saving to gas consumers of $23,128,225 per year at 100 percent load factor.

Alternatively the computation can be made on the basis of total cost of all of Transwestern's sales. Transwestern's evidence sets forth that its cost of service for the present 350,000 Mcf/d with 52,500 Mcf/d of excess capacity would average 40.63 cents per Mcf for the 1964–1967 period, assuming a purchased gas cost of 16.75 cents per Mcf. As noted above the price for the 475,000 Mcf/d of Rock Springs gas would be 39.5 cents at 100 percent load factor (including the 1.6-cent differential). The rolled-in costs stated by Transwestern for the original 350,000 Mcf/d plus the 475,000 Mcf/d Rock Springs volumes plus 52,500 of excess capacity would be 33.34 cents per Mcf (transportation costs of 15.64 cents and purchased gas cost allowance of 17.7 cents). Savings would thus be 7.29 cents on the 350,000 Mcf/d or $9,312,975 annually and would be 6.16 cents on the Rock Springs 475,000 Mcf/d or $10,697,900, totalling $19,992,875 annually on this approximate basis.

We may observe before leaving Transwestern's proposed alternatives that permitting the Transwestern expansion will not leave the California market without a safety factor in case of increased needs because there are other means of delivering gas to this market, which may also serve as a safety factor. These are the alternatives discussed below.

(3) Another alternative indicated by the record evidence would employ the northern segment of El Paso's Southern Division. Utilizing the existing exchange agreement between El Paso and Northern Natural Gas Company, El Paso could purchase up to 200,000 Mcf per day from CIG for delivery to Northern Natural at Dumas, Texas. This delivery would be in partial repayment for the 475,000

Mcf per day which Northern Natural is delivering to El Paso at Plains, Texas. By construction of additional loops and compressor facilities on its Northern Division facilities west of Plains, El Paso could correspondingly increase its capacity and deliver the 200,000 Mcf per day at Topock. As the examiner points out, this gas could be delivered by El Paso in the same way it proposed to deliver 200,000 Mcf/d to Pacific Gas and Electric Company in accordance with applications filed in Docket Nos. G–15696 and G–18616. The price under this proposal was 33.38 cents per Mcf (at 14.9 psia and 100 percent load factor). These particular applications were withdrawn because it turned out that PG&E did not need the gas.[18]

The applicants variously criticize the presentation of the alternative projects. El Paso argues that the proposal presented by Transwestern employs only incremental costs and that even such costs are underestimated. As already stated, incremental costs are a proper measure of the savings arising from Transwestern's proposal; and in any event there are savings even on a rolled-in basis. El Paso and CIG also contend that Transwestern's costs are understated in that it computed incremental investment above a base of $206,000,000 although its original certificated facilities were constructed for about $181,000,000. In our opinion even if the $25,000,000 of additional facilities are not needed for the original deliveries, their prior construction goes to make the delivery of additional gas incrementally cheaper and the Transwestern proposal more attractive. And of course, in considering rolled-in costs the classification of the $25,000,000 is irrelevant.

The applicants also argue that the evidence of the alternative routes is highly speculative and impractical. They say, particularly, that there is nothing to show that CIG could or would supply gas to El Paso at Dumas or that Transwestern could obtain sufficient reserves of gas to make its proposed deliveries. The evidence on alternative routes and the discussion of the examiner thereon are, of course, based on estimates which are subject to an indefinable margin of error. They clearly would not be sufficient to support an application for such routes. However, in our opinion, these estimates are reasonable for the limited purpose of showing that ways of supplying gas to California probably exist which should be less costly than the proposed project. To certificate the Rock Springs project in these circumstances would be contrary to our obligation to carry out our responsibilities under the Natural Gas Act in such manner as to make gas available to consumers at the lowest reasonable rate.

(c) *Proposed service to the Rocky Mountain area*—With respect to service in the Rocky Mountain area we find that the record does not show that completion of the Rock Springs Project will satisfy the estimated needs for gas. For this reason the proposed service to the Rocky Mountain area does not give support to the project.

The record does not establish that the project would enable CIG to meet peak demands. CIG states that the daily delivery capacity of its Rocky Mountain system upon completion of the Rock Springs Project would be 725,000 Mcf/d.[19] This represents an increase of only 18,234 Mcf/d over the present capacity of 706,766 Mcf/d shown in the record, and is less than 2,000 Mcf/d

[18] There are still other alternative possibilities which, however, on a cost basis do not presently appear to be as favorable as those discussed above. See examiner's decision of December 18, 1962, *infra*, pp. 114–116. The staff introduced evidence as to a further alternative. This would involve use of the line of Pacific Gas Transmission Company and PG&E and would approximately double the present capacity of 450,000 Mcf/d.

[19] The basic exhibits and some testimony show a capacity of only about 710,000 Mcf/d, but the record indicates that some 15,000 Mcf/d is added by attachment of the Patrick Draw field.

above the 723,124 Mcf sales from the presently existing system on the highest peak day of the 1961–1962 winter.[17] In contrast the examiner finds that the peak day requirements of the Rocky Mountain area are as follows:

Winter Season	*Mcf*
1963–1964	753,770
1964–1965	760,060
1965–1966	764,970

CIG objects that the requirement figures include 35,000 Mcf/d for a proposed firm sale to Colorado Fuel and Iron Corporation which is subject to our approval. We think the examiner correctly included this amount even though a certificate was required because it represents a market need and is therefore a valid part of an estimate for the future. CIG offered to increase its capacity to serve the Rocky Mountain area in the amount of 100,000 Mcf/d with the additional expenditure of some $7,500,000. However, there is no application for such an expansion before us and such a proposal would not afford the necessary prompt relief to the Rocky Mountain area.

More important, on an annual basis the record leaves us without sufficient support for any finding that the project will benefit the Rocky Mountain area. As set forth by the examiner the Rock Springs Project requires CIG to furnish annually to the Rocky Mountain area 116,152,530 Mcf plus 3,558,750 Mcf from the Patrick Draw field or a total of 119,711,280 Mcf. On the other hand, the witness for Denver, whose estimates were accepted as reasonable by the examiner (a finding with which we concur) shows annual requirements as follows for the Rocky Mountain markets:

Year	*Mcf*
1963	175,795,590
1964	179,736,260
1965	183,376,220

On this basis CIG would not meet its requirements even if we add the proposed 100,000 Mcf per day or 36,500,000 Mcf per year at 100 percent load factor. CIG answers that it stated its reserves and its market requirements as of a given point of time, "plateauing" its firm sales and showing its interruptible sales for the then existing terms of its contracts. This is, of course, merely an admission that it has not taken future increases into account. While it does not show quantitatively that it would be able to meet the annual requirements of the Rocky Mountain area, its witnesses stated that the company intends to meet those requirements. However, such statements, unrelated to any showing of how this would be done or the cost thereof, do not serve to counter the showing in Denver's exhibits that the present project will fall far short of meeting the needs of CIG's own prime market.

(d) *Other issues relating to public convenience and necessity.* The examiner and the parties raise other questions with respect to the proposed project.

Interveners from the Rocky Mountain and Pacific Northwest states have argued that certification of the project will prevent imminent rate increases by CIG and the Pacific Northwest System presently being operated as a division of El Paso. The evidence supporting this argument with respect to CIG is based on the unrealistic assumption that if this project is denied CIG will have to replace the Bivins Line but will not at the same time seek other ways to improve the utilization, and hence the economy, of its system. With respect to the Pacific Northwest System, the argument is based upon unsupported statements of El Paso officials that a rate increase will be necessary if the present project is

[17] The record indicates that 18,295 Mcf of this was taken out of line pack.

not granted whereas one might not be necessary if it were. Presently the proper rates for the Pacific Northwest System are involved in a rate case in Docket No. G–13202. This filing was made on August 6, 1957, prior to the merger between Pacific Northwest and El Paso. No additional rate increases have been filed since the time El Paso took over operation of the Pacific Northwest System and no allocations between the Pacific Northwest System and the rest of the El Paso system have been determined, including, of course, any allocation of the proposed facilities to serve southern California. Nor can the eventual status of the Pacific Northwest System be determined in view of the pending antitrust action. Under these circumstances it would be pure speculation to accept the opinion of the El Paso officials as to the ultimate outcome of a new rate filing, if in fact one is ever made.

Even if we assume that grant of the present project would redound to the financial benefit of the Pacific Northwest System, either as a division of El Paso or as an independent company, this fact would not be determinative here. The principal purpose of the project is to serve the southern California market. If this could be done by the proposed project in a manner which would provide needed new service to southern California, at rates comparable to those achievable from other likely alternatives, the possible benefits to the existing customers of the Pacific Northwest System would be an important additional factor in the project's favor. We have found, however, that this is not the case; certainly there can be no justification for requiring the customers in southern California, for whose primary benefit the project is intended, to pay more for their gas supply than they otherwise would in order to benefit gas consumers in other parts of the country.

Another argument advanced as a reason for certificating this project was the expectation that it would stimulate exploration for additional gas reserves in Wyoming by providing a market for such reserves. Existing facilities already provide such a market. In granting the original certificate for Pacific Northwest Pipeline Corp. and the pipeline of CIG running east from Green River, the Commission pointed out that these lines should stimulate additional production in Wyoming. (*Northwest Natural Gas Co., et al.*, 13 FPC 221.) The existing Pacific Northwest line makes it possible to take Wyoming gas to California by going south to San Juan and then west through El Paso's main line. It also brings Wyoming gas to the markets of the Pacific Northwest. The line of CIG provides an outlet to the eastern markets for Wyoming gas. In addition the line of Mountain Fuel Supply Co. serving Colorado, Wyoming and Utah is undoubtedly capable of taking substantial amounts of Wyoming gas production. As far as we can ascertain, none of these existing lines has as yet been fully utilized as outlets for Wyoming gas.

As gas reserves become economically available in Wyoming, presumably Pacific Northwest and CIG will utilize them in preference to the relatively expensive Canadian gas used in much of the Northwest line and the San Juan gas purchased by CIG at Green River. It appears, therefore, that the necessary capacity and markets to stimulate production in Wyoming for the immediate future are already in existence and the next step in an orderly utilization of our natural resources and proper performance of our regulatory responsibilities would be to await the development of additional Wyoming gas rather than add another pipeline in the hope that it will provide the stimulation which existing pipelines have failed to do.

It has been contended that the proposed route of the project is circuitous. The examiner, following the staff brief, finds that a pipeline should run from the principal source of supply to the principal market with reasonable directness and that the proposal here violates this proposition and is therefore unsound.

He points out that the gas would travel approximately 1,252 miles from the Texas Panhandle Field to the delivery point near Las Vegas, Nevada, and similarly that El Paso proposes to transport gas from the San Juan Basin 300 miles north to Green River and then southwest 536 miles to the Las Vegas delivery point. He finds that the gas reserves committed to El Paso in the vicinity of Green River are not sufficient to support the Provo line. He also finds that there are uncertainties with respect to the availability of Canadian gas.

The problem here is essentially one of comparative costs and the purpose of the pipeline. Whether a proposed project involves a wastefully circuitous route for moving gas is not a question of the pattern formed by the pipeline on a map, but rather one of overall economy, considering the established location of present pipelines, the sources of the gas, comparative costs of moving the gas to market, and other factors. While the record does not make clear the extent to which future expansion of gas supplies in Wyoming may be anticipated, the applicants have shown that gas from that state would be used for Rock Springs. It appears also that gas from Canada would be available, either directly or by displacement. The proposed project, as El Paso argues, would serve to bring together gas from several sources and provide flexibility of operation. Furthermore, it would use the existing pipelines of CIG and Pacific Northwest. Therefore, it is not controlling in our view that a large part of CIG's contribution of gas would come from the West Panhandle Field of Texas, or that at times substantial amounts of gas would flow north to Green River from the San Juan Field. We thus do not find that the route is wastefully circuitous as argued by the parties.

In addition to finding, as mentioned above, that CIG has given El Paso an unjustified price differential, the examiner finds that the Denver and Pierce Compressor stations located between Denver and Cheyenne are not needed except for the sale to El Paso and should be allocated to the sale to El Paso, but we are of the opinion that CIG correctly cites the *Trunkline* case[18] to the contrary, for it states that "The Commission has consistently rejected allocation methods which would, in effect, assign costs of particular main line facilities to a specific customer."

On the economic feasibility of the Provo line the examiner finds that even assuming there is a market for the gas, El Paso has failed to meet the burden of establishing that the project is economically feasible, and, that if it is assumed that Edison ceases to be a customer of Southern California Companies, El Paso's portion of the Rock Springs project is hopelessly uneconomic. In our opinion the record indicates that with the Edison load El Paso's portion of the project would probably earn an adequate return by the third year. As pointed out by the examiner, El Paso did not introduce up-to-date exhibits with the Edison load included reflecting the cost of service applicable to the gas which it would deliver to Southern California Companies from the Provo line. Thus it is necessary to apply data relating to the years 1962, 1963 and 1964 to the years 1965, 1966 and 1967. On this basis and without the adjustments made by the examiner, the evidence shows a return of 3.9 percent for 1965, 4.5 percent for 1966 and the adequate return of 7.8 percent for 1967 in spite of the fact that only 475,000 Mcf/d of the Provo line's designed capacity of approximately 850,000 Mcf/d would be used by the contemplated project. If CIG's rate differential in favor of El Paso is eliminated, the return figures fall to 2.54 percent for 1965, 3.63 percent for 1966 and 6.9 percent for 1967.[19] Without the Edison

[18] *Trunkline Gas Company*, 21 FPC 704, 711.

[19] Of course, if the price to California is correspondingly raised as contemplated by the comparisons made above, the return figures would not be reduced.

load and eliminating the 1.6 cents per Mcf differential, return is reduced to 1.71 percent, 2.93 percent and 3.82 percent respectively.

There is nothing in this record, however, to show that Edison would not be a customer of the Southern California Companies for El Paso's gas if we were to certificate this sale. The possibility of its getting gas from the Pemex Project has now been eliminated. It is true that it has entered into an arrangement principally with the Humble Oil and Refining Company and other producers to purchase gas in Texas, and this is the subject of the application by Gulf Pacific in Docket No. CP63–223, but there is no evidence concerning Gulf Pacific before us at this time, the application having been filed long after the record herein was closed. As already noted, in this application there is proposed a pipeline to extend from the Texas Gulf Coast to California to carry gas purchased from the producers by Edison and the Department of Water and Power of the City of Los Angeles. However, these plans of Edison are dependent on the completion of that proceeding and the grant of required certificates by this Commission. For purposes of this proceeding no consideration may be given to the Gulf Pacific application.

The Tennessee Subsidiaries argue that El Paso, CIG and the Southern California Companies have violated the policy of the antitrust laws with respect to the California market. We are aware that "anti-trust considerations are relevant to the issue of public 'convenience and necessity' ". *California* v. *F.P.C.*, 369 U.S. 482, 485. However, because we find Rock Springs deficient in other respects and because any new project proposed by the present applicants would probably differ from it, there does not seem any reason to discuss it in relation to the policy of the antitrust laws. This is also true with respect to the matter now pending before the Supreme Court in *United States* v. *El Paso Natural Gas Co.*, No. 94, October Term 1962, jurisdiction noted May 24, 1963.

(e) *Conclusion on public convenience and necessity.*—The record is clear that there is no immediate need for a new pipeline to transport gas to California even though the California market is growing. At the same time the record shows that other ways of bringing gas to California appear to be less costly than that proposed by the applicants here. Certainly there is no need to preserve indefinitely the cheap expandibility of the Transwestern system at the cost of the California consumers. The other alternatives provide further expandibility as a protection to the California market needs. Thus we are compelled to deny the project, but we shall institute a further proceeding so that full consideration may be given to the other possible routes for transporting gas to California. In doing so we recognize that the applicants may no longer be able to hold together this particular project, or be able to reconstitute a similar project. However, if it turns out that there are substantial gas reserves in Wyoming and the needs of the market make it feasible to transport this gas to California rather than some other area of need, we are confident that means will be found to bring it about.

Initiation of Comparative Proceedings

Although we are denying certificates to the Rock Springs Project, in view of the expanding market for natural gas in Southern California and the need for substantial additional supplies beginning with 1968, we shall institute a proceeding to determine how the long term needs for natural gas deliveries to Southern California may be met in the manner which is most desirable from the standpoint of the public interest. In the new proceeding further opportunity will be given for the presentation of evidence on alternative methods for serving the Southern California market. These methods may include, in addition to the pending Gulf Pacific proposal, expansion of El Paso's Southern Division's

facilities, expansion of Transwestern, and the delivery of gas by PGT into Northern California as well as a line from the Rocky Mountain area to California. We do not exclude other possibilities. However, we reserve the right to exclude from the proceeding proposals for limited expansions by Transwestern and El Paso not involving construction of major facilities.

In view of this determination, we shall defer action on the application of Gulf Pacific in Docket No. CP63–223, and shall consolidate it with any other applications for major pipeline construction for the supply of gas to the Southern California market filed within three months of the issuance of this opinion and order.

The Bivins Line

In the course of the hearing evidence was developed that CIG's line extending from Denver, Colorado, to Bivins, Texas, is obsolete in design and has deteriorated. Engineering reports show that the line is Dresser coupled instead of being welded at the joints as in modern practice, and that it leaks at many of the couplings. In our opinion this line should be repaired or replaced irrespective of our decision in the Rock Springs Project. In fact, CIG has filed an application in Docket No. CP63–344 which proposes among other things a new 24 and 20-inch pipeline from Morton Junction, Colrado to Denver and to retire a major portion of the Bivins-Denver transmission line. Because of this filing, it is not necessary to take steps on our own motion to bring about rehabilitation and repair of the Bivins' line. Furthermore, we shall deny CIG's application in the present Docket No. G–16904 to abandon the line immediately. The record shows that the line has operated for some years in doubtful condition and could be operated for some purposes in an interim period.

The Commission further finds:

(1) El Paso and CIG are, and Pacific Northwest, if a separate corporation, would be, natural-gas companies within the meaning of the Natural Gas Act.

(2) The facilities which El Paso, Pacific Northwest and CIG propose to construct and operate and those which CIG has constructed and is operating under temporary authorization, as described in their applications, are for the transportation and sale of natural gas in interstate commerce for resale subject to the jurisdiction of the Commission and the construction and operation of such facilities and the proposed sales and deliveries of natural gas are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) CIG is able and willing properly to do the acts and to perform the service by means of the temporarily authorized facilities proposed by it; and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the temporarily authorized facilities as proposed by CIG and any sales subject to our jurisdiction to be made thereby are required by the public convenience and necessity, and a certificate therefor should be issued.

(5) El Paso, Pacific Northwest and CIG have not shown that the remainder of the facilities proposed and the sales to be made thereby are or will be required by the present or future public convenience and necessity or that the public convenience and necessity permit abandonment of the Bivins line.

The Commission orders:

(A) A certificate of public convenience and necessity is hereby issued in Docket No. G–16904 authorizing CIG to construct and operate the facilities heretofore temporarily authorized in Docket No. G–16904, as described in CIG's application, and to transport natural gas as proposed therein and to make

any sales of natural gas subject to our jurisdiction affected by such facilities, upon the terms and conditions of this order.

(B) The certificate herein issued shall be accepted in writing by a responsible official of CIG. The general terms and conditions set out in paragraphs (a), (c) (insofar as applicable to facilities which have already been constructed), and (e) of Section 157.20 of the Commission's *Regulations Under the Natural Gas Act* shall attach to the issuance of the certificate. CIG shall file the applicable information called for by paragraph (c) of Section 157.20 within 30 days from the issuance date of this order.

(C) The application of CIG in Docket No. G–16904 is hereby denied in all other respects, including abandonment of the Bivins line.

(D) The applications of El Paso in Docket No. G–16235 and of Pacific Northwest in Docket No. G–16237, are hereby denied.

(E) Exceptions not granted herein are denied.

Commissioner Morgan *dissenting.*

MORGAN, Commissioner, *dissenting:*

The majority of the Commission, having deliberated since oral argument on February 21, 1963 concerning the preparation of the opinion, repeatedly revised, by which it hopes to justify the denial of certification in this case which it announced to a startled world by press release last May 1,[1] now insists that I prepare my dissenting opinion with impossible haste. Although the occasion giving rise to this sudden passion for speed has by no means been made clear to me I shall try to accede to it and, to the best of my ability in these circumstances, present my objections to the action of the majority in denying the certificate. It is my hope that the reader of this document will exercise some forbearance in his judgment of its style, clarity and completeness.

Most laymen who read the majority's opinion can be expected to conclude that this was merely a rather routine but puzzling case wherein the Commission refused to authorize an additional pipeline to serve the admittedly increasing demands of a huge and growing state, because (after subjecting that "expanding market" to hyper-critical scrutiny) it appeared that the proposal was premature—taking into consideration time for judicial review and construction—by a year or two.

But those people who read the majority's opinion and who realize the need for a pipeline system that would integrate the towering long-range demands of the far-western United States with the distant southwestern, Rocky Mountain and western Canadian natural gas fields, will probably wonder whether the Federal Power Commission knows what it is doing.

And those who know the history of this case, including the years of incessant pressure exerted by this Commission on El Paso Natural Gas Company to advance just such a proposal as is here rejected, will be rather sure the Commission does *not* know what it is doing.

* * * * * * *

The pipeline system linking the natural gas fields of the southwest with the market areas in southern California and the Pacific Northwest resembles a large, right-angled triangle. The westerly axis, running roughly north and south is represented by the lines of the Pacific Transmission and Pacific Gas & Electric Companies, running from the western Canadian fields southward to California;

---

[1] That press release contained this remarkable gem of understatement: "* * * because of the many complexities of the case, preparation of the formal opinion may require considerable additional time."

the base is formed by the lines of the Transwestern and El Paso companies running eastward from southern California across to the New Mexico, west Texas and Oklahoma natural gas supply field; and the hypotenuse is formed by the El Paso line that runs from the San Juan basin fields in a northwesterly direction through the Rocky Mountain supply region to the market centers of the Pacific Northwest and thence northward to the gas fields of Canada.

At a point about in the center of that hypotenuse line, specifically at Rock Springs, Wyoming (in the middle of the Rocky Mountain gas reserves), the applicants herein propose to run an additional line straight southwestward to the southern California market—exactly bisecting, as it were, the existing, grand pipeline triangle. Thus, by virtue of this single new connection with the (hypotenuse) line running from Canada through the Rocky Mountain area to the southwest, the insatiable gas market of southern California (long dependent solely upon southwestern reserves) would at last be linked by a single new connection to new sources of Rocky Mountain, Canadian, southwestern, and (through Colorado Interstate facilities described later) Kansas-Hugoton gas reserves.

To portray the need for and the logic of the proposed Rock Springs line, it is necessary briefly to review the development of natural gas pipeline service to California; the difficulty that El Paso has experienced in obtaining reserves necessary to sustain present and future levels of that service; and the basic pipeline network that presently exists.

El Paso Natural Gas Company entered the southern California gas market shortly after California's own supply of natural gas began to fall short of market demands. Under a certificate granted by this Commission in May 1946, El Paso constructed a 1,000-mile pipeline (the original, base line of the triangle) extending from Dumas in west Texas to Blythe in southern California, for the sale of gas from the Permian and Panhandle fields in Texas to the Southern California Companies.[2] El Paso's second major step was taken when it effected a complete looping of that base line, and constructed a lateral therefrom to deliver gas at Topock from the Permian and Panhandle fields to the Pacific Gas & Electric Company (serving central and northern California), under an authorization granted in February 1949.[3] Thereafter, and as the demands of the California market expanded, El Paso continued to expand its transportation facilities and, until 1960,[4] to serve as the sole supplier of out-of-state natural gas to California.

But unlike the market demands of Southern California, El Paso's supply reserves are not unlimited. The (out-of-state) natural gas fields closest to California are in the San Juan basin, the Aneth field, and the Permian basin—all in the southwest. These fields now constitute southern California's chief source of supply; they are among the oldest fields in the country; for years they have supplied some of the largest consumer areas in the country in addition to El Paso's California markets; and the enormous daily withdrawals from these fields constantly lessens their productive lives.[5] Accordingly, early in the 1950's it became evident that El Paso would have to obtain additional sources of reserve supply if it were to keep pace with the ever-increasing demands of its California market.

---

[2] 5 FPC 115.

[3] 8 FPC 992.

[4] As explained later, in 1960 the Commission authorized the construction of lines to deliver Canadian gas to northern and central California, and southwestern gas to southern California, by the Pacific Gas Transmission and Transwestern Pipeline companies, respectively.

[5] 22 FPC at 1124.

The most obvious supplementary source was the Pacific Northwest Pipeline (the hypotenuse of the triangle), certificated by the Commission in June 1954.[6] That line, extending from the San Juan basin in New Mexico to Pacific Northwest's primary market in the northwest, was supported by Pacific's gas reserves in New Mexico, Colorado and Wyoming. Also, the Commission pointed out, that line—

> * * * traverses three large sedimentary basins in the States of Colorado, Utah and Wyoming in which there has been only minor development due to the lack of a market. It is common knowledge * * * that development of this potentially productive area will be retarded unless stimulated by a market outlet.[7]

El Paso moved immediately to obtain supplementary sources of that Canadian and Rocky Mountain gas for its California market through Pacific's facilities. In November 1955, when Pacific was authorized to expand its system to import about 300,000 Mcf/d of gas from Canada,[8] El Paso therein also received authorization (in G–8932) to obtain about 100,000 Mcf/d of Canadian and Wyoming gas from Pacific Northwest under an exchange arrangement. That gas, plus additional quantities obtained from the Permian and San Juan basins, provided El Paso with the supply needed to meet the increased demands of its California and other (on-route) consumers at that time.

But it did not provide much more. "In fact," the Commission pointed out—

> the record shows that the three California companies will have requirements for larger volumes of natural gas at a very early date in excess of the supply from their present California sources and the total gas which El Paso will be delivering to them under its present proposal.[9]

El Paso was well aware of this: its own proposal to provide the needed "larger volumes" had been rejected! In this same docket, El Paso had originally proposed to construct a new line (a parallel of the presently proposed Rock Springs line) to convey Canadian gas purchased at Pacific's compressor station No. 11 near Mountain Home, Idaho, to a point just above the elbow of the California-Nevada border near Reno; and there to deliver the gas to Pacific Gas & Electric for delivery to the Southern California Companies. But PG&E refused to accept delivery at any point other than Topock, far to the south on the Arizona-California boundary; Pacific Northwest had to sell that gas at other points on its system instead; and the Commission refused El Paso's request to reverse the examiner's ruling rejecting all El Paso's evidence on the several alternative methods of providing additional quantities of gas to the California market.[10]

The inability of El Paso's southwestern reserves to sustain the demands of its California market became increasingly evident in the years that followed. In December 1956, for example, (in authorizing El Paso to loop its southern facilities to deliver additional quantities of gas to southern California), the Commission felt constrained to comment as follows:

> The record demonstrates that the additional gas supplies acquired by El Paso will be adequate to serve the three California utilities with the additional 151,725 M.c.f. per day on a firm basis for a period of 15 years.

---

[6] Commission Opinion No. 271, at 13 FPC 221. In the same proceeding the Commission also authorized Colorado Interstate to construct its 365-mile, Wyoming transmission line (which figures in the subject proceeding). It ran from a point on Pacific's line near Rock Springs, Wyoming, eastward across Wyoming and directly south to Denver, Colorado; and carried 100,000 Mcf/d of gas the Commission therein authorized CIG to purchase from Pacific, eastward and south to CIG's Rocky Mountain customers.

[7] 13 FPC 230.

[8] Commission Opinion No. 289, at 14 FPC 157.

[9] *Ibid.*, at 169 (November 1955).

[10] 20 Fed. Reg. 7173–75 (September 24, 1955).

> On this basis, El Paso's ability to meet its system requirements is left unaffected by its proposal in this proceeding. Staff opposes issuance of the certificate, however, for the reason that the evidence does not show that El Paso will be able, commencing in 1959, and thereafter, to supply gas to meet its estimated system requirements. * * * [We] are [not] unmindful of the serious problem facing El Paso with respect to its ability to meet its system requirements. The record conclusively demonstrates that after 1958 the requirements of present customers will exceed El Paso's ability to supply gas to them. This, of course, is of serious concern not only to El Paso but to ultimate consumers in California and elsewhere on the El Paso system. * * * [We] shall require in the next certificate proceeding which El Paso has before us, that it present a definite program demonstrating how its future system requirements are to be met and how the ultimate consumers will be protected.[11]

When El Paso's next certificate application came before the Commission in March 1958,[12] the Commission observed that "the evidence shows that, with its supplies of gas now certificated, El Paso will be able to meet in full the estimated market requirements for natural gas of its existing customers only through 1963"; and accordingly it remanded the question of the sufficiency of El Paso's reserves to the examiner.

The examiner issued his decision in May 1959.[13]

> California has had a very large increase in its population and in its industry," he reported, "and this area will constitute an ever increasing market for natural gas. * * * El Paso as a matter of business necessity must obtain well over a trillion cubic feet of deliverable gas per annum just to stand still, i.e., to maintain the present balance of reserves relative to requirements. * * *
>
> The adequacy of gas supply is a relative matter, and adequacy can only have meaning when related to requirements. Every time El Paso increases its requirements there must be an increase in gas supply in order to maintain the balance which existed theretofore between these two elements and when supply is not adequate relative to requirements the company will have to buy more than an incremental amount in order to reach a reasonable relationship between reserves and requirements. To improve materially the present relationship between supply and requirements, it would be necessary for El Paso to acquire well over a trillion cubic feet per annum even if it did not obtain any additional authorizations from the Commission to sell more gas.[14]

The examiner concluded that El Paso's available reserves were barely enough to support this particular sale. Affirming the examiner, the Commission (again) observed that:

> * * * it is clear that any future authorizations to El Paso will have to be based on additional reserves in excess of the annual increments necessary to maintain the existing minimum balance for its present services.[15]

Further on this point, in its Order Denying Rehearing, the Commission stressed that—

---

[11] 16 FPC 1356, 1356–57.

[12] Docket Nos. G–11797 and G–12580, at 19 FPC 393, involving applications for the construction of additional facilities for the delivery and sale of additional quantities of southwestern gas to southern California.

[13] 22 FPC 906.

[14] *Ibid.*, at 951.

[15] 22 FPC 900 at 904.

> El Paso * * * has only a bare minimum of reserves and is experiencing difficulty in maintaining and adding to these reserves. The entire record shows that in the area served by El Paso there is a great need and demand by all types of customers for additional gas.[16]

El Paso's efforts to obtain and to connect needed "additional reserves," which efforts form the basis of the Rock Springs proposal here rejected, are well known. In brief, they involve (1) El Paso's application in the summer of 1957 to merge with and thereby acquire access to the southwestern, Rocky Mountain and Canadian supply sources of the Pacific Northwest (hypotenuse) pipeline; (2) El Paso's proposal, filed in September 1958, to connect those additional reserves with the southern California market by the shortest route possible—namely, by a line running from Rock Springs in the center of the Pacific Northwest line directly down to southern California; and (3) El Paso's application filed in December 1958 to purchase Canadian gas through the Canada-to-California line simultaneously proposed by Pacific Gas Transmission Company (the westerly leg of the triangle), and to transport that Canadian gas to southern California via the Pacific Northwest and Rock Springs lines.

To protect the feasibility of these arrangements, El Paso intervened in the proceedings involving Transwestern's proposal (filed during the period April to September 1958) to construct a new pipeline to parallel El Paso's lines from the Panhandle and Permian basins in the southwest to southern California. As certificated by the Commission, Transwestern was authorized to deliver 300,000 Mcf/d to the Southern California Companies through a line having an initial capacity of 350,000 Mcf/d and a potential of 640,000 Mcf/d. In this Transwestern proceeding, El Paso asked the Commission in March 1959 either (1) to find that the Southern California Companies' requirements would support both the volumes Transwestern would deliver and the volumes El Paso would deliver over its Rock Springs line; or (2) if it did not make that finding, to consolidate the Transwestern and Rock Springs applications for a comparative hearing. *The Commission refused.* Granting that request (filed two days, before the close of the Transwestern hearing), it said, would delay the proceeding. Anyway, the Commission added, project—

> exclusivity is not an automatic inference where *the area to be served has demonstrated capacity in the past for absorbing substantial increments of natural gas* and two or more applications sought to be consolidated have been filed at a considerable time from each other. [Emphasis supplied.][17]

In his decision issued July 1, 1959, approving the Transwestern proposal, the examiner announced that as to the needs of southern California market, the evidence showed that the Transwestern and Rock Springs lines combined would not fill the requirements of the southern California market. In the examiner's own words—

> This record is replete with evidence that both the Transwestern and the El Paso [Rock Springs] quantities of natural gas are urgently required to meet the heavy actual and anticipated growth in peak-day firm demand experienced in this market area, also that in the very near future the Gas Supply Company, and its affiliated companies, the Southern California Companies, will require additional quantities.[18]

Affirming, the Commission (on August 10, 1959) stated:

> we * * * adopt so much of the examiner's decision as treats of the need for this gas in the Southern California markets.[19]

---

[16] 23 FPC 213 (January 1960).
[17] 21 FPC 594 at 596 (April 28, 1959).
[18] 22 FPC 407 at 413.
[19] 22 FPC 391 at 393.

Next, on December 23, 1959, the Commission unanimously affirmed the examiner's decision[20] approving the El Paso-Pacific Northwest Pipeline Company merger. The merger was particularly desirable, the Commission said, for the reasons (among others) that "the record shows * * * that California has a continuing and increasing demand for gas, and is now importing in excess of 2,000,000 Mcf per day"; that "present sources of supply for this imported gas are the San Juan Basin, the Aneth Field, the Permian Basin and the Panhandle area of Texas"; that "El Paso is in need of additional supplies of gas in order to continue rendition of service to California"; and that "the merger constitutes a step in the direction of increased supplies of gas."[21]

As to the claim that "the merger will not make the gas supplies of Pacific's system available to El Paso's present customers * * * without the construction of extensive pipeline facilities," the Commission said, "in any event, if the continuing increased demands for gas in California are to be made available, new construction must be undertaken by El Paso or some other company."[22] Further, the Commission asserted, "* * * we cannot appraise the proposed merger from a narrow viewpoint but must look to the future when gas supplies north of El Paso's present system become more important as Permian and San Juan reserves decrease and when additional facilities are built to provide free movement of gas north and south."[23]

The following August,[24] the Commission also approved (a) the proposal of Pacific Gas Transmission Company and its parent, Pacific Gas & Electric Company, to construct a line from the Canadian border south to Antioch near San Francisco to serve the northern two-thirds of California; and (b) El Paso's purchase of 50 million Mcf of Canadian gas annually from Pacific Gas Transmission at a point near Spokane, Washington for sale (by displacement) in southern California. As the examiner in the Pacific Northwest Pipeline-El Paso merger proceeding brought out,

> * * * the purchase of this additional quantity of Canadian gas was only feasible because the gas could be transported and sold to El Paso for delivery to Southern California Companies by means of the Provo-Las Vegas [i.e., Rock Springs] pipeline.[25]

As to the needs of the southern California market, the examiner in this Pacific Gas Transmission-El Paso proceeding found—

> * * * that El Paso not only has a market for the Canadian gas to be supplied to California by displacement, but [it also] has an immediate and pressing need for such resources, which, the record shows, are not obtainable elsewhere.[26]

And the Commision affirmed him. So for the foregoing reasons, and for other reasons discussed later, the examiner, the Federal Power Commission, and the California commission unanimously approved the Rock Springs project when it came before them in the latter half of 1960.

In the words of the United States Supreme Court, the function and responsibility of the Commission in certificate matters such as this one is as follows:

> The Commission is the guardian of the public interest in determining whether certificates of convenience and necessity shall be granted. * * *

---

[20] 22 FPC 1102 (November 20, 1959).
[21] 22 FPC 1091 at 1096.
[22] *Ibid.*, at 1098.
[23] *Ibid.*, at 1099.
[24] 24 FPC 134 (August 5, 1960).
[25] 22 FPC 1102 at 1111 (November 20, 1959).
[26] 24 FPC 144 at 156 (April 29, 1960).

> [I]ts function is * * * to determine from its analysis of the total situation on which side of the controversy the public interest lies."[17]

It is necessary briefly to describe "the total situation."

The Rock Springs pipeline project has five main advantages and benefits. First and foremost it is a proposal whereby the vast and rapidly increasing natural gas requirements of southern California may be linked with the gas reserves of the Canadian, Rocky Mountain, southwestern, and Kansas-Hugoton natural gas fields by a single new line. It would do this by extending a single new line from southern California, 500 miles in a northeasterly direction to Rock Springs, Wyoming, where—

(a) because Rock Springs is located in the middle of the Rocky Mountain gas fields, the new line would make Rocky Mountain gas reserves available to southern California; and

(b) because Rock Springs is located in the middle of the line whose northern end extends to Canada, the new line would make Canadian gas reserves available to southern California; and

(c) because Rock Springs is located in the middle of the line whose southern end extends to the southwest, the new line would make additional southwestern gas reserves available to southern California; and

(d) because Rock Springs is located at terminus of Colorado Interstate's system that extends eastward to the Kansas-Hugoton fields, the new line would make Hugoton-Panhandle reserves available to southern California.

To say that this multi-faceted reserve supply feature solely and sufficiently justifies the Rock Springs project would be to employ the most restrained form of understatement. Suffice it to say that this Commission has long and rightly insisted that the public interest *requires* that the southern California market be provided with supplementary natural gas reserves; and that the Rock Springs proposal responds to and fulfills that requirement in a manner far surpassing the highest expectations.

Yet the Rock Springs proposal has four other major benefits. And each of them, subsidiary though it may be to the central long-range reserve supply purpose of the project, possesses public interest features of substantial magnitude and is considerably to be desired for its own sake, as will be seen. Thus, the second major benefit is that by providing Rocky Mountain gas reserves with a direct and open outlet to southern California, the Rock Springs proposal would give further impetus to the development and discovery of additional Rocky Mountain gas. That these reserves are already of vast magnitude, even though inadequately explored because of present lack of markets, is too well known to require documentation.

Third, by providing a central point at which gas from the Canadian, Rocky Mountain, Hugoton-Panhandle, and San Juan areas can be pooled, controlled and dispatched, the Rock Springs project would provide the economies of all (related) regions, presently dependent upon gas from a single source, with the assurance and flexibility of continued supplies from any one of several different areas in the event of a shortage or disruption in existing service patterns. Moreover, the project would make the increasing reserves of Canada and the dwindling reserves of the southwest increasingly *available* to southern California, without making that area increasingly *dependent* upon either. This fact has long-range rate advantages to southern California which have been ignored in the present proceeding.

Fourth, by employing the under-utilized northwest-southwest pipeline to bring gas south from Canada and north from the San Juan basin for southern

[17] *U.S. v. Detroit Navigation Co.*, 326 U.S. at 241 (1945).

California, the Rock Springs project would improve the revenue position of that presently under-utilized line and minimize the present probability of rate increases which will be inescapably damaging to the economies of the several states it traverses and to the welfare of the public it serves.

Fifth, by providing Colorado Interstate with additional markets for its gas and through-put for its lines, the Rock Springs project would give CIG the additional sales base that would enable it, without increasing rates, to replace its ancient, hazardous Panhandle-to-Denver artery with a new 360-mile line. Conversely, denial of the certificate will require CIG to replace that line at the sole expense of its Colorado customers, who will unquestionably be faced with a consequent rate increase.

This, in brief, is "the total situation" to which this Commission was required to address itself. This, then, is "the total situation" which this Commission must find to be or not to be in the public interest.

As the history of large-scale, venturesome undertakings shows, the feasibility of a project involving long-range planning and subsidiary benefits of the scope and magnitude of Rock Springs, cannot be determined by splitting it asunder and testing each of its integral parts by legalistic standards and attitudes developed to meet the problems of the past. But naturally, a venture having the magnitude and benefits of Rock Springs may be expected to generate a strong opposition from rival communities and promoters. And we may expect those rivals to demand that it be criticized, analyzed and judged by every conceivable rule and standard however picayune.

That is the situation here.

First, as noted later, this project has already been certificated (conditioned upon approval of the California Public Utilities Commission) by FPC. And approval of the California commission has been granted on two occasions. At the present time and in this proceeding the Rock Springs project is supported by the Southern California Companies, whose utility responsibilities require them to assure themselves of long-range gas supply reserves; by the City of Los Angeles, California because the economic sustenance and growth of the third largest city in the Nation dictate that additional reserve supplies be made available; by the Public Service Commissions of the States of Nevada, Utah, Wyoming, Idaho, Oregon, and Washington because the sale of the gas, the development and discovery of additional gas supply reserves, the construction of the new line, and the utilization that the project would make of the existing transmission system, is necessary to the economic health, industrial growth, and general welfare of these states; by the largest public customer of Colorado Interstate, namely the Public Service Company of Colorado and its subsidiaries, the Colorado-Wyoming Gas Company and the Pueblo Gas and Fuel Company, because they are anxious to obtain improved service from and avoid rate increases by CIG; and by the City of Colorado Springs, Colorado, presently served by and exposed to CIG's ancient and hazardous Bivins-to-Denver line, because it also is anxious to obtain the improved service, to avoid the rate increases, and to enjoy the related benefits that the CIG portion of the Rock Springs project would provide.

On the other side, the Rock Springs project is opposed by the Tennessee Gas Transmission Company because it or its subsidiaries want to build a new transcontinental line from the Atlantic Coast of Texas for the sole purpose of selling Atlantic Coast gas as boiler fuel to the Southern California Edison Company, which has always been supplied by the Southern California Companies, with resulting rate benefits (due to the size of the Edison boiler fuel sale), to the household consumers of Southern California; by Edison itself because it wants and is determined to get its own independent gas supply

service, even though more costly; by Transwestern Pipeline Company because it believes its existing line from the southwest could be used to meet southern California's additional requirements for the next two or three years; by Denver and by the Colorado Public Utilities Commission ostensibly because they claim to believe CIG will neglect its utility responsibility in Colorado if it participates in the Rock Springs project; and by this Commission's staff for a series of individual reasons too numerous, complex and trivial to enumerate; and finally by the California oil companies because they fear that the availability of the needed natural gas supplies to southern California will diminish their sales of oil.

It is very difficult (and the majority opinion does not make the attempt) to state flatly that all *or any* of these objections are based on a sound, factual elucidation of the public interest.

The application for this project was filed five years ago, during the summer of 1958. Two and one-half years later, it was unanimously approved, unscathed, by and with the blessing of this Federal Power Commission. Then and there, on December 27, 1960, this Commission ordered—conditioned *only* upon the California commission's approval of the portion of the line to be built by the Southern California Companies to receive this Rock Springs project gas—that this entire project "shall be constructed and placed in operation within eighteen months."[28] The Commission reached its unanimous decision on the basis of a lengthy hearing record, briefs, and reply briefs, an extensive and highly affirmative examiner's decision,[29] exceptions thereto by all interested parties, a lengthly oral argument, and more than due deliberation.

Unfortunately, time does not here permit an exposition or recital of the public interest aspects of the Rock Springs proposal which compelled this Commission to find this project to be overwhelmingly in the public interest. It therefore will again suffice to say (for that record, decision, and opinion speak for themselves) that the examiner and the Commission exhaustively covered and considered each and every objection raised against the project, however picayune, myopic and unimaginative, and including those now seized upon by the present majority, weighed them, and found each objection wanting. There as here, of course, some of those objections were beneath administrative notice.[30]

Next, despite the fact that the California commission was only concerned primarily with the immediate need of the southern California market for this Rock Springs gas and the economic feasibility of the intrastate segment of the line to convey it to the southern California load centers, the California commission unanimously found the entire Rock Springs project to be in the public interest not once, but twice; and its reasons for so doing so were affirmed by the

---

[28] 24 FPC 1137 at 1146.

[29] 24 FPC 1147 (July 15, 1960).

[30] The examiner's treatment (at 24 FPC 1180) of one of the Colorado PUC's major objections to the project is illustrative.

> The reversal of the flow of the gas in the Green River line * * * together with the extension of its system to Salt Lake City (Provo, Utah) opens up to Colorado an avenue of new gas service to the west and to California—a market which is notoriously hungry for gas. Colorado has not released or reduced any of its facilities or connections with markets to the eastern areas of service; it has merely opened new westward markets. In cooperation with El Paso it has become a supplier of the southern California market. It has been demonstrated that there is substantial economy to the Rocky Mountain areas flowing from the participation of the California customers in the costs of the newly oriented system. The Brief of the Colorado PUC is particularly erroneous in speaking of the possibility that the Rocky Mountain customers could be required to pay for the capacity of [CIG's existing Denver to] Rock Springs line twice. Counsel certainly knows better.

Supreme Court of California and left undisturbed by the Supreme Court of the United States.

On February 21, 1961, however, this Commission granted a rehearing of its (December 27, 1960) approval, for the sole purpose of determining whether the "changes made" [21] in the Rock Springs project to meet the intrastate requirements of the California commission would alter the basic project proposal previously approved by this Commission.[22]

Eventually, and on the basis of their recently filed (and subsequently withdrawn) "Pemex" proposal to build a new line from Texas through Mexico to southern California for the transmission of gas to Southern California Edison Company, the subsidiaries of the Tennessee Gas Transmission Company were allowed to intervene in the rehearing.[23] The "hearing," if it can be called that, thereafter became an administrative shambles, as TGT counsel was allowed to ransack every crevice and cranny throughout the entire foundation and framework of this thrice-approved project. The entire performance, it must sadly be said, revealed the administrative process at its worst.[24]

The examiner's decision came forth on December 19, 1962. Its contents are well-known. It is based on the negativistic assumption that if an infirmity can be shown in any of the many separate elements comprising the entire proposal, the proposal must be rejected in its entirety. Then, quoting large tracts of the Tennessee Gas subsidiaries' brief to support a finding that such infirmities exist, the examiner discards the proposal.

To their credit, my colleagues have rejected many of the examiner's arguments—and I use the word "arguments" advisedly.

---

[21] Which "changes," our order of July 21, 1961 explained, "concern only the time at which such [Rock Springs] facilities will be constructed."

[22] That this was the sole purpose of rehearing is evident from that Order Granting Rehearing and the dissent thereto, both dated February 21, 1961, in this Docket No. G–16235, *et al.* The implication of the majority's claim (here) that such order "granted rehearing without limitation" is entirely misleading; and is entirely belied both by that Order and by the thrust and tone of the procedural orders subsequently issued herein.. The same must be said of the majority's insinuation that rehearing was granted "to permit questioning * * * regarding alternative routes."

[23] Order of September 13, 1961 Granting Application for Rehearing of the Commission's Order (of July 21, 1961) Denying Intervention. Twice before, however, the Commission had ruled that proposals such as the TGT subsidiaries' "Pemex" proposal were contrary to the public interest. See Commission Opinion No. 315–A at 21 FPC 138 (1959), affirmed U.S. Supreme Court; and Opinion No. 333, at 22 FPC 900 (1959).

[24] Late in April 1961, however, the case was shocked from the torpor into which it had fallen, by the discovery that the Washington, D.C. hotel room of El Paso's Rock Springs counsel had been electronically "bugged" for the purpose of eavesdropping on the attorney-client discussions held therein. The extent to which that episode affected the subject proceedings remains unknown, however, for the officials of the Tennessee Gas Transmission Company invoked their privilege against self-incrimination during the limited grand jury proceedings that followed.

Another development, equally unrelated, was the April 1962 ruling of the Supreme Court in *California* v. *F.P.C.*, to the effect that this Commission should reconsider its 1959 approval of the El Paso-Pacific Northwest Pipeline Company merger, for the reason that the Commission should not have approved it until the Department of Justice concluded its (unsuccessful) attack upon the legality of that merger. As the central question in the subject proceeding is whether the proposal to provide southern California with reserve supplies of natural gas by means of the Rock Springs proposal squares with the public interest, the question whether that line (from Rock Springs, or Provo, to southern California) should be owned by El Paso or by Pacific Northwest (each of which is maintained on a separate accounting basis) may be pursued when the merger question again comes before the Commission for approval. The allusions of the majority opinion to that matter are, as admitted therein, absolutely irrelevant to this proceeding.

But the majority's opinion is an absolute paradox.

Having spent the past eight years upbraiding El Paso for basing each of its major certificate applications on only that increment of additional gas reserves necessary to sustain only that increment of additional demand which it proposed to meet immediately, the Commission now rejects El Paso's proposal to obtain long-range reserves in excess of the additional service immediately needed, for the reason that that increment of additional service immediately needed—and only that increment—(naturally) could be provided more cheaply by some "alternative means"!

But the paradox is greater. It is greater because the "alternative means" the Commission here nominates for rendering that immediate increment of service, is none other than the Transwestern Pipeline Company; yet, when previously requested to do so by El Paso, the Commission refused to hold a comparative hearing on the question of whether such service should be rendered by Transwestern or by the Rock Springs proposal![35]

But the more grievous error, and the absolute error, that underlies the majority's false cost comparison—and to use its own words it is "subject to an indefinable margin of error"[36]—is that is compares the cost of gas obtained through a project having a capacity of about 800,000 Mcf with the cost of gas obtained through an incremental proposal having a capacity of only about 400,000 Mcf; and, with no attempt to estimate the cost of the new facilities that will soon be needed to provide the additional 400,000 Mcf (discounted to the extent necessary for premature construction), it rejects the larger proposal because it is more costly than the smaller. In sum, the majority has rejected the Rock Springs proposal on cost grounds alone, but it has employed a totally inappropriate standard in doing so.

Throughout its discussion of this project, the majority opinion betrays an obsession with, and constantly returns to consideration of, the possible effect on the Rock Springs project of the loss of the Edison boiler fuel load. On what can such an obsession be based? It can only be based on the defunct proposal, voluntarily withdrawn by Tennessee, for the Pemex project. *That is not before us.* It is, in fact, dead at the hands of its own sponsor. The only other source of such a discussion is the Gulf Pacific proposal, also sponsored by Tennessee. *But that was not before us in this proceeding.* Having refused El Paso when it sought to turn the Transwestern certificate case into a comparative hearing with Rock Springs shortly *before* conclusion of the Transwestern case, how can we now deny this certificate on grounds which clearly show the Commission is consciously or unconsciously giving comparative consideration to a proposal filed *after this proceeding terminated!*

In any case the California Public Utilities Commission, whose job it is to protect the California consumers who will pay for needed future gas reserves and pipelines, held that this Rock Springs project is required by the demands of California consumers and will be economically feasible *with or without the*

---

[35] See Dissent, page 98.

[36] I wish to warn the reader that he should read the phrase "indefinable margin of error" with caution. It does not mean, as it may seem to the casual reader to mean, that the error is slight or insignificant. It means exactly what it actually says: that the majority makes no pretense of knowing whether their errors of computation are of minor *or of major* magnitude. Without going into the mathematics involved I suggest that, because the majority is comparing rates based on incremental use of existing capacity for the supply of moderate, short-term increases in demand, on the one hand, with rates based on new construction and new reserves which will unquestionably be needed in the near future for long-term increased demand *after short-term demand has been satisfied*, on the other, the chosen approach itself guarantees that the "indefinable margin of error" is inescapably of major dimensions.

Edison load. The majority opinion itself clearly shows the same finding, even without that load, after the usual short initial period of market development. So why the preoccupation with the Edison load? Not only is such preoccupation grossly improper, being based on extra-record developments not before us; it is pointless and senseless by the majority's own findings as well as those of the California commission.

There are many aspects of the majority's unique—to use a kindly word—handling of this proceeding and the rather self-conscious opinion by which it seeks to justify itself, but time will not permit as thorough an exploration of all those aspects as is richly merited. I would like to comment on one aspect, however, which the majority, with more or less becoming modesty, has buried in an obscure paragraph of the opinion rejecting this proposed construction. "In doing so," they say, "we recognize that the applicants may no longer be able to hold together this particular project, or be able to reconstitute a similar project."

This passage deserves expansion.

After years of repeated and increasing pressures and exhortations by this Commission to do so, El Paso, joined by CIG, secured vast reserves of gas in Canada, the Rocky Mountains, the southwest and in the Texas-Oklahoma Panhandles and in Kansas, and dedicated those reserves to the most rapidly-growing market in the United States—that of southern California. This was done prior to 1958—more than 5 years ago. It is reasonable to suppose, that, as experienced pipeline operators, they knew what they were doing—and moreover they had been told by this Commission to do it. Further still, their proposal was approved by this Commission in 1960 and twice by the direct representatives of the California consumers: the California Public Utilities Commission. So it is reasonable to suppose that these acquisitions were made prudently and with business acumen.

But anyone who supposes this was done without cost to the companies—and the lay reader is left free to make such a supposition by the majority opinion—does not know the natural gas business. The acquisition of these reserves and their retention in readiness for the Rock Springs project could only be done at great and continuing cost to the companies.

What was the cost? The majority opinion does not say. It does not say that the reason the companies "may not be able to hold together this particular project" is because even these large companies cannot continue to sustain such heavy expenses after more than 5 years of sustaining them without income already. It does not explain who will bear the burden of these sunk costs now that the Commission has reversed itself and killed a type of project it insisted for the past 8 years was needed and which it approved prior to these proceedings.

I have asked my colleagues what these expenses amount to and they have been unable to tell me. I have asked the staff to supply me with the figures and have not received them. I have asked for a study showing the rate impact on existing customers of these sunk costs which will be irretrievably lost if this decision is not reversed by the Commision on rehearing or by the courts, and I have yet to receive it. I can only suppose—with good grounds—that my colleagues are as much in the dark on this score as I am.

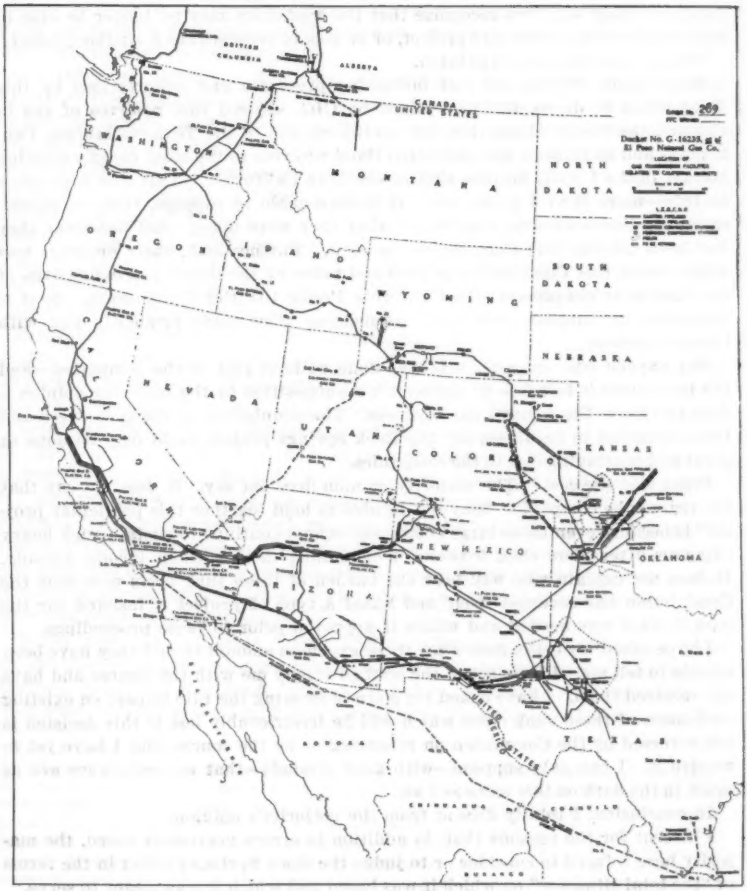
In conclusion, I totally dissent from the majority's opinion.

I dissent for the reasons that, in addition to errors previously noted, the majority here refused to consider or to judge the Rock Springs project in the terms of "the total situation" on which it was based and which it was meant to serve.

I further dissent because I believe that the tactics of the majority in constantly elevating the standards to which the applicants had to conform their proposal constitute an abuse of its own rules and rulings, an abuse of the certificating au-

thority of this Commission, and a denial of the due process of law to which parties appearing before this Commission are entitled.

And lastly, I dissent because I believe the capriciousness with which the majority has strewn the landscape of the western United States with the wreckage of this dramatic proposal; its bland disregard of the enormous, now wasted costs of holding that proposal together since 1956; and the high-handed manner in which it dismissed the inestimable subsidiary benefits this project would have provided the western States of this Nation—unless remedied on rehearing or review—will constitute a lasting impairment of the dignity and effectiveness of a once-great Federal regulatory agency.



INITIAL DECISION

UPON APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR PERMISSION TO ABANDON FACILITIES AND SERVICE

(Issued December 18, 1962)

PURDUE, *Presiding Examiner:* This decision is upon a rehearing of applications of Colorado Interstate Gas Co. and El Paso Natural Gas Co. (respectively filed on November 7, 1958 and September 10, 1958) seeking orders authorizing what is commonly referred to as the "Rock Springs project"; and of an application of Pacific Northwest Pipeline Corp. (filed on September 10, 1958) seeking permission to abandon a sale of natural gas and facilities used therefor. The Colorado Interstate application also seeks permission to abandon certain facilities.

The Rock Springs project is a joint undertaking of Colorado Interstate and El Paso. The project, except for changes and modifications hereinafter adverted to, is described in the original initial decision of Examiner Woodall herein (24 FPC 1147–50). Generally, Colorado Interstate seeks authorization, under Section 7(c) of the Natural Gas Act, to construct and operate (1) a new large-diameter transmission pipeline from its Bivins compressor station and its near-by Fourway compressor station, in the West Panhandle field of Texas, to Denver, Colorado; (2) facilities for tying in gas reserves in Oklahoma, Kansas and Wyoming; (3) a large-diameter transmission pipeline from Station No. 6 on the pipeline of Pacific Northwest (adjacent to Green River, Wyoming, and near Rock Springs, Wyoming) to Provo, Utah; (4) a number of compressor stations and increased horsepower in existing compressor stations; and (5) appurtenant facilities. Colorado Interstate further seeks authorization to sell to El Paso, at Green River, volumes up to a maximum of 237,712 Mcf[1] per day, and to transport for El Paso up to a maximum of 475,424 Mcf per day through the Green River-to-Provo pipeline. Finally, Colorado Interstate seeks permission and approval, under Section 7(b), to retire the major portion of its existing Bivins-Denver transmission pipeline and appurtenant facilities.

Generally, El Paso seeks authorization (1) to construct and operate a large-diameter transmission pipeline from the terminus of the Colorado Interstate pipeline at Provo to a point on the California border near Las Vegas, Nevada (by a slightly shorter route than that proposed at the original hearing), and a 14,000 HP compressor station on such line (an increase in the horsepower originally proposed); (2) to transport up to 475,424 Mcf per day through such pipeline; (3) and to sell the volumes transported to Southern California Gas Co. and Southern Counties Gas Co. of California at the California border, at a pressure of up to 800 pounds psig (instead of a lesser pressure originally proposed).

Pacific Northwest seeks permission and approval to abandon a sale of gas to Colorado Interstate at Green River (consisting of average daily deliveries of 101,154 Mcf and a contract demand of 118,856 Mcf), and facilities used for making such sale. Prior to the filing of Pacific Northwest's application, El Paso had acquired the stock of Pacific Northwest; and on August 7, 1957, had applied to the Commission for authorization, under Section 7(c), to acquire the assets of Pacific Northwest. On December 23, 1959, the Commission authorized the merger of said two companies. *Pacific Northwest Pipeline Corp. et al.*, 22 FPC 1091, 23 FPC 350. Thereupon El Paso adopted Pacific Northwest's application; and prosecuted, and now continues to prosecute, the same. Colorado Interstate transports the 101,154 Mcf eastward through its 22" pipeline between

[1] Unless otherwise specified, all volumes of natural gas referred to herein are at a pressure base of 14.73 psia.

Green River and Denver to serve its Rocky Mountain area customers. In the event abandonment of Pacific Northwest's sale to Colorado Interstate should be approved, this volume of gas would be utilized for the California market. Also, Colorado Interstate would reverse the flow in its Green River to Denver line so that gas would move westwardly from Denver to Green River.

The proposed combined pipeline of Colorado Interstate and El Paso between Green River and the California border will be referred to herein as the "Provo line"; and Colorado Interstate's pipeline between Green River and Denver, as the "Wyoming line."

Colorado Interstate and El Paso respectively estimate that the cost of construction of the former company's portion of the Rock Springs project would be $92,829,566; and the latter company's portion, $58,685,000—a total of $151,514,566.

Colorado Interstate has already constructed some of the facilities involved in its application pursuant to temporary authorization. All of the facilities so constructed at the time of the original hearing are described in the original initial decision, 24 FPC at page 1149. There has been one subsequent installation, the Rawlins compressor station (4500 horsepower), which was completed on August 5, 1960. The combined cost of construction which Colorado Interstate estimated that the foregoing facilities would entail is $9,255,308. The estimated cost of the remainder of the facilities involved in Colorado Interstate's application is, therefore, $83,574,258; and the estimated cost of the remainder of the facilities in the joint Rock Springs project, $142,259,258.

Except for a few customers served off of a transmission line of Pacific Gas and Electric Co. the whole of Southern California is served with natural gas either directly by the Pacific Lighting System or by two utilities to which such system sells gas at wholesale. The Pacific Lighting System is composed of a parent corporation, Pacific Lighting Corp., and three subsidiaries; namely, Southern California Gas Co., Southern Counties Gas Co., and Pacific Lighting Gas Supply Co., Southern California Gas Co., and Southern Counties Co. are distribution companies, and Pacific Lighting Gas Supply Co. is responsible for gas procurement for the Pacific Lighting System. Hereinafter, for convenience, Southern California Gas Co. and Southern Counties Gas Co. (and at times Pacific Lighting Gas Supply Co.) will be referred to, either collectively or individually, as the "Southern Companies." The utilities to which the Southern Companies sell natural gas at wholesale are San Diego Gas & Electric Co. and the City of Long Beach Municipal Gas Department.

The initial decision of Examiner Woodall contains the following language: "El Paso's existing pipeline, which was constructed by Pacific Northwest Pipeline Corporation (now the Northwest Division of El Paso). . .". 24 FPC at p. 1147. In the light of developments subsequent to the issuance of such decision, the above-quoted expression is not justified. At the time of issuance of the decision, the Commission, in *Pacific Northwest Pipeline Corp. et al.*, Docket No. G–13018 *et al.*, by order had authorized the merger of Pacific Northwest into El Paso. On review of such order, the United States Supreme Court, in *California* v. *Federal Power Commission*, 369 U.S. 482 (decided April 30, 1962), held that the Commission could not proceed to a decision on the merits of the merger application in view of the pendency of a suit by the federal government against El Paso and Pacific Northwest challenging the validity, under the antitrust laws, of a transaction whereby El Paso had acquired the stock of Pacific Northwest. The Supreme Court remanded the case to the Court of Appeals for the District of Columbia, and the latter court vacated the Commission's order authorizing the merger.

The original hearing herein terminated on March 30, 1960. Thereafter, by order issued December 27, 1960, the Commission authorized the Rock Springs

project, subject to certain conditions. On the day following, the Public Utilities Commission of the State of California issued a decision and order authorizing the Southern Companies to construct and operate a large-diameter pipeline between the California-Nevada border and Newberry, California, for transporting the gas toward contemplated market areas in Southern California.

The order of the California Commission was made subject to conditions which necessitated a revision of contracts, pertaining to the project, between Colorado Interstate and El Paso, and between El Paso and the Southern Companies. The changes relate principally to the timing of the Rock Springs deliveries of gas. As originally proposed, initial deliveries from El Paso to the Southern Companies at the California-Nevada border were to commence not later than January 1, 1961, with a "build up" from an initial 202,300 Mcf per day, increasing to 475,424 Mcf per day of firm gas by January 1, 1962. As now proposed, El Paso would commence deliveries to the Southern Companies on January 1, 1964, at an initial daily average of 265,024 Mcf and a daily demand of 303,462 Mcf; and on January 1, 1965, would increase the deliveries to 475,424 Mcf per day of firm gas. Similarily, Colorado Interstate now proposes to deliver to El Paso half of the total volumes to be transported through the new Provo line commencing January 1, 1964, and to deliver its full portion of 237,712 Mcf per day in 1965. The agreed-upon initial rates which Colorado Interstate is to charge El Paso (all at 14.9 psia) are as follows: for a contract demand volume of 117,500 Mcf, an initial rate of $1.97 demand and $0.21 commodity; for a contract demand in excess of 176,250 Mcf, an initial rate of $1.72 demand and $0.21 commodity. The latter rate would produce approximately 27¢ per Mcf at an 85% load factor. For the transportation of the gas, Colorado Interstate is to charge an initial rate of $0.56 demand and $0.0215 commodity; and if the average volume transported exceeds 300,000 Mcf/d prior to January 1, 1965, the initial rate is to be $0.33 demand and $0.0127 commodity.

By the supplemental agreement between El Paso and the Southern Companies, the 1964 deliveries are to be at a flat price of 39.6¢ per Mcf. The sale of the contract volume is to be at initial demand and commodity rates which will produce a price of 39.6¢ per Mcf at an 85% load factor and 37.9¢ per Mcf at 100% load factor.

Various Commission orders in the proceedings have made it clear that issues presented and evidence which should or might be adduced upon the rehearing include the following: the changes proposed to be made in the Rock Springs project in view of the aforementioned order of the Public Utilities Commission of California which conditionally certificated facilities for transporting the gas from the Nevada border to a point in Southern California (FPC order issued June 22, 1961, not reported); the reasons for and effects of such changes upon the project (*id.*); "the issues should encompass, and evidence should be adduced concerning, alternative routes and facilities by which El Paso and Colorado Interstate Gas Co. could supply additional gas to the market areas which they propose to serve by the Rock Springs project" (order issued July 21, 1961, 26 FPC 175, 177); "the need for additional gas in the southern California market area * * * El Paso should present evidence concerning the altered estimates of market requirements for the natural gas * * * " (order issued August 25, 1961, 26 FPC 432, 434); "the rates proposed to be charged therefore * * * in relation to the determination of the project's economic feasibility" (*id.*); "all of the factual data underlying the estimates of the requirements of gas in the southern California market" (*id.*); "the gas supply available to El Paso" and "the deliverability life thereof" (*id.*); "evidence which will show clearly whether or not the Rock Springs project will be economically feasible if Edison should cease to be a customer of Southern California Gas Company" (order issued

September 13, 1961, 26 FPC 488, 490);[2] "the economic feasibility of the * * * project" and "the financibility of the project" including justification for the rates which Colorado Interstate proposes to charge El Paso (order issued November 2, 1961, 26 FPC 687); "[the] matter of using existing pipelines, whether by means of exchange arrangements or otherwise, in connection with bringing additional volumes of natural gas to the southern California market * * * [such] evidence should include, among other things and without limitation, the location, ownership, age, and physical characteristics of such pipelines and appurtenant facilities; existing and potential delivery capacity and use; additional facilities required to increase delivery capacity to the economic optimum and cost thereof; costs of operation and of gas at delivery points" (order issued March 22, 1962, 27 FPC 597, 598.); "the impact of the construction [of the project] upon present and future rates and whether the ultimate consumer will be adversely affected thereby * * * how proposed sources of present or future supplies and the relationships between all parties concerned may affect those rates [; such] matters must be viewed, also, in connection with the policy of the anti-trust laws" (order issued March 23, 1962, 27 FPC 600, 601). Also, problems are presented by the decision of the United States Supreme Court in *California* v. *Federal Power Commission, supra.*

The rehearing was held, commencing on July 24, 1961, continuing intermittently over a period of 102 hearing days, and concluding on April 26, 1962. Oral and documentary evidence was introduced by applicant Colorado Interstate, applicant El Paso, the Commission Staff, and the following intervenors: the Southern Companies; California Gas Transmission Co. and Tennessee California Gas Transmission Co. (Tennessee subsidiaries); the City and County of Denver, Colorado; Transwestern Pipeline Co.; and Natural Gas Pipeline Co. of America. Cross-examination of witnesses was conducted by said participants, and by intervenors Public Service Co. of Colorado (Public Service), Colorado-Wyoming Gas Co. (Colorado-Wyoming), The Pueblo Gas and Fuel Co. (Pueblo), Southern California Edison Co. (Edison), The Public Utilities Commission of Colorado, and oil company intervenors.[3] Intervenors Washington Utilities and Transportation Commission, and the Public Utility Commissioner of Oregon were also represented at the rehearing. Following the rehearing, briefs were filed by applicant Colorado Interstate, applicant El Paso, the Commission Staff, and the following intervenors: Washington Utilities and Transportation Commission, Public Utility Commissioner of Oregon, the Southern California Companies, the City of Los Angeles, The Public Utilities Commission of Colorado, the City and County of Denver, the Tennessee subsidiaries, Edison, the oil companies, and Transwestern Pipeline Co.; and a statement of position, by Public Service, Colorado-Wyoming, and Pueblo. The proceedings were thereby submitted for consideration and decision.

The following intervenors support the applications: Washington Utilities and Transportation Commission, Public Utility Commissioner of Oregon, the Southern California Companies, the City of Los Angeles, Public Service, Colorado-Wyoming, and Pueblo. The following participants oppose the granting of any of the applications: The Public Utilities Commission of Colorado, the City and County of

[2] If the Pemex project (Docket No. CP61–172 *et al.*) were consummated, gas would be exported by the intervenor Tennessee subsidiaries from southern Texas to Mexico; and, together with quantities of Mexican gas, transported to the California-Mexican border; whence it would be transported back into the United States to the vicinity of Los Angeles for use as boiler fuel by intervenor Southern California Edison Co., and perhaps for resale.

[3] Richfield Oil Corp., Standard Oil Co. of California, Oil Producers Agency of California, Golden Bear Oil Co., Lloyd Corp., Ltd., National Oil Co., Mt. Diablo Co., Bonmac Oil Co., Atlas Royalties, Inc., McGreghar Land Co., Petroleum Supply Co., and Frank Goldman.

Denver, the Tennessee subsidiaries, Edison, the oil companies, Transwestern, and the Staff.

Improper Arguments Advanced in Briefs

Counsel for certain of the parties, in their briefs, have gone outside the record by citing and quoting material which was not received in evidence, such as pleadings filed in these and other proceedings, excerpts from briefs in other proceedings, and a speech by a former president of the California Public Utilities Commission. The Examiner has disregarded these extraneous citations and quotations. Counsel should remember that their argument should be based on the evidence in the case.

DISCUSSION

It has been noted that Colorado Interstate has constructed certain of the supply laterals and compressor installations involved in Docket No. G–16904 under temporary authorizations issued by the Commission. All of the participants either advocate, or offer no objection to, the permanent certification of the temporarily-authorized facilities. These facilities are needed for serving Colorado Interstate's Rocky Mountain customers.

The law and the facts compel the conclusion "over and over again" that the application of Colorado Interstate should be denied in all other respects, and that the applications of El Paso and Pacific Northwest should be denied *in toto*.

The applications in the three consolidated proceedings are inextricably bound together. A denial of any one of them requires a denial of all of them. The Colorado Interstate portion of the Rock Springs project can be justified only if the El Paso portion therof is authorized, and vice versa. Likewise, the proposed abandonment of Pacific Northwest's sale of gas to Colorado Interstate at Green River and the proposed abandonment of the Bivins-to-Denver line cannot be justified unless certificates for the Rock Springs project be granted. And the proposed construction cannot be justified unless the abandonments be permitted.

Applicants have the burden of proving that the public interest will be served by the joint project for which they seek certificates, and that the public interest will not be disserved by the abandonments. That is to say, applicants must "satisfy our minds" of such facts. *Michigan Consolidated Gas Co.* v. *Federal Power Commission* (App. D.C.), 283 F. 2d 204, 214; *cf. Transcontinental Gas Pipe Line Corp.*, 11 FPC 94, 97, citing *Western Case*, 20 I.C.C. 307.

The evidence introduced by Colorado Interstate, and that introduced in support of El Paso's and Pacific Northwest's cases, does not meet the burden of proof in vital respects; and in other vital respects, is contrary to the weight of the evidence.

El Paso's Portion of Gas Supply

In the landmark case, *Kansas Pipe Line & Gas Co.*, 2 FPC 29, 40, the Commission held that an applicant for a certificate of convenience and necessity must show that it possesses a supply of natural gas adequate to support its project.

El Paso has failed to establish that it posseses an adequate gas supply to enable it to deliver the 237,712 Mcf/d which it committed itself to furnish. El Paso's showing of gas supply is predicated upon the assumption that El Paso and Pacific Northwest were merged. It appears that a large portion of such 237,712 Mcf/d would come from Pacific Northwest sources; also, that all of the gas which El Paso proposes to supply would be transported to Green River through Pacific Northwest's facilities. There is a dearth of evidence that El Paso can furnish its proposed contribution of gas necessary to support the Rock Springs project without ownership of the assets of Pacific Northwest.

It has been said that the Supreme Court, in *California* v. *Federal Power Commission*, *supra*, upon review of the Commission's action in Docket No. G–13018 *et al.* authorizing the merger of Pacific Northwest into El Paso, held that the Commission could not proceed to a decision on the merits of the merger application in view of the pendency of the suit by the federal government challenging the validity of El Paso's acquisition of the stock of Pacific Northwest; and that the Court of Appeals for the District of Columbia has accordingly vacated the Commission's order which had authorized the merger.

In an order issued on July 2, 1962, in Docket No. G–13018 *et al.*, 28 FPC 7, the Commission recited the facts adverted to in the foregoing paragraph, and said:

> In view of the Supreme Court's decision it is necessary that further action on the question of the acquisition and operation of Pacific's facilities by El Paso under the Natural Gas Act be stayed pending the outcome of those proceedings.

With this state of affairs before us, it is a matter of impossibility to determine, until the final conclusion of the suit by the Federal Government, whether El Paso can acquire the assets of Pacific Northwest. Therefore, El Paso's evidence in the instant proceedings upon the question of gas reserves to support the project is fatally defective; and this failure of proof, alone, necessitates a denial of all of the applications.

Circuitous Route

The Staff state, and the Examiner finds, as follows:

> An outstanding feature of the applicants' proposals is the roundabout route by which they propose to transport the new volumes of gas to California. Instead of following a fairly direct and shorter route, * * * the gas from the Texas Panhandle Field * * * will travel approximately 1252 miles to the El Paso-Southern [Companies] delivery point near Las Vegas along a route shaped roughly like a horseshoe expanded at the open end. It will go approximately 351 miles northwest to Denver, 365 miles north and west through the Wyoming line to Green River, where it will enter the Provo line; and then 536 miles southwest to the California border.
>
> Similarly, although El Paso is currently delivering San Juan gas to [the] Southern [Companies] at Topock, [Arizona], through its existing pipeline facilities, it now proposes to transport San Juan gas destined for [the] Southern [Companies] through its Northwest Division [Pacific Northwest's] facilities approximately 300 miles northward to its station No. 6 at Green River where, upon entering the Provo line, it will practically reverse its direction in a 536-mile journey southwestward to the Las Vegas delivery point.

It is basic in "the business of transporting and selling natural gas for ultimate distribution to the public" that a pipeline should run from the principal source of supply to the principal market with reasonable directness. The proposal advanced by the applicants flagrantly violates such basic proposition, and is therefore unsound.

If one but takes a look at the Commission map, "Major Natural Gas Pipelines as of June 30, 1962," he will see that there is no pipeline similar to applicants' gigantic horseshoe proposal in all of the pipelines which the Commission has certificated over the years.

The record shows that Colorado Interstate has available, for sale to El Paso, 237,500 Mcf/d in the West Panhandle field of Texas, in the vicinity of its Bivins and Fourway compressor stations; and that its gas reserves in the area are sufficient for such volume to be available during the next 15 years.

The record further shows that the great burden of such daily volume can be transported to the California border near Topock, Arizona, over either of two much more direct routes than are involved in applicants' proposal, and that via the first of the two alternative routes, the entire 237,500 Mcf/d can be so transported. If applicants utilize the first of the two alternatives, the cost of the 237,500 Mcf/d to the Southern Companies would be far less than the rate at which El Paso proposes to sell the Rock Springs gas at the California-Nevada border; and, under the second alternative, the cost would also be less.

The first of the two alternative routes is via the system of Transwestern, which now delivers gas to the Southern Companies. Transwestern has a main line which consists of aproximately 645 miles of 30" line extending from Roswell, New Mexico, across New Mexico and Arizona to a point of connection with a line of the Southern Companies near Topock. Two Transwestern laterals lead into its main line at Roswell. One of these, the Panhandle lateral, consists of 291 miles of 24" transmission line extending from the Panhandle-Hugoton-Anadarko areas of Texas and Oklahoma. The other lateral, the West Texas lateral, consists of 166 miles of 24" line and 62 miles of 20" line extending from the Permian Basin area of West Texas. Both main laterals tie into various sublaterals which connect sources of gas supply in the Panhandle and West Texas areas. The installed design capacity of the system is 350,000 Mcf/d; and the optimum capacity, 640,000 Mcf/d.

The evidence shows that by construction of a 40-mile, 22" pipeline from Colorado Interstate's Fourway station to Transwestern's facilities, and additional compression on Transwestern's system, Transwestern could deliver the 237,500 Mcf/d of Colorado Interstate gas at the California border. A reasonable estimate of the cost of transporting such volume through a Transwestern system thus extended, and having its optimum capacity of 640,000 Mcf/d, is $35,650,000, or an incremental transportation cost of only 8.09¢ per Mcf for the period 1964–67. The transportation would be at substantially a 100% load factor.

While we are not purporting to make a rate determination, it would appear, from the record, that 22¢ per Mcf (at 14.9 psia) is a top price for the sale of the gas by Colorado Interstate at the Fourway station or the Bivins station; and we shall accept such figure for the purpose of this treatment. The cost of the 237,500 Mcf/d to the Southern Companies at the California border would thus be on the order of 30.09¢, as compared with El Paso's proposed Rock Springs rate of 37.9¢ at 100% load factor.

The record shows that Transwestern is ready, willing and able to construct the facilities referred to in the preceding paragraph (including additions for the operation of its system at optimum capacity), and to transport the 237,500 Mcf/d to California for applicants.

The second of the two alternative routes is via the northern segment of El Paso's Southern Division, which extends from Texas to Topock in a fairly direct course. Under a temporary contract, Colorado Interstate is now selling 100,000 Mcf/d (at 14.9 psia) to El Paso at Dumas, Texas, at 22¢ per Mcf. There is also in force a long-term agreement between El Paso and Northern Natural for the exchange of volumes of gas up to 475,000 Mcf/d. An effect of the two agreements is that Colorado Interstate delivers gas to Northern Natural at Dumas, and Northern Natural delivers an equivalent volume to El Paso at Plains. The evidence shows that Northern Natural can make delivery of as large a volume as 200,000 Mcf/d at Plains with existing facilities.

El Paso introduced no evidence respecting its ability to procure the delivery of 200,000 Mcf/d at Plains, or any other volume on a long-term basis, by virtue of its exchange agreement with Northern Natural.

In its order of March 22, 1962, the Commission admonished the applicants as follows: "Affirmative evidence * * * should be presented by the applicants" respecting "the matter of using existing pipelines * * * in connection with bringing additional volumes of natural gas to the southern California market." It is a presumption of law that evidence withheld would be adverse if produced. Cyc. of Fed. Proc. (3d Ed.), Vol. 8, sec. 26.273.

In the light of the foregoing evidence, the admonition of the Commission to El Paso, and the presumption of law above adverted to, the Examiner is warranted in concluding, and does find and conclude, that a permanent arrangement can be effected whereby Colorado Interstate will sell 200,000 Mcf/d to El Paso at Dumas; and, under the exchange agreement, Northern Natural will receive such gas there and will deliver 200,000 Mcf/d to El Paso at Plains.

The evidence shows that by an El Paso-estimated expenditure of $65,580,000 for loops and compressor facilities, El Paso can increase its delivery capacity by, and can deliver, an additional 200,000 Mcf per day (14.9 psia) from its Southern Division at Topock at a cost of service no higher than between 33¢ and 34¢.

El Paso, on July 29, 1958, and May 25, 1959, filed applications in Docket Nos. G–15696 and G–18616 for authorization to construct such facilities and make sales of the 200,000 Mcf per day to Pacific Gas and Electric Company at a rate level of 33.38¢ per Mcf (at 14.9 psia) at 100% load factor. El Paso did not prosecute these applications, however, because it developed that PG&E did not need the gas. In 1960 El Paso and PG&E agreed that if El Paso should find another market for the 200,000 Mcf of gas "prior to firm agreement being reached as to date of delivery to PG&E," the arrangement for the delivery of such gas to PG&E would be terminated. James S. Moulton, vice president and executive engineer of Pacific Gas and Electric Company, testified that because of discovery of more gas available to PG&E "than any prior trend of discoveries would indicate as probable in California," PG&E assumes, subject to some "imponderables," that it will need only about 400 million cubic feet of additional gas until some year after 1970, and that the 400 million cubic feet will be made available from the pipeline systems connecting PG&E to Canada.

Mr. Moulton further testified as follows:

> PRESIDING EXAMINER: Now, Mr. Moulton, when if at all, is it your best judgment that you will need the El Paso gas involved in those two docket numbers? The WITNESS: Mr. Examiner, it depends entirely on the assumptions made. Now, under the assumption I described in this exhibit prepared by Mr. Frank, it shows that we wouldn't need it until beyond 1970. Other assumptions could be made, and I don't believe could be challenged, that could show its need earlier than that, but certainly not before 1965. I can't answer it more specifically.

The record is thus indefinite as to whether PG&E will desire to have an additional 200,000 Mcf per day from El Paso in 1965 or sometime after 1970. But the fact remains that PG&E has agreed that El Paso may cancel its arrangement with PG&E respecting the 200,000 Mcf per day and utilize its present and proposed Southern Division facilities for the sale of gas to other customers at any time until and unless El Paso and PG&E enter into a firm agreement for the date of delivery of the gas to PG&E. The increased delivery capacity of 200,000 Mcf per day (or a lesser increased capacity) could be used, just as well, to transport the increment of 100,000 Mcf/d of Colorado Interstate gas.

Manifestly, the 200,000 Mcf/d of 22¢ gas at Plains can be transported and sold

by El Paso at Topock at a rate far below El Paso's proposed Rock Springs rate of 37.9¢ at 100% load factor (and 39.6¢ at 85% load factor).

But even assuming that it were necessary for El Paso to construct a line between Dumas and Plains, a distance of 204 miles, it is a justifiable conclusion that the cost of service of purchasing the 200,000 Mcf/d; and of transporting such volume through the line, and thence on to California in El Paso's main system, would be below El Paso's proposed Rock Springs rate. There is no evidence in the record specifically directed to the cost of a Dumas-to-Plains line. However, there is testimony of an expert witness for Colorado Interstate in which he gave his opinion respecting what would be the cost of a 24" pipeline from Morton Junction, Kansas, to Pueblo, Colorado. The evidence shows that a pipeline of such size is more than sufficient to transport 200,000 Mcf per day. The witness estimated the cost of the Morton Junction-to-Pueblo line at $60,920 per mile; and the cost of a compressor station, to obtain additional compression needed, at $263,333 per 1000 horsepower. On this basis the cost of a 204-mile 24" line would be $12,427,000, or $13,669,700 with 10% for contingencies and overheads. The land between Dumas and Plains is good pipeline country, certainly as good as that between Morton Junction and Pueblo. But assuming *arguendo* that the estimate per mile, applied to the Dumas-to-Plains line, is on the low side by even as much as 20%, the total estimated cost of the line would be $16,403,640. It can be inferred from the record that if any compression at all be needed, a 1000 horsepower compressor would suffice; and that the cost thereof would be not more than $350,000, including contingencies, overhead and 20% allowance for possible underestimate. Working capital at the factor of 2% employed by the Colorado Interstate witness would be $335,073. The result is a total capital cost of $16,738,713, which will be rounded to $16,750,000. The Colorado Interstate witness reasonably used a factor of 18% to arrive at the transmission cost of service of the Morton Junction-to-Pueblo line. Using the same factor, the transmission cost of service of the Dumas-to-Plains line becomes $3,015,000. From these figures, the unit cost of transmission at 100% load factor (73,000,000 Mcf) would be 4.13¢, which cost we shall round to 4.25¢.

At a 22¢ purchase price and a transmission cost to Plains of 4.25¢, the unit cost of the gas at Plains would be 26.25¢ per Mcf. Plains is in the heart of El Paso's Southern Division; and it would seem that transporting the gas from such point to the California border would increase the cost of the gas at the state border to a sum on the order of 35¢ per Mcf.

The 35¢ figure, however, is merely an indication of the likely cost. The Examiner, upon the record made, is unable to find specifically what would be a reasonable estimate of the cost of the gas at Topock.

The inadequacy of the record is due to the failure of El Paso to comply with the Commission's admonition to the applicants to present affirmative evidence respecting utilization of existing pipelines for bringing additional volumes of natural gas to the southern California market. Again, the presumption of law applies that evidence withheld would be adverse if produced.

The Examiner is warranted in concluding, as he does, that El Paso could purchase 200,000 Mcf/d of gas from Colorado Interstate at Dumas, transport the same to Plains, and thence transport the volume, via its Southern Division, to Topock, at a lesser cost than the price which El Paso proposes to charge for the Rock Springs gas at the California-Neveda border.

Next to be considered is the question of an alternative route for transporting the 237,712 Mcf/d which El Paso, itself proposes to furnish for the Rock Springs project. We shall assume, for the purpose of the discussion, that Pacific Northwest is merged into El Paso, and that Pacific Northwest's facilities are a part of what is referred to as El Paso's Northwest Division.

El Paso's contribution of 237,712 Mcf/d to the Rock Springs gas supply would, of course, have to come from its Northwest Division, which includes its reserves and facilities in San Juan Basin.

The question is presented as to the feasibility, and the cost, of transporting additional volumes of gas southward via the Northwest Division to Ignacio, and of transporting such volumes thence (together with gas produced in the San Juan Basin) to El Paso's Southern Division, and thence to Topock.

It would seem likely that the 237,712 Mcf/d, or a large portion thereof, could be transmitted over such route by reinforcing El Paso's existing facilities.

El Paso introduced no evidence as to the feasibility or cost of its transporting the 237,712 Mcf/d, or any lesser volume, via such route, by reinforcing its existing lines or otherwise.

In the light of (1) the fact that there are lines already in existence along the entire route above described which, so far as appears, could be reinforced to permit the passage of greater volumes of gas than are now transmitted therein; and (2) the presumption which attends El Paso's failure after the admonition of the Commission, to produce evidence on the question of the feasibility of such route for transporting a volume of 237,712 Mcf/d, the Examiner finds that at least a substantial portion of El Paso's contribution of 237,712 Mcf/d could be transmitted to Topock feasibly, and at a lesser cost, than an equivalent volume could be transmitted to the California-Nevada border.

Assuming a market for 200,000 Mcf/d (at 14.9 psia) of Colorado Interstate gas (or for 237,500 Mcf/d if Transwestern's facilities be utilized), either the Transwestern system or the El Paso Southern Division (including a new line from Dumas to Plains on the assumption one is required) offers a more desirable alternative than applicants' project. Assuming a market for more than 237,500 Mcf/d, either (1) utilization of El Paso's Ignatio to Topock route, together with a line from Dumas to Plains assuming one is required and El Paso's Southern Division from Plains westward; or (2) utilization of El Paso's Ignatio to Topock route and Transwestern's facilities, are more desirable than applicants' project.

The savings above considered which would be achieved by making use of the alternative routes are in addition to the savings which would accrue to Colorado Interstate by its foregoing the Rock Springs project, which savings are treated of hereinafter.

> The existence of a more desirable alternative is one of the factors which enters into a determination of whether a particular proposal would serve the public convenience and necessity. That the Commission has no authority to command the alternative does not mean it cannot reject the proposal. *City of Pittsburgh* v. *Federal Power Commission* (App. D.C.), 237 F. 2d 741, 751.

For these additional reasons, the applications should be denied.

No Gas Supply in Vicinity of Green River Adequate to Justify Provo Line

The intervenor Southern Companies correctly say in their briefs:

> The Rock Springs project proposed in these applications can be most clearly described in two segments. The eastern segment consists of the revamping and augmentation of the Colorado Interstate system. The western segment consists of a new large-diameter pipeline project commencing at [Green River] and extending southwesterly to the California border * * *

In effect, the "western segment," or the Provo line, constitutes a new pipeline project in itself. It would commence at a point in southwest Wyoming and ex-

tend southwestwardly to the California border, a distance of 550 miles, and from the latter point lines inside California would continue the project for some 200 miles until the market areas in Southern California are reached.

It has already been observed that, as a prerequisite to the issuance of a certificate of convenience and necessity for a pipeline, there must be committed to the project supplies of natural gas adequate to support it.

Even assuming that Pacific Northwest's gas reserves and facilities are to be considered as belonging to El Paso, there are no gas reserves committed to El Paso which originate at, or in the vicinity of, Green River that are anywhere near sufficient to support a "project" of the magnitude of the Provo line. Nor is Colorado Interstate, with its existing facilities, able to deliver any gas at such point. For these additional reasons, the applications should be denied.

El Paso says that the Provo line would afford the California market access to tremendous reserves of natural gas in Canada which would first be transported from the border by the pipeline of its Northwest Division (Pacific Northwest). There may be circumstances, such as the commitment of adequate Canadian supplies to the project, at rates that would enable it to be economically feasible, which would overcome the want of adequate gas supplies originating in the vicinity of Green River. But no circumstances of this nature are here present. See Commission order issued herein December 27, 1960, 24 FPC 1137, 1142. It is true that in 1957, Westcoast Transmission Co. Ltd. and Pacific Northwest entered into a contract for the purchase by Pacific Northwest of 150,000 Mcf/d of Kingsgate Canadian gas, which the Southern Companies in turn agreed to take from El Paso. But these volumes have not been included in the Rock Springs project for the reason that uncertainties exist as to when, if at all, the Canadian gas would be exportable.

Rock Springs Project Would Adversely Affect Colorado Interstate's Rocky Mountain Customers

Increased Cost of Gas to Public in Rocky Mountain Area without Offsetting Benefits

The City and County of Denver and The Public Utilities Commission of the State of Colorado take the position that they would be worse off with the project than without it. For consumer interests to advance such a proposition is startling, and analysis of the evidence establishes that their position is justified.

The evidence shows that, if the project were to become a reality, the cost of service to Colorado Interstate's Rocky Mountain customers would be materially increased, and such customers would be faced with the prospect of higher rates. The evidence discloses that for 1960 (the most recent year for which complete data were available) the cost of service to the Rocky Mountain customers was 24.06¢ per Mcf, and that the indicated cost in 1961 was substantially the same. The evidence further shows that if the project were consummated, the cost of service to such customers would be 27.52¢ per Mcf. The difference of 3.46¢ in the cost of service is of major significance. The record discloses that Colorado Interstate's present rates in the Rocky Mountain area are too high; *i.e.*, in 1960, on the basis of a 6½% rate of return, Colorado Interstate received an excess profit of approximately $2,000,000. The record further discloses that if the project should be carried out, Colorado Interstate's revenue, at the current rates and the proposed rates to El Paso, would be so diminished that the annual excess revenues would be more than wiped out, and Colorado Interstate would be entitled to a rate increase of about $900,000 per year—a total diminishment in revenue of some $2,900,000 annually. The record also discloses that even if the Rock Springs project should become a different project by disallowance of a 3.75¢ rate

differential in favor of El Paso, hereinafter considered, there would still be a diminishment in Colorado Interstate's revenue of about $1,900,000.

The evidence is clear that the Rocky Mountain customers would receive no commensurate benefits from the Rock Springs project, either by increased deliveries to the Rocky Mountain area or by increase in Colorado Interstate's capacity to serve such area.

Colorado Interstate says that the Rock Springs project would increase the daily delivery capacity of its system by 80,000 Mcf. As of the time that its application (Docket No. G–16904) in the instant proceedings was filed, this statement was correct. But in 1959, 1960 and 1961, said applicant installed facilities either on or connecting to the Wyoming line pursuant to temporary authorizations in Docket No. G–16904 and pursuant to authorizations in other proceedings.

The effect of these installations is such that if the entire Rock Springs project were authorized, the daily delivery capacity would merely be increased by 18,232 Mcf. According to Colorado Interstate's own statements in its reply brief, the Examiner finds that the increased capacity already installed is as follows:

Facilities	Docket No.	Date issued	Mcf capacity
Table Rock compressor, 180 HP	G–18340	May 8, 1959	
Table Rock Lateral (Temporary authorizations)	G–16904	May 8, 1959	20,109
Rawlins Station (Temporary authorization)	G–16904	Aug. 5, 1960	48,694
Lateral from Patrick Draw Field (Constructed under budget certificate).	CP61–138	Mar. 1, 1961	[4] 8,230
Total			77,033

[4] The Patrick Draw field delivers 15,000 Mcf/d into Colorado Interstate's system, but there is a net increase of only 8,230 Mcf/d because the 15,000 Mcf partially displaces gas coming from Green River.

Colorado Interstate says, and the Examiner finds, that the resulting present daily delivery capacity of the system is 706,768 Mcf.

According to Colorado Interstate's further statement in its brief, the daily delivery capacity of its system upon completion of the entire Rock Springs project would be 725,000 Mcf; and the Examiner so finds.

The difference between these two volumes, 18,232 Mcf, constitutes the comparatively small additional increase in the capacity of Colorado Interstate's system which would result if the entire project were to come to fruition. Thus, most of the increased capacity of 80,000 Mcf has been attained without said applicant's proposed major Rock Springs installation, the new Bivins-to-Denver large-diameter pipeline.

Colorado Interstate could have sought and received a certificate authorizing the Table Rock lateral and the Rawlins station separate and apart from the Rock Springs project—as witness the circumstance that these facilities have been constructed despite the fact that the new Bivins-to-Denver line has not been authorized. The installation of the Table Rock and Rawlins facilities, with the gas in the Wyoming line continuing to flow from west to east, is a normal and expected development, in view of the existing and potential gas reserves along the route of the line; and such facilities make for utilization of the spare capacity in the Wyoming line.

Colorado Interstate, itself, estimates that under the Rock Springs proposal, it would supply only 116,152,530 Mcf to the Rocky Mountain area annually (not counting 3,558,750 Mcf from the Patrick Draw field—15,000 Mcf times 365 days times 0.65 reasonably assumed load factor).

The proposal which Colorado Interstate advances for an increase in the daily delivery capacity of its system to a mere 725,000 Mcf is in the face of the fact that

a vice president of the company readily concedes that the Rocky Mountain sales will steadily increase. He said that it is "inconceivable * * * that the unbroken history of increased demands" will not continue.

Reasonable estimates of the peak-day requirements in the Rocky Mountain area for the winter season indicated below are as follows:

Winter Season	*Mcf*
1963–64	753,770
1964–65	760,060
1965–66	764,970

Under Colorado Interstate's proposal, there would thus be a peak-day deficiency in the three winter seasons of 28,770 Mcf, 35,060 Mcf and 39,970 Mcf, respectively.

There would also be a deficiency, if the Rock Springs project were authorized, in the annual supply of gas for the Rocky Mountain area. Reasonable estimates of the annual requirements for the area in the years 1963 to 1965, inclusive, are shown below.

Year	*Mcf*
1963	175,795,590
1964	179,736,260
1965	183,376,220

It has been noted that the Rock Springs project calls for Colorado Interstate to furnish annually to the Rocky Mountain area only 116,152,530 Mcf. and the increased annual deliveries from the Patrick Draw field would be 3,558,750 Mcf. So Colorado Interstate's total annual deliveries would be only on the order of 119,711,280 Mcf. The annual deficiencies in the respective years would, therefore, be approximately as follows: 1963, 56,084,310 Mcf; 1964, 60,024,980 Mcf; and 1965, 63,664,940 Mcf.

It is true that the foregoing analysis does not take into account one factor which Colorado Interstate avers would inure to the benefit of the Rocky Mountain customers; to-wit, the new Bivins-to-Denver line would supplant the existing Bivins-to-Denver line, which Colorado Interstate claims is obsolescent. Such factor will be considered *infra* pages 121, 122, under another subheading. Suffice it to say at this point that the construction of a new pipeline would be but small comfort to the Rocky Mountain consumers when compared with the disadvantages of the project above described.

Colorado Interstate represents as follows:

> * * * that an additional 100,000 Mcf of transmission capacity, above that daily design capacity involved in the present case, will be made available to CIG's Rocky Mountain area customers by the addition of compression horsepower to the facilities south of Denver proposed herein. With respect to such additional capacity, CIG will seasonably apply for and, upon receipt of requisite authority, will add from time to time such part of such additional compression horsepower as may be needed to meet the requirements of its Rocky Mountain area customers when such requirements are evidenced by contract demand nominations or by other appropriate contractual obligation.

We do not question these assertions. But we do say that in order for Colorado Interstate to receive the certificate authorizations for which it is to apply in the future, it must establish that it has obtained adequate gas reserves to meet the requirements, and that such future projects are economically feasible. It is to be noted that a vice president of Colorado Interstate frankly conceded that, if the Rock Springs project were to become a reality, his company would

have to acquire additional gas reserves in order to take care of the increases in the requirements of its Rocky Mountain customers. Under Colorado Interstate's proposals, at the very best the gas-consuming public in the Rocky Mountain area would be saddled with still additional costs before their requirements could be met.

Clearly, the proposed investment and operation by Colorado Interstate would have an adverse effect upon said applicant's charges for the services which it renders, without offsetting benefits; and for this reason the application in Docket No. G–16904 should be denied. *East Tennessee Natural Gas Co.*, 23 FPC 916, 917. In determining whether a permit for a project should be granted, a regulatory agency should give consideration to "any public loss" which may ensue. *Democrat Printing Co. v. Federal Communications Commission* (App. D.C.), 202 F. 2d 298, 301.

With the fall of Colorado Interstate's case, that of El Paso falls also.

Colorado Interstate Facilities Would be Inadequate to Render Complete Service in Rocky Mountain Area

The facts treated of under the last subheading establish that the project which Colorado Interstate proposes is inadequate to meet the needs of the consuming public in the Rocky Mountain area.

In *Kansas Pipe Line and Gas Co., supra*, 2 FPC at page 46, the Commission laid down the rule that an applicant "must show that the facilities for which [it] seeks a certificate are adequate to render a full and complete public service in the territory proposed to be served."

For the reason of inadequacy of Colorado Interstate's proposed facilities, the application of Colorado Interstate, and perforce that of El Paso, should be denied.

Alternative Means of Serving Rocky Mountain Area Proposed by Denver

Apparently, one factor which motivated Colorado Interstate to enter into the Rock Springs project was a desire for more rate base than it now has.

Certain suggested alternative means to serve the Rocky Mountain area, involving a great deal less investment than Colorado Interstate's proposal for serving such area, were advanced by the City and County of Denver or their engineer witness. These means consist of the following, among others: (1) the construction of a loop line on the existing Bivins-to-Denver line from Bivins to Pueblo, installed in stages as needed to meet aditional requirements, a reasonably estimated cost of which is approximately $14,000,000; (2) an increase in Colorado Interstate's production and purchases in the West Panhandle and Hugoton fields; and (3) continued development and expansion of operations in the Table Rock and Patrick Draw fields.

Relative to the first suggestion, the Denver witness explained that the loop line would enable Colorado Interstate to provide the additional requirements for the Rocky Mountain area through the winter of 1965–66 and perhaps beyond such time, including the sale of 35,000 Mcf/d of additional firm gas to an industrial concern pursuant to a recent contract; that the loop line would enable said applicant to reduce the operating pressure on the Bivins-Denver line; and that the loop line could utilize available compression horsepower from the old line, and automated compression when it becomes economically feasible to replace the old compressor engines or add compression; and also that the loop line could handle the load to maintain service when maintenance is necessary on the old line. The Examiner agrees with the foregoing statements of the expert witness as to the advantages of the loop line and the advantages of retaining the old line and operating it in conjunction with the loop.

Relative to the third suggestion, it has already been shown that since Colorado Interstate filed its application in the instant proceedings, said applicant has increased the daily deliveries from the Wyoming line by 77,033 Mcf, obtained from areas of production adjacent to such line. It would appear probable that substantial additional volumes of gas from such areas will be available to Colorado Interstate in the future.

Obviously, a prudent combination of these various ways of meeting the future requirements of Colorado Interstate's Rocky Mountain customers would achieve a very great saving in cost and expense compared with Colorado Interstate's proposal.

The Examiner is of the view that such combination of the three aforementioned means of serving the Rocky Mountain area as is deemed proper by Colorado Interstate's management will be adequate to meet such area's gas supply problem; and is far preferable to the Rock Springs project from the standpoint of the Rocky Mountain customers and the public interest.

Colorado Interstate makes a plea that the present Bivins-Denver line (a 22'' and 20'' line), constructed in 1928, is "obsolescent" and "unsafe"; and should be superseded by the large-diameter (136 miles of 34'', and 100.8 miles of 30''), high-pressure pipeline which it proposes. An expert witness on behalf of Colorado Interstate said that the line can be replaced most econmically in conjunction with the Rock Springs expansion.

Colorado Interstate's vice president in charge of operations testified that the condition of the present line is such that there is a serious threat of loss of service to the area south of Denver; that "there is no way which we can predict will be the place that this line is going to blow up, * * * nor when it is going to blow up; but we can predict what * * * is going to happen when it blows up": that the line was thoroughly inspected in 1958, and "we recorded—because that is about all you can do in this situation— * * * 242 leaks," and repaired 15 of the worst leaks; and that each of the 90,000 Dresser couplings in the line is leaking to a degree. Both Colorado Interstate witnesses said that the line is expensive to maintain and operate as compared with modern facilities and that its condition is such as to constitute a hazard to operating and maintenance personnel. There was also certain hearsay evidence concerning the present Bivins-Denver adduced at the original hearing on behalf of Colorado Interstate, the weight to be accorded which the Examiner cannot appraise.

The testimony above summarized is offset by the factors concerning the line above referred to in the testimony of the Denver witness. The force of the testimony is also offset or weakened by the following considerations:

Because of the ambiguity created by the twice-repeated reference to "the line blowing up," it should be observed that a whole line never blows up—a blow up occurs only at a particular spot.

Significantly, the Colorado Interstate vice president said that "we have not spent any more money on that line in prospect for abandonment than we could help," and there is no evidence that the installation of some new sections in the Bivins-Denver line would not put the line in reasonably satisfactory operating condition. In this connection the Examiner takes administrative notice that the pipeline of Northern Natural from the Texas Panhandle field to Omaha, Nebraska, completed in 1931, only three years later than the Bivins-Denver line, and the pipeline of Natural Gas Pipeline Co. of America from such field to Chicago, completed in 1932, are each still in service. For that matter, there have been a number of replacements in the Bivins-Denver line, so all of it does not date back to 1928.

The Colorado Interstate witness recognized that the Bivins-Denver line can be operated safely at a lesser pressure than that at which it now operates, and

said that it could be used as a lateral line where a temporary interruption would not hurt. The record also shows that the company has been able to effect repairs in the line without interruption of service, except a temporary loss of service to interruptible customers in 1957. Also, there is no evidence as to the present volume of gas leakage, even in the absence of adequate maintenance of the line.

Furthermore, there has been a change in Colorado Interstate's method of operating the present Bivins-Denver line which causes it to have additional usefulness. Colorado Interstate formerly operated the line, as originally planned, by transporting gas from Bivins station to Denver, and to points along the route of the line. The line, as so used, was designed for a capacity of 155,000 Mcf per day. Colorado Interstate now uses the pipeline to transport 133,000 Mcf per day northward from Bivins station toward Denver, and to transport from 60,000 to 80,000 Mcf per day southward from Denver. This manner of operation increases the sales capacity of the line from 155,000 Mcf per day to about 210,000 Mcf per day at the pressures now employed, which are lower than those for which the line was designed.

Colorado Interstate has failed to establish to the satisfaction of the Examiner, or by a preponderance of the evidence, that the Bivins line should be abandoned.

For these additional reasons, the application should be denied.

Alternative Means of Serving Rocky Mountain Area Proposed by Tennessee Subsidiaries

Assuming for the purpose of the discussion that Colorado Interstate has established that its present Bivins-Denver line should be abandoned, the evidence shows that the objectives which Colorado Interstate says it seeks in these proceedings for the Rocky Mountain area can be accomplished far more economically if Colorado Interstate so expands its system as to serve the Rocky Mountain area only. The objectives stated by Colorado Interstate are to provide 80,000 Mcf per day of immediate additional capacity to the Rocky Mountain area; to retire and replace the Bivins-Denver line; and to provide a further potential added capacity of 100,000 Mcf per day to the Rocky Mountain area.

It has been seen that already Colorado Interstate has obtained 77,033 Mcf of additional capacity from the Table Rock, Rawlins and Patrick Draw facilities which are either on, or tie into, the Wyoming line. The Tennessee subsidiaries established by cross-examination of a Colorado Interstate witness that in addition to this increased capacity, 80,000 Mcf of immediate capacity can be obtained, and the other aforementioned stated objectives can be achieved (1) by continuing purchases to the extent of 100,000 Mcf/d from Pacific Northwest (or El Paso) at Green River, and (2) by installation of the following transmission facilities: 136 miles of 24'' pipeline, Morton Junction to Pueblo; 100.9 miles of 20'' pipeline, Pueblo to Denver Hamlen Avenue meter station; Trinidad lateral; and Morton County compressor station, 6000 HP; and by supercharging Lakin compressor station. A reasonable estimate of the capital cost of these facilities, according to the evidence, is only $18,000,000.

The cross-examination of the Tennessee subsidiaries also shows that the revenues from the operation of Colorado Interstate's transmission system after the construction of the foregoing facilities would exceed the corresponding cost of service by a small margin. Consequently, such a separate project is economically feasible even before attachment of the additional load which would be made possible by the potential capacity of 100,000 Mcf per day. The excess of revenues over cost of service, $36,809, is more particularly shown by the following tabulation:

SEPARATE ROCKY MOUNTAIN SERVICE BY COLORADO INTERSTATE—COST OF SERVICE AND REVENUES FROM OPERATION OF MORTON JUNCTION-PUEBLO-DENVER LINE (CONSTRUCTION OF WHICH WOULD BE REQUIRED), PLUS ADDITIONAL COST OF SERVICE BY COLORADO INTERSTATE'S PRESENT TRANSMISSION SYSTEM

Item	Cost of service	Revenue
1. Sale of 80,000 Mcf/d plus volumes previously transported by Bivins line (approx. 36,000,000 Mcf per annum).		$9,848,809
2. Total transmission cost of service, new facilities ($18,000,000 x 18%).	$3,240,000	
3. Savings from abandonment of Bivins line (negative cost).	(2,310,000)	
4. Cost of gas referred to in Item 1 (36,000,000 Mcf x 16.45¢).	5,922,000	
5. Additional cost of remainder of transmission system gas because of retention of El Paso Rock Springs purchase (185,000,000 Mcf x 1.6¢).	2,960,000	
Totals	9,812,000	9,848,809
Excess revenues		36,809

The Examiner finds that the above amounts are valid and reasonable estimates.

In an attempt to refute the foregoing showing, Colorado Interstate sets up a straw man and knocks him down. Said applicant notes that the revenues from the incremental volumes of gas (80,000 Mcf/d) are $3,447,000, and points out that such sum is less than the total transmission cost of service plus the cost of the incremental volumes. This is an irrelevant consideration. What matters is the total revenue compared wih the total transmission cost of service plus the total cost of the gas transmitted.

Next, Colorado Interstate claims that the additional cost of the gas referred to in Item 5 of the tabulation should have been computed by multiplying 185,000,000 Mcf by 2.12¢, instead of 1.6¢. This claim is without merit. The 1.6¢ is the difference between 16.45¢, the average cost per Mcf of production, purchases and gathering to Colorado Interstate including the purchase at Green River, and 14.85¢, such average cost exclusive of the Green River purchase. The 2.12¢ is the difference between the 16.45¢ and 14.33¢, which latter figure was the rate arrived at in a settlement of a Colorado Interstate rate case, and did not purport to be a cost figure. The Colorado Interstate witness, himself, said that the 1.6¢ "looks like a reasonable figure" to adjust the cost of the 185,000,000 Mcf to recognize the continuance of Colorado Interstate's purchase at Green River.

Assuming that the alternative expansion of the Colorado Interstate system proposed by the Tennessee subsidiaries is required instead of the Denver proposals, such expansion is decidedly more desirable than Colorado Interstate's portion of the Rock Springs project; and for this additional reason, the applications should be denied.

Response to Miscellaneous Arguments of Colorado Interstate

There are averments in the testimony on behalf of Colorado Interstate that a Colorado Interstate separate expansion to serve the Rocky Mountain area would result in a rate increase to its Rocky Mountain customers of on the order of $5,000,000. Colorado Interstate introduced no study to support this claim. As best the Examiner can gather from the record, the basis for the claim is that said applicant would have to continue to purchase gas from Pacific Northwest (or El Paso) at Green River at the present rate of 27¢ per Mcf, and in the future at still higher rates, of which applicants say there is a prospect. Thus, one of Colorado Interstate's vice presidents testified:

> * * * in my judgment [a project designed solely to serve the Rocky Mountain area] would result in a rate increase to present customers on the order of $5,000,000. This is predicated upon the present rate of approxi-

> mately 27¢ per Mcf for gas which we purchase from El Paso near Green River, Wyoming.

And another of its vice presidents testified:

> * * * that Rock Springs gas today is costing us 27¢ per Mcf * * * [The president of El Paso] has testified that the Pacific Northwest system is still in a revenue deficiency position, and we may get further increases down the road. * * * our average purchased gas price * * *, excluding the [Green River] gas, now, is only 15¢ per Mcf * * *, so we think it is much better for our customers that we cancel that contract at Green River and turn that gas around and supply their needs with 15¢ gas rather than to continue to supply them with 27¢ gas, * * * and all we need is a line into Denver to take care of them. That will save us * * * in gas purchase costs alone, about $5,000,000 a year * * *.

These claims are not valid. They are refuted by the evidence above considered respecting means other than the Rock Springs project of serving the Rocky Mountain area. Indeed, the first of the two vice presidents was the selfsame witness who, on cross-examination, furnished the data and the figures which demonstrate that a separate project to serve the Rocky Mountain area, including abandonment of the present Bivins-Denver line, and continuation of the present minimum average daily purchases of 100,000 Mcf/d at Green River, would entail no revenue deficiency. Unquestionably, purchases at Green River can also be held to this minimum, and there would be no revenue deficiency, under the alternative means of serving the Rocky Mountain area proposed by Denver.

Furthermore, the difference between Green River 27¢ gas and the average production, purchase and gathering cost of Colorado Interstate's other supplies, 15¢ (14.85¢, to be exact), is not a correct figure to use. For it has been shown that if the Rock Springs project were consummated, Colorado Interstate would have no 14.85¢ gas left with which to meet the future increased needs of the Rocky Mountain customers, and would be forced to procure other gas supplies to satisfy those needs, at prices which are unknown.

The claimed prospect of higher gas purchase costs at Green River cannot counterbalance (1) the enormous saving in capital costs and expenses which will accrue to Colorado Interstate from serving the Rocky Mountain area by the alternative means which have been treated of, and (2) the fact that said applicant will have ample 14.85¢ gas for increased needs of the Rocky Mountain area.

Next, Colorado Interstate avers that certification of its temporary facilities and denial of the rest of its project will increase its gas purchase costs by $3,600,000 annually. The reason which Colorado Interstate assigns is that if the Rock Springs project is denied, said applicant, "under its present purchase pattern," would have to increase its contract demand from El Paso (Pacific Northwest) at Green River by 42,559 Mcf in order to maintain its present transmission capacity. The present contract demand is 117,500 Mcf/d. In the Rock Springs agreements between El Paso and Colorado Interstate, El Paso gave assurance that "except under unusual circumstances, not anticipated," it would furnish Colorado Interstate up to 170,000 Mcf/d during the 1960–61 and 1961–62 winter seasons so that peak-day requirements of the Rocky Mountain customers could be met. The additional volumes from El Paso were to consist of gas for which Colorado Interstate had previously paid but had not taken. Apparently, the 42,559 Mcf is the difference between the present contract demand at Green River and the volume at Green River which, according to Colorado Interstate, can now be transmitted in the Wyoming line.

The qualification which Colorado Interstate necessarily makes in its position, "under its present purchase pattern," shows that its contention has but

little force. Colorado Interstate's management is duty bound not to sit idly by and increase its contract demand for purchases at Green River while neglecting to take steps to supply the Rocky Mountain area with its 14.85¢ gas, and additional production in the Table Rock and Patrick Draw fields as well. It has been seen that even now a 15,000 Mcf/d input into the Wyoming line from the Patrick Draw field has displaced 6,770 Mcf/d of the gas which previously was coming from Green River. As already brought out, in the absence of the Rock Springs project, it is economically feasible for Colorado Interstate to supply the present and increasing requirements of the Rocky Mountain area from its present sources of supply other than Green River purchases (except for the 117,500 Mcf/d Green River contract volume).

To be sure, Colorado Interstate would have to continue taking volumes of on the order of 160,000 Mcf/d at Green River, as a temporary expedient during the present winter season, pending Commission authorization for, and the construction of, additional facilities by Colorado Interstate. But it is likely that said applicant will not need to have even a temporary increase in the contract demand of its Green River purchases. The volumes over the present contract demand which El Paso assured Colorado Interstate it would undertake to furnish for meeting peaks in the winters of 1960–61 and 1961–62 were volumes for which Colorado Interstate had already paid, as has been seen. The record shows that on January 1, 1961, such prepaid gas was 2,392,134 Mcf. It is probable that there is an ample sufficiency of the prepaid gas remaining to supply all of the volumes on peak days which the transmission capacity of the Wyoming line enables Colorado Interstate to take. It stands to reason that El Paso should be willing for Colorado Interstate to use any prepaid gas under the same, or a similar, arrangement to that which said parties entered into for the 1960–61 and 1961–62 winters. If Colorado Interstate acts with due diligence, including consideration of the possibilities of there being an abridged hearing upon an application seeking authorization of facilities for a separate expansion to serve the Rocky Mountain area or of there being a temporary authorization of such facilities, Colorado Interstate will likely have such facilities installed before the heating season of 1963–64.

No Justification for Divided Ownership of Provo Line

It has been shown that applicants propose that the pipeline from Green River to the California border be owned and operated in part by Colorado Interstate: and in part, by El Paso. The Colorado Interstate portion, from Green River to Provo, is 155 miles in length; and is far removed from the area which Colorado Interstate now supplies with gas. No purpose is served by Colorado Interstate owning such stretch of line other than that of increasing said applicant's rate base. In addition, El Paso's segment of the Provo line would be separated from the rest of its Northwest Division (assuming for the purpose of the discussion that it has acquired the assets of Pacific Northwest). The divided ownership of the line from Green River to California is without justification.

This is an additional reason for denying the applications.

Even Assuming a Market for Rock Springs Gas, No Satisfactory Showing that El Paso Portion of Project is Economically Feasible

In *Colorado Interstate Gas Co.* v. *Federal Power Commission*, 324 U.S. 581, 591, the Supreme Court said: "* * * considerations of fairness * * * govern the allocation of costs." This criterion requires the making of two adjustments to El Paso's purported cost of service.

The first adjustment is the elimination of a Colorado Interstate 3.75¢ rate differential in favor of El Paso. The following language, made use of by the Tennessee subsidiaries in developing the point, is adopted by the Examiner as findings and conclusions:

> The conclusive objection to CIG's [an abbreviation employed by the Tennessee subsidiaries to denote Colorado Interstate Gas Co.] rate proposal * * * is that it is unduly discriminatory, granting a preference in favor of El Paso and to the detriment of CIG's general service customers in the Rocky Mountain area. To understand the use and impact of the discrimination, it must be noted that CIG proposes to employ two rate zones. At the present time CIG employs only one rate zone with a system-wide volumetric allocation of cost to demand and commodity components in that one rate zone. CIG proposes to set up a separate Rate Zone 2 for El Paso, leaving all its present customers in Rate Zone 1. In developing the Zone 2 El Paso rate, Colorado employed the zone-gate allocation method. This method treats all costs in Zone 1 as though all customers, including El Paso, received service in Zone 1; the gas flowing out of Zone 1 is then charged with the additional costs incurred in Zone 2. The critical point is that costs are allocated to Zone 2 volumes in Zone 1 just as though that volume was sold in Zone 1. In making its allocations in Rate Zone 1, CIG *arbitrarily* imposed a 3.75¢ per Mcf differential to the *commodity* costs between its general service and pipeline service in favor of the pipeline service customers (including El Paso) in that zone. The *net* effect of the use of the 3.75¢ differential in Zone 1 is to allocate 1.6¢ per Mcf less cost to El Paso than would have been the case had the differential not been employed.
>
> There is no cost basis for this differential. It [allegedly] is employed solely because CIG historically has used a similar rate differential in favor of *small* pipeline customers, to wit: Colorado-Wyoming Gas Company and Citizen's Utilities Company. In the past, the size of the load served those two companies was such that the differential in their favor did not seriously penalize CIG's general service customers. The differential was originally imposed to permit distributing companies north of Denver to buy gas at a price comparable to Denver's; as [a CIG witness] pointed out, this reason was basically political to avoid controversy between local communities. However, when this differential is applied to the volumes estimated to be sold to El Paso, it produces a change of a full $1 million per year. In other words, an *additional* $1 million per year would have been allocated to *El Paso* and $1 million per year *less* to CIG's general service customers had this differential not been employed.
>
> There is * * * no justification for granting El Paso a $1,000,000 per year cost differential *at the expense* of CIG's *present customers* simply because small pipeline customers have enjoyed some differential in the past. This is an *outright gift* of $1,000,000 per year to El Paso from CIG's other customers. The situation of the small pipeline customers is in no way comparable to that of El Paso; the size and character of the loads are entirely dissimilar, * * *
>
> If this were not enough, the * * * fact is that the *amount* of the differential and the *method* by which it is computed in favor of El Paso is far more discriminatory than the amount and method of the differential historically employed in favor of the small pipeline customers. In the past, the method employed for the small pipeline customers was by means of an adjustment to the *demand* portion of their rate, so that the size of the differential actually received varied in accordance with their load factor. The differential in El Paso's case is applied directly to the *com-*

> *modity* portion of the cost allocation, so that El Paso receives the *full amount* of the differential regardless of the load factors. The absolute level of the differential employed in favor of El Paso (3.75¢ per Mcf) is the *highest* the differential has *ever* been in the history of CIG, and is *higher than it now is* in favor of the small pipeline companies. * * * El Paso should pay its full share of CIG's cost of service, the use of the discriminatory differential should be disallowed, * * * [Italics those of Tennessee subsidiaries.]

Colorado Interstate correctly points out that the proposed rate to El Paso at Green River is higher than the rate at Denver. But this fact does not justify the differential. It has been noted that the distance between Denver and Green River over the route of the pipeline between such two points is 365 miles. Obviously there would be substantial additional costs attendant upon the transportation of the 237,712 Mcf per day from Denver to Green River for sale to El Paso, the sole use to which the line would be put. The creation of a second zone, with a higher price to El Paso based upon cost, is proper. But having a second zone does not excuse the 3.75¢ differential in favor of El Paso—a differential which constitutes a departure from a full cost allocation to El Paso in Zone 1.

Colorado Interstate and the Southern Companies argue that Colorado Interstate would have been justified in adopting a system-wide method of allocation instead of having two rate zones, in which event the rates to El Paso at Green River would have been lower than those here proposed. From the treatment in the preceding paragraph hereof, it is manifest that a single zone would have been unjust and unfair to the Rocky Mountain customers. Colorado Interstate and the Southern Companies base their argument upon the fact that the Commission adopted a system-wide allocation for El Paso's Southern Division system. The operation of El Paso's Southern Division is so dissimilar to Colorado Interstate's Rock Springs project that the Commission precedent respecting El Paso's Southern Division has no application. The great bulk of El Paso's Southern Division sales are made at the western end of its system; *i.e.*, 91% of the sales capacity is devoted to Tucson and points west thereof, and 78%, to the Southern California sales. In contrast, the sale of gas to El Paso, to which the entire 365 miles of line west of Denver would be devoted, would constitute but 25% of the capacity of the Colorado Interstate system.

The nature of and reason for the second adjustment to El Paso's cost of service is also well expressed by the Tennessee subsidiaries, and the Examiner adopts their language, and finds and concludes, as follows:

> CIG in its use of the zone-gate method * * * has included within the boundaries of Zone 1 its [proposed] Denver and Pierce compressor stations, [to be located on the Wyoming line], and allocated the costs attributable to those stations amongst all customers in Zone 1, including El Paso. However, the Denver and Pierce compressor stations are required *only* for service to El Paso. Service to all customers *except* El Paso could be rendered just as well *without* the Denver and Pierce stations. As a consequence, it is only fair and reasonable that El Paso, which receives the sole benefit of those stations, should pay their entire cost. [Italics those of Tennessee subsidiaries.]

El Paso did not introduce up-to-date exhibits reflecting the cost of service applicable to the gas which it would deliver to the Southern Companies from the Provo line, with the Edison load included. We are relegated to making use of said applicant's Exhibits 14 and 120, which pertain to such a showing for the years 1962, 1963 and 1964, at a rate of return to El Paso of 6½%. Since the project was subsequently deferred for three years, the figures for 1962, 1963 and 1964 now apply to 1965, 1966 and 1967. From the figures in Exhibits 14

and 120, the estimated rate of return, adjusted to eliminate the 3.75¢ differential and to make a direct allocation of the Denver and Pierce compressor stations to the service to El Paso, is reduced to the following percentages: in 1965, 1.05%; in 1966, 2.12¢ and in 1967, 6.08%.

There is another feature which increases El Paso's cost of service applicable to the Rock Springs project materially; *i.e.*, volumes of gas which El Paso has been and is contractually obligated to take, or for which it must pay if it does not take the gas, with the right to make up, or recoup, the gas within a specified period of time. The record shows that El Paso has incurred large expenditures for this take-or-pay gas which it has not been able to take. As of December 31, 1961, the prepayments amounted to $14,357,239. The record further shows that in 1962, 1963 and 1964 El Paso would incur large additional expenditures for gas which it would not take during such period of time. The payments for gas not taken become working capital, in other words, part of the rate base; and are manifestly a substantial cost item. El Paso expects to make up most of the volumes after the Rock Springs project commences full operation, if authorized. But apparently it would have to write off some amounts spent for gas which it could not recoup; just what the loss would be because of write-offs, the record does not show.

It is manifest that a large portion of the take-or-pay obligations was incurred because of the Rock Springs project. In fairness, the costs for such portion of the take-or-pay gas should be allocated directly to the project. El Paso, however, has merely allocated the costs generally to all of its customers.

El Paso takes the position, which the Examiner does not believe to be justified, that it is unable even by allowing considerable latitude for the exercise of judgment, to make a breakdown between the take-or-pay obligations incurred for the Rock Springs project and those not incurred for the project. Again, the presumption applies that evidence withheld would be adverse if produced.

Irrespective of whether there is a market for the gas, El Paso has failed to satisfy the Examiner's mind—*i.e.*, has failed to meet the burden of establishing—that its portion of the Rock Springs project is economically feasible.

For these additional reasons, the applications should be denied.

Project Not Economically Feasible Without Edison Load

The foregoing treatment has been predicated upon the assumption that the Southern Companies will continue to serve the Edison load. The record is clear that if Edison should cease to be a customer of the Southern Companies, El Paso's portion of the Rock Springs project is "hopelessly uneconomic."

El Paso's allocation studies treat the delivery of the volumes which El Paso proposes to supply at Green River as though the delivery were a sale. Likewise, in the ensuing analysis of El Paso's method of allocating the cost of such volumes, the delivery will be referred to as a "sale" and the Provo line as a "customer," in the interest of simplicity.

At the original hearing, in arriving at the cost of service applicable to such gas, El Paso's allocation witness, in Exhibit 14, appears to have made a demand unit allocation of 235,000 Mcf (at 14.9 psia). But in Exhibit 263, sponsored by the witness at the rehearing, the witness, in arriving at the purported cost of service without the Edison load, allocated only 165,000 Mcf (at 14.9 psia) as the demand units attributable to the sale at Green River. The 165,000 Mcf is not a proper share of the demand units, and an adjustment back to the 235,000 Mcf is required.

The Examiner adopts as findings and conclusions the following language in the brief of the Tennessee subsidiaries:

> The method [of allocation] El Paso adopted * * * was to treat the Northwest Division [Pacific Northwest] as a single zone, and to make a system-wide allocation of both demand and commodity costs on a volumetric basis. In other words, the costs were divided between customers solely on a volumetric basis after classification between demand and commodity costs, without regard to the location of the customer point of delivery on the pipeline system. The same dollars would be allocated to a sale taking place at the Canadian border, at Rock Springs, or at San Juan if the volumes at each place (both demand and commodity) should be the same. This means, of course, that an increase or decrease in gas volumes, either on the demand side or the commodity side, allocated to any one customer, automatically changes not only the costs allocated to that customer, but also the costs allocated to all other customers on the system.
>
> To illustrate this principle, costs are assigned to a given service on a straight ratio basis: that is, that percentage of demand costs is assigned to a given customer which represents the ratio of that customer's demand volume to total system demand volumes. It follows by pure arithmetic that if the demand volumes assigned to one particular customer are increased, the percentage of demand costs assigned to that customer increases, and the percentage of demand costs assigned to all other customers decreases: vice versa if a demand volume is decreased. Use of this single zone volumetric method makes it particularly important that these volumetric allocations be done on a basis which is consistent for all customers.
>
> The El Paso allocation method sponsored by [El Paso's allocation witness] in Exhibit 263 does *not* do so. [His] method for determining demand units for the Rock Springs sale is *not* consistent with the method he employs for determining demand units for other customers. * * * In Exhibit 263 [the witness] assigned demand costs to all customers situated north of Station 7 [a point 70 miles northwest of Green River] on a capacity basis; that is, he allocated to those customers as a group the full capacity of the pipeline located north of Station 7. For the customers located south of Station 7, [the witness] stated that he based his allocations on the peak day estimated for each customer. This is correct in the case of Mountain Fuel Supply Company, but when it came to Rock Springs he abandoned *both the capacity and the peak-day estimate method.* The proposed capacity of the Rock Springs facilities is 470,000 Mcf per day [at 14.9 psia] in the year 1965 when fully powered. Only 50% of this, or 235,000 Mcf, is available from CIG, so the remaining 235,000 Mcf must come from the Northwest Division. However, [the witness'] Exhibit 263 demand unit allocation to Rock Springs in 1965 and thereafter was only 165,000 Mcf, instead of the 235,000 Mcf which represents a *capacity* allocation on a basis consistent with that employed for the custmers north of Station 7. * * * Furthermore, [the witness] did *not* use Rock Springs' estimated peak-day volumes as a basis for Exhibit 263 demand unit allocations. The peak-day volume estimated to be delivered to the Southern Gas Companies at Las Vegas in Exhibit 260, Schedule 3, page 1, line 8 (prepared by * * * El Paso's market witness) is 470,000 Mcf, of which at least 235,000 would have to come from the Northwest Division. [The allocation witness] offered no reasonable explanation as to why he elected to allocate demand units to the Rock Springs sale in Exhibit 263 on a basis different from that employed in Exhibit 14, and different from either of the two methods employed in Exhibit 263 for other Northwest Division cus-

tomers, although questioned at some length thereon. There is *no* reasonable justification for this difference in treatment; since the capacity is in fact proposed to be installed, and is in fact proposed to be used whenever required, Rock Springs should be allocated its full share of the demand costs on that basis. If the full demand unit allocations are not assigned to Rock Springs, this installed capacity nevertheless will be paid for, but by *other* Northwest Division customers. [Italics those of Tennessee subsidiaries.]

The effect of adjusting El Paso's cost of service on the Provo pipeline (without the Edison load) for (1) elimination of the Colorado Interstate $3.75¢ differential, (2) the direct allocation of the Denver and Pierce compressor stations, and (3) use of a demand allocation volume of 235,000 Mcf (at 14.9 psia) to El Paso at Green River, is to reduce El Paso's rate of return to zero in 1964 and 1965, to a bare 0.65% in 1966, and to a bare 1.97% in 1967.

Purchase of Rock Springs Gas by Southern Companies Economically Infeasible—No Market Therefor Except Distant-Future Sales as Boiler Fuel

It has been pointed out that already there are two pipeline systems extending from Texas to California, the Southern Division of El Paso and the Transwestern system.

Extreme caution should be exercised in determining whether to certificate the Rock Springs project, for we should be very careful not to authorize it if it is not needed. These assertions are prompted by the following considerations:

(1) The project is very costly, and the consumer is going to have to foot the bill. Under settled law, the question of the economic feasibility of the Southern Companies' proposal to purchase the Rock Springs gas is properly to be taken into account in passing upon El Paso's application for the authorization which it seeks. *Virginia Petroleum Jobbers Association* v. *Federal Power Commission*, 293 F. 2d 527, 529, certiorari denied 368 U.S. 940; *Coastal Transmission Corp.*, 26 FPC 318, 330.

(2) It is in the public interest that the supply of natural gas in the United States be conserved for use by the people of the nation as a premium fuel so far as practicable. *Federal Power Commission* v. *Transcontinental Gas Pipe Line Corp.*, 365 U.S. 1, 8, 22. There is just so much gas in the ground; and when it is gone, the people who enjoy its benefits for "superior uses" will have those benefits no longer. If there are too many pipelines, either capacity lies idle or an undue proportion of gas goes for boiler fuel.

It has been noted that the Commission prescribed—and wisely so—that the matter of using existing pipelines to bring additional volumes of gas to the southern California market should be fully explored.

Peak-Day Requirements and Supply

The Southern Companies presented the phase of El Paso's case having to do with their estimated market requirements and supply, and the question of the economic feasibility of their purchase of the Rock Springs gas. The most recent estimates of their market witness are set out in Exhibit 290.

The estimate of peak-day requirements in Exhibit 290, made early in 1961, was calculated at a mean temperature of 36 degrees Fahrenheit. Adoption of calculations at such temperatures is liberal to the applicants, for a mean temperature that low last occurred in 1937; and before that, in 1922. A 37-degree temperature occurred in 1949. However, the Examiner accepts the estimate as not being without the bounds of reasonableness.

These estimated peak-day requirements are as follows:

Heating season	*Mcf*
1962–63	3,040,000
1963–64	3,205,000
1964–65	3,365,000
1965–66	3,528,000
1966–67	3,695,000
1967–68	3,871,000
1968–69	4,048,000
1969–70	4,227,000

The out-of-state sources from which the Southern Companies at present obtain their gas supplies, as has been seen, are the Southern Division of El Paso and Transwestern. A reasonable estimate of the peak-day supply from El Paso in each of the eight winters in question is that specified in Exhibit 290, 1,143,000 Mcf. This volume is the Southern Companies' maximum contracted daily demand from El Paso's Southern Division (1,130,000 Mcf at 14.9 psia converted to a pressure base of 14.73 psia).

As to Transwestern, such company has a large amount of unused capacity in its system. Despite efforts on its part, it has been unable to sell the load represented by such unused capacity to the Southern Companies (except an increase from the present contract demand quantity, 300,000 Mcf/d, to 350,000 Mcf/d on November 1, 1963). If applicants do not take advantage of Transwestern's willingness to transport 237,500 Mcf/d of Colorado Interstate gas, or if the Commission should not authorize such transportation; it is a reasonable and justifiable conclusion from the evidence that the peak-day volume which Transwestern can now, and will in the future be able to, deliver to the Southern Companies with its existing facilities is at least 420,000 Mcf. The service agreement between Transwestern and the Southern Companies contains a provision that deliveries of 300,000 Mcf are to be made at a pressure of not less than 800 pounds psig. At such pressure, Transwestern is able to deliver at the California border in the winter only approximately 370,000 Mcf per day. But substantially larger volumes can be delivered at a lesser pressure, as is permissible under Transwestern's LX Rate Schedule. During January, February and March 1962, Transwestern delivered to the Southern Companies volumes in excess of 420,000 Mcf on the Southern Companies' peak day and on 37 other days. Many of these daily deliveries were substantially more than 420,000 Mcf, and reached a high of 430,611 Mcf. The fact that Transwestern delivered in excess of 420,000 Mcf on the 1961-62 peak day and the other days mentioned warrants the conclusion that Transwestern has the ability to deliver, and the Southern Companies have the ability to receive from Transwestern, 420,000 Mcf on peak days in the future.

The Examiner finds and concludes that a reasonable and conservative estimate of the peak-day supply available to the Southern Companies from the existing facilities of El Paso and Transwestern, during the heating seasons 1962–63 to 1969–70, inclusive, is as follows:

	Mcf
El Paso Natural Gas Co	1,143,000
Transwestern Pipeline Co	420,000
Total	1,563,000

The California sources of peak-day supply consists of (1) underground storage, (2) normal production sources, and (3) other sources in California available during periods of peak demand. The Southern Companies' estimate of peak-day volumes available to them from intrastate sources, reflected in their

Exhibit 290, which the Examiner considers to be reasonable as of the time early in 1961 when the peak-day estimate was made, is as follows:

Heating season	Underground storage (Mcf)	Normal production sources plus some peaking gas (Mcf)	Total California sources (Mcf)
1962–63	1,097,000	639,000	1,736,000
1963–64	1,102,000	584,000	1,686,000
1964–65	1,122,000	581,000	1,703,000
1965–66	1,162,000	577,000	1,739,000
1966–67	1,162,000	574,000	1,736,000
1967–68	1,162,000	570,000	1,732,000
1968–69	1,182,000	566,000	1,748,000
1969–70	1,182,000	563,000	1,745,000

The out-of-state and California-source peak-day supplies above specified give us the following totals:

Heating season	*Mcf*
1962–63	3,299,000
1963–64	3,249,000
1964–65	3,266,000
1965–66	3,302,000
1966–67	3,299,000
1967–68	3,295,000
1968–69	3,311,000
1969–70	3,308,000

It will be noted that the forgoing peak-day supplies are in excess of the peak-day requirements for the winters of 1962–63 and 1963–64 (*supra*, p. 131); and therefore, on the basis of the above volumes alone, that there is excess pipeline capacity in each of such two heating seasons.

But the peak-day volumes which will be available to meet the requirements are in fact far in excess of the volumes in the tabulation last above set out. In his Special Findings issued in these proceedings on June 14, 1962, which were made without the benefit of briefs, the Examiner found that there would be an estimated 620,000 Mcf of additional peak-day repressuring gas available during the respective heating seasons 1962–63—1969–70, inclusive. In the light of the briefs which have since been submitted, the Examiner is satisfied that such finding is erroneous. The Examiner, however, does find, as a reasonable estimate, that the Southern Companies will have available and will utilize 550,000 Mcf of additional peak-day gas during the respective winter seasons 1964–65—1969–70, inclusive, from one trillion cubic feet of repressuring gas testified about on December 14, 1961, by a witness in a proceeding before the California Public Utilities Commission.

The witness, R. W. Todd, a vice president of Pacific Lighting Gas Supply Company whose duties include purchasing gas from California producers, said in the California proceeding that there are numerous gas reinjection programs now being carried on by California producers; and at the conclusion of the projects the gas used for recycling will be available for sale to the Southern Companies under long-term contracts. He further said that late in 1961, the Southern Companies were apprised that two gas reinjection projects, employing in excess of one trillion cubic feet of natural gas, either had reached, or within the next two or three years would reach, their economic limit; and that when the gas was no longer needed for reinjection it would be sold by the producers to

the Southern Companies. The record shows that the particular significance of repressuring gas is that it can be used predominantly to meet winter and peak-day loads, in contradistinction to the larger portion of California gas purchased by the Southern Companies, oil-well gas, the rate of production of which is determined by the production of oil.

It should be noted that no portion of the trillion cubic feet is included in the Southern Companies' estimate of peak-day supplies contained in Exhibit 290, since the peak-day estimate was prepared early in 1961 and, according to Mr. Todd, the Southern Companies were not apprised of such repressuring gas until "late in 1961."

In their comments on the Special Findings, the Southern Companies, referring to Mr. Todd's testimony, aver that there is a "lack of trustworthiness in hearsay evidence." To be sure, the testimony is hearsay. But no party objected to its receipt in evidence in these proceedings; and the statements constitute an admission against interest by a responsible officer of Pacific Lighting, in the very field in which his duties lie. Moreover, the evidence stands unweakened by any effective contradiction or denial. Indeed, W. M. Jacobs, the president of Pacific Lighting, testified in the instant proceedings, on January 24, 1962, that the Southern Companies had by that time entered into long-term contracts for the purchase of 200 billion cubic feet of the one trillion cubic feet.

Respecting the 200 billion cubic feet, Mr. Jacobs went on to say that "the actual delivery date of that gas is not set, and the rate of delivery in cubic feet per day has not been established." But there is no denial of Mr. Todd's statement that the producers would sell the trillion cubic feet to the Southern Companies when the economic limit of the recovery operations had been reached, which event apparently has already occurred as to the 200 billion cubic feet, or is in the offing. And there is no denial by Mr. Jacobs of Mr. Todd's further statement that the entire trillion cubic feet will be available within the next two or three years.

The Southern Companies and El Paso attempt to make something of the fact that on January 22, 1962, counsel for Southern California Gas Co. made the following statement at the hearing in the instant proceedings:

> I am informed that this testimony [, Mr. Todd's,] was inadvertently in error, and that the California Commission has been so advised by letter, that in fact only 200 billion cubic feet of gas is actually under long-term contract, and that the date of delivery and availability and rate of delivery of that gas is also uncertain.
>
> Now, we expect to confirm this, Your Honor, through the testimony or through questions of Mr. Jacobs at such time as he is on the stand, * * *

The Examiner makes a twofold response to the position now taken by the Southern Companies and El Paso:

First, the above quoted statement of counsel is not evidence in the proceedings.

Secondly, if the statement were evidence, either it does not militate in any wise against the correctness of Mr. Todd's testimony, or else it is insufficient to change the effect of, or weaken, that testimony. Apparently what counsel had in mind were the facts subsequently testified to by Mr. Jacobs, and which have already been referred to in this decision. Those facts do not contradict Mr. Todd's testimony in any way. If counsel had anything else in mind when he said that he had been informed that Mr. Todd's testimony was in error, counsel was apparently under a misapprehension, because Mr. Jacobs' subsequent testimony did not "confirm" counsel's statement that there had been an error.

The Examiner regrets taking the space to answer such trivial arguments, and he only does so lest the Commission (unintentionally on the part of the Southern Companies and El Paso) be misled.

Another witness for the Southern Companies perhaps attributed to Mr. Todd a representation on January 12, 1962, that "It is possible, even, that it might be four or five years before this gas does become available." But such statement of possibility, if made by Mr. Todd, cannot prevail against his testimony under oath before the California Commission, received in evidence in the instant proceedings. If Mr. Todd desired to retract that testimony in any respect, it was incumbent upon him to appear as a witness in these proceedings for that purpose. He failed to produce himself as a witness despite the fact that the hearing did not conclude until two and a half months after his testimony before the California Commission was made a part of the record in these proceedings.

The Examiner finds, as a reasonable estimate, that in the winter of 1964–65, three years from the time of Mr. Todd's testimony, the Southern Companies will have available at least a trillion cubic feet of repressuring gas in addition to the volumes of gas which form the basis of the estimated peak-day supply contained in Exhibit 290.

Keith Kelsey, assistant vice president of Southern California Gas Co., recognized that the one trillion cubic feet, when contracted for, will be delivered by the producers as it is processed, at an average rate of at least 275 million cubic feet a day, which rate will spread the delivery over a period of about ten years.

Mr. Jacobs testified that the repressuring gas,

> can be produced at rates which can be varied, and therefore we would seek to put it under contract ultimately on a basis which would enable us to take the gas primarily in the winter for peaking purposes, and for the seasonal requirements of the firm customers rather than to take the gas at a steady rate throughout the year.

It may well be that, in meeting its peaks, the Southern Companies can and will use four or five times as much of the repressuring gas as the average daily take of 275,000 Mcf. But the Examiner finds that a reasonable estimate of the annual load factor at which the Southern Companies will take the repressuring gas is 50%. It follows that a reasonable estimate of the daily volume of such repressuring gas which the Southern Companies will use in meeting the peaks is twice 275,000 Mcf, or 550,000 Mcf, as heretofore found. This estimation is held to 550,000 Mcf in order to be conservative, and to counterbalance such general considerations as the interrelationship of the repressuring supply and storage deliverability.

The record shows that there is an important additional source of peak-day gas, which the Southern Companies did not include in their estimates of supply; *viz.*, emergency gas. This is gas that California producers make available to the Southern Companies on a temporary basis in periods of extreme peak demand. The substantial nature of emergency gas as a source of peak-day supply is shown by the testimony of Mr. Jacobs that, "the peak demand days * * * are largely cared for by emergency gas and underground storage." Contrary to the experience of the Southern Companies, said companies, in making their peak-day estimates, assumed that none of their existing emergency-gas contracts would be renewed, and that there would be no new emergency-gas contracts entered into.

The record further shows that there are two sources of additional peak-day gas which the Southern Companies did not take into account in arriving at their estimates of supply; *viz.*,

(1) Mr. Todd's testimony is to be borne in mind that the projects involving the trillion cubic feet are but two of numerous gas reinjection programs in California, at the termination of which the gas will be available for sale to Pacific Lighting.

Mr. Jacobs testified that Pacific Lighting takes all of the California-produced gas available to it.

(2) The Southern Companies should be able to purchase additional gas from El Paso on their peak days under an existing contract whereby they have the right to purchase any gas that is a "kick-back" from Pacific Gas and Electric Co. For the evidence shows that PG&E stands to have substantial quantities of surplus gas. Mr. Jacobs testified:

> I know, of course, that they [PG&E] have a new pipeline from Canada which will bring in substantial quantities of gas from that source, and it may be, in fact I hope it is true, that we can avail ourselves of some of the low-priced gas (GX or GX1).[5]

The record also discloses that there have been a number of unanticipated discoveries of gas in the territory served by PG&E. (In the tabulations *infra*, the "kick-back" gas is included as a California supply, for simplicity.)

The three factors last treated of—emergency gas, termination of other gas reinjection programs, and "kick-backs" from PG&E—reenforce the finding of an estimated 550,000 Mcf of additional peak-day gas. They also warrant the conclusion, as a reasonable estimate, that there will be still additional peak-day gas to the extent of at least 50,000 Mcf available to the Southern Companies in each of the heating seasons 1964–65—1969–70, inclusive.

The total volumes of California gas reasonably estimated as available to meet the peak-day load in the respective years 1962–63 to 1969–70, inclusive, are as follows:

Year	Exhibit 290 total California supply (Mcf)	Additional repress. and other peaking gas available (Mcf)	Total California supply (Mcf)
1962–63	1,736,000	(6)	1,736,000
1963–64	1,686,000	(6)	1,686,000
1964–65	1,703,000	600,000	2,303,000
1965–66	1,739,000	600,000	2,339,000
1966–67	1,736,000	600,000	2,336,000
1967–68	1,732,000	600,000	2,332,000
1968–69	1,748,000	600,000	2,348,000
1969–70	1,745,000	600,000	2,345,000

[6] The Examiner includes no estimate for the 1962–63 and 1963–64 peak days for volumes of gas in this category because such estimate is unnecessary for the purpose of this decision.

When to the totals in the last column of the foregoing table are added the 1,563,000 Mcf of gas hereinbefore found to be the supply available from out of state to meet the peak-day loads (*supra*, p. 131), the total peak-day gas available

[5] The Staff introduced evidence, received without objection, that PG&E is the owner of part of an Alberta-California pipeline system; and that by an expenditure of some $67,000,000, the average daily delivery of natural gas from such pipeline can be increased from an existing capacity of about 412,000 Mcf/d to 800,000 Mcf/d. There is no showing as to when, if at all, PG&E intends to increase the capacity of the system. Nor is there any showing that PG&E is willing or intends to sell any of such gas to, or exchange gas with, the Southern Companies; or that no undue burden would be placed upon it by a Commission order requiring a sale of gas to the Southern Companies. The evidence has relevancy, if any, only as a rather remote factor to be considered in weighing the probabilities whether the Southern Companies will receive considerable volumes of El Paso gas which PG&E does not choose to take.

from California sources and existing out-of-state facilities in the respective years 1962–63 to 1969–70, inclusive, is seen to be as follows:

Year	Total California supply (Mcf)	Total out-of-State supply (Mcf)	Total supply with existing facilities (Mcf)
1962–63	1,736,000	1,563,000	3,299,000
1963–64	1,686,000	1,563,000	3,249,000
1964–65	2,303,000	1,563,000	3,866,000
1965–66	2,339,000	1,563,000	3,902,000
1966–67	2,336,000	1,563,000	3,899,000
1967–68	2,332,000	1,563,000	3,895,000
1968–69	2,348,000	1,563,000	3,911,000
1969–70	2,345,000	1,563,000	3,908,000

The foregoing estimated peak-day supplies available from existing facilities exceed the estimated peak-day requirements for the six respective years 1962–63 to 1967–68, inclusive, as will be seen from the following tabulation:

Year	Supply available (Mcf)	Market requirements (Mcf)	Excess supply (Mcf)
1962–63	3,299,000	3,040,000	259,000
1963–64	3,249,000	3,205,000	44,000
1964–65	3,866,000	3,365,000	501,000
1965–66	3,902,000	3,528,000	374,000
1966–67	3,899,000	3,695,000	204,000
1967–68	3,895,000	3,871,000	24,000
1968–69	3,911,000	4,048,000	(137,000)
1969–70	3,908,000	4,227,000	(319,000)

The existence of an excess of supply over requirements in the winter seasons through 1967–68 finds further support in the testimony of an officer of Southern California gas company, himself, and in a statement of the Southern Companies, in their brief, that they "could serve their firm load for a number of years without the Rock Springs project."

The Examiner finds and concludes that the volumes shown in the last column of the foregoing table, "Excess Supply (Mcf)," for the six respective years 1962–63 to 1967–68, inclusive, are a reasonable and conservative estimate of the excess peak-day capacity available to serve the southern California market which will exist on the El Paso and Transwestern systems with the facilities now installed.

It has already been found (*supra*, p. 114) that by an El Paso-estimated expenditure of $65,580,000 for loops and compressor facilities, El Paso can increase the delivery capacity of its present facilities at the southern California border by 200,000 Mcf/d (at 14.9 psia), at a cost of service no higher than between 33¢ and 34¢ and that the increased capacity can be used to supply an additional 200,000 Mcf/d to the Southern Companies. By the installation of still more facilities, El Paso doubtless could increase the capacity of its Southern Division by more than 200,000 Mcf/d; but the increase of 200,000 Mcf/d is the only increase that is supported by cost figures in the record. The present capacity plus the 200,000 Mcf/d is, for convenience, referred to herein as the potential capacity of El Paso's Southern Division. If El Paso does not choose to develop and utilize the potential delivery capacity to transport to the Southern Companies gas which is now a part of the Rock Springs supply, said applicant can develop and utilize the 200,000 Mcf/d of potential delivery capacity to transport to the Southern Companies the gas which it had planned to sell PG&E when it filed the applications in Docket Nos. G–15696 and G–18616.

The Examiner, therefore, finds and concludes that El Paso can supply 200,000 Mcf/d to the Southern Companies from its Southern Division upon the construction by it of the facilities referred to in the preceding paragraph; and that a reasonable price for such gas is no more than the price at which said applicant proposed to sell the same to PG&E; *i.e.*, 33.38¢ per Mcf (at 14.9 psia).

We shall now turn to the question of Transwestern selling to the Southern Companies additional gas to the extent of the potential delivery capacity of its system. The examiner finds that the capacity of the Transwestern system at the California border can be increased to its maximum of 640,000 Mcf/d (an increase of 290,000 Mcf/d over the present daily delivery capacity) by the construction of new compressor stations, additions to existing compressor stations, and lateral and gathering lines. A reasonable and valid estimate of the cost of the additional facilities is on the order of $32,490,000.

Transwestern's only firm customers are the Southern Companies. The record discloses that Transwestern controls by gas purchase contracts adequate gas reserves to support a deliverability of on the order of 517,800 Mcf/d for a period of at least 15 years.

Transwestern draws its gas supplies from two great natural-gas production regions of the United States, the Permian Basin region and the Panhandle-Hugoton-Anadarko region. Its sytsem lies near another great production area, the South Texas region; and extends westward through the edge of the San Juan Basin, another gas production area.

John H. Murrell, a petroleum, geological and economic engineer and the president of DeGolyer and MacNaughton, a firm of the highest standing which specializes in the estimation of oil and gas reserves and the availability of oil and gas reserves, testified in substance as follows:

That in my opinion Transwestern can acquire in the vicinity of its pipeline system additional reserves in excess of five trillion cubic feet of gas over the next 15 years; this amount would be amply sufficient to sustain a 290,000 to 300,000 Mcf/d deliverability for such period; Transwestern can purchase in competition with others, over the next one to two years, at least an additional two trillion cubic feet of gas in the area traversed by its pipeline system, and nearby areas; and the volume last mentioned would increase Transwestern's deliverability approximately 300,000 Mcf per day for a 10-year period.

It is true that on February 2, 1962, Transwestern and a subsidiary of Cities Service Gas Co. entered into a contract for the sale and purchase of gas. The agreement provides for the sale at the eastern extreme of Transwestern's existing system of 100,000 Mcf/d beginning in January 1964; and of 200,000 Mcf/d commencing in January 1966, and continuing thereafter during the 20-year term of the contract. None of the excess capacity of Transwestern's principal laterals and main line would be utilized by such deliveries.

Adding to Transwestern's present deliverability the 300,000 Mcf/d increased deliverability to which Mr. Murrell testified, and deducting the 200,000 Mcf/d which Transwestern is obligated to sell to Cities Service, the resultant deliverability is 617,800 Mcf/d.

In view of the great gas producing areas in which the Transwestern system has its origin, as above described, the other gas producing areas adjacent to its system, and the positive nature of Mr. Murrell's testimony (*e.g.*, the additional reserves of in excess of five trillion cubic feet which Transwestern can acquire would be "*amply* sufficient to sustain a 290,000 to 300,000 deliverability"; "a measly little 5 trillion cubic feet" from "that tremendous area"), the Examiner finds that Transwestern will have no difficulty in entering into contracts for the purchase by it of additional gas reserves which, coupled with its present reserves,

will be sufficient to support a deliverability of 640,000 Mcf/d over the period of the next 15 years.

It follows that the potential peak-day supply from Transwestern at the California border is 220,000 Mcf over and above its present peak-day supply of 420,000 Mcf.

Transwestern is desirous of selling additional gas to the Southern Companies to the extent of the optimum capacity of its facilities.

Transwestern introduced expert testimony, supported by exhibits, that, for the period 1964 through 1967, the incremental cost of service for delivering the additional 290,000 Mcf/d volumes at the California border at 100% load factor would be an average of 23.39¢. The purchased gas component of such cost of service is 16.75¢ per Mcf, which is the present Transwestern average cost. It is true, as Colorado Interstate says, that the prices which Transwestern will pay for gas in the future are unknown. But we have been cited to no better way, in estimating the amount of the purchased gas component, than to use Transwestern's present average cost of purchased gas. For that matter, the purpose of estimating Transwestern's incremental cost of service is to compare such estimate with El Paso's Rock Springs project estimated cost of service. El Paso, in estimating the cost to it of the Rock Springs gas, employed prices now in effect, and failed to employ fixed contract increases. To reach an estimated figure for the Transwestern cost of service comparable to that of El Paso's Rock Springs project estimated cost of service, it seems to be appropriaite to calculate the cost to Transwestern of the future purchases of gas on the basis of its present average cost of purchased gas.

El Paso points out that Transwestern now has deliverability capacity in its field facilities of some 172,800 Mcf/d in excess of its present requirements. El Paso argues that the costs associated with those facilities should have been assigned to the additional deliveries assumed by Transwestern. We agree. El Paso furnished no figures as to what the claimed effect on the incremental cost of service would be of assigning the excess capacity in the field facilities thereto. As best we can make out from the record, the addition to the incremental cost would be a little over 2¢.

The Examiner is of the view and finds, on the basis of the evidence above adverted to, that a reasonable estimate of Transwestern's incremental cost of service for the additional 290,000 Mcf/d (which figure includes peak-day deliveries) is on the order of 26¢ per Mcf.

The potential capacity of the El Paso Southern Division and Transwestern systems above referred to should, if needed, become a reality shortly prior to the 1963–64 heating season. The statement, *supra*, page 125, relative to the time which would likely be required for Colorado Interstate to install additional facilities to serve the Rocky Mountain area exclusively, is also true of the additional El Paso Southern Division facilities. Manifestly, Transwestern should be able to install the additional facilities on its system before the 1963–64 heating season.

During the winter of 1963–64 and the subsequent winters, the potential peak-day additional capacity of the Southern Division of the El Paso system at the California border (200,000 Mcf) plus the potential additional peak-day capacity of the Transwestern system at such border (220,000 Mcf) give us a total potential peak-day additional capacity from these two out-of-state sources available to the southern California market of 420,000 Mcf.

Adding the potential peak-day additional capacity to the existing excess peak-day capacity of the two systems, the total excess capacity, existing and potential, of the Southern Division of the El Paso system, and the Transwestern system,

for the respective winters 1962–63 to 1969–70, inclusive, for serving the southern California market is as appears in the last column of the table below.

EXISTING AND POTENTIAL EXCESS PEAK-DAY CAPACITY FOR SERVING SOUTHERN COMPANIES FROM SOUTHERN DIVISION EL PASO SYSTEM AND TRANSWESTERN SYSTEM

Year	Excess capacity existing facilities (Mcf)	Potential additional capacity (Mcf)	Total existing and potential excess capacity (Mcf)
1962–63	259,000	----------	259,000
1963–64	44,000	420,000	464,000
1964–65	201,000	420,000	421,000
1965–66	374,000	420,000	794,000
1966–67	204,000	420,000	624,000
1967–68	24,000	420,000	444,000
1968–69	(137,000)	420,000	283,000
1969–70	(319,000)	420,000	101,000

The Examiner finds and concludes that volumes shown in the last column of the foregoing table are a reasonable and conservative estimate of the excess peak-day capacity on the Southern Division of the El Paso system and on the Transwestern system now available, and which can be made available, to serve the southern California market in the eight respective years 1962–63 to 1969–70, inclusive.

Certainly, the installation of facilities to attain such portions of the potential capacity, above described, of the Transwestern and El Paso systems as are needed for the requirements of the southern California market is greatly to be preferred to the Rock Springs project. It follows that there is no need whatever for the Rock Springs project in order for the Southern Companies to meet the peak requirements on their systems at any time during the period from January 1, 1964 (when applicants propose to commence operations) through the winter season 1969–70.

Annual Requirements and Supply

The Southern Companies' Exhibit 290 contains an estimate of annual gas requirements and supply for the years 1963 through 1970. This estimate was prepared in February 1962, much later than the preparation of the peak-day portrayal in such exhibit. The Southern Companies estimate their annual requirements on two bases: (1) an "Average Year," and (2) a "Cold Year."

The Southern Companies' estimates of their average-year firm gas requirements are somewhat overstated. Their market witness made an unwarranted temperature adjustment from 1745 degree days to 1800 degree days. The areas served by the Southern Companies are sufficiently contiguous longitudinally for the same annual average of degree days to apply to each area. The average degree-day year for the 30-year period, 1931–1960, is 1744; and Southern Counties Gas Co. uses 1745 degree days in forecasting volumes of "unaccounted for" gas. The effect of the improper adjustment to 1800 degree days is an overstatement of the firm sales by about 2%. In addition, the estimated rate of attachment of firm meters, as reflected in Exhibit 290, appears to be overstated to a limited extent; and the estimated use per meter is perhaps a little overstated above the temperature element overstatement. For the companies' estimates of their firm requirements in these and prior proceedings before this Commission for the years 1956 to 1960, inclusive (derived by the same methods as they employed in compiling Exhibit 290) have been proved by the sales actually experienced in such years to be too high. Allowing for unduly mild

winter seasons in most of such years, the actual firm requirements for these years fell below the estimates by approximately 5%. However, a 5% difference between estimation and realization is not unreasonable; and the Examiner adopts the Southern Companies' estimates of average year firm requirements in Exhibit 290.

By a "cold year," the Southern Companies mean a year "as cold as 1949 when there were 2342 degree days in the service area of the Southern California Companies." The Southern Companies correctly say that they must be prepared to meet a cold year. Their estimate, in Exhibit 290, of the cold-year firm requirements seems to be overstated to a limited extent because of the apparent overestimate in rate of meter attachments and perhaps in use per meter. But the estimate is accepted by the Examiner as being within the confines of a reasonable estimation.

Column (e) of Exhibit 290 lists the Southern Companies' estimated firm requirements, both for an average year and a cold year. Column (h), "interruptible adjusted," lists the estimated interruptible requirements as reduced by the amount of fuel oil that the Southern Companies assume will be burned. The record is clear that the volumes in column (h) have not been adjusted for any estimated curtailments. In the interest of simplicity, column (h) volumes will be referred to herein as the interruptible gas requirements, since they constitute the estimated interruptible volumes which the Southern Companies have the opportunity of supplying.

The Examiner is of the view, based upon the testimony of the Southern Companies' market witness and data upon which the witness relied, that the estimate of the interruptible requirements is reasonable; and he so finds.

With Edison Load. Including the load of Southern California Edison Co., the average-year estimates of the Southern Companies' annual firm and interruptible requirements (for sales at retail and wholesale), and the resultant totals, set out in Exhibit 290, are as follows:

AVERAGE-YEAR REQUIREMENTS

Year	Firm (Mcf)	Interruptible (Mcf)	Total (Mcf)
1963	363,000,000	390,000,000	753,000,000
1964	384,000,000	408,000,000	792,000,000
1965	400,000,000	425,000,000	825,000,000
1966	417,000,000	447,000,000	864,000,000
1967	435,000,000	469,000,000	904,000,000
1968	453,000,000	478,000,000	931,000,000
1969	471,000,000	491,000,000	962,000,000
1970	489,000,000	519,000,000	1,008,000,000

The corresponding estimate of cold-year requirements contained in Exhibit 290 is as follows:

COLD-YEAR REQUIREMENTS

Year	Firm (Mcf)	Interruptible (Mcf)	Total (Mcf)
1963	401,000,000	390,000,000	791,000,000
1964	420,000,000	408,000,000	828,000,000
1965	438,000,000	425,000,000	863,000,000
1966	457,000,000	447,000,000	904,000,000
1967	476,000,000	469,000,000	945,000,000
1968	496,000,000	478,000,000	974,000,000
1969	516,000,000	491,000,000	1,007,000,000
1970	536,000,000	519,000,000	1,055,000,000

Exhibit 290 sets out certain volumes from California sources as being available to meet the foregoing estimated annual requirements. The evidence shows that there will be substantial California-source volumes besides such volumes. It has already been seen (*supra*, pp. 132–133) that, according to the testimony of officers of the Southern Companies, an additional trillion cubic feet of repressuring gas will be delivered to the Southern Companies at an average rate of at least 275,000 Mcf/d, commencing "two or three years" from December 1961. On an annual basis, 275,000 Mcf/d amounts to 100,000,000 Mcf. It is a reasonable and conservative conclusion that the Southern Companies will receive at least 100,000,000 Mcf of the trillion cubic feet of repressuring gas in each of the years 1965 to 1970, inclusive.

Moreover, the finding (*supra*, p. 135) is to be borne in mind that 50,000 Mcf is a reasonable estimation of peak-day gas from emergency-gas sources, additional repressuring gas, and PG&E "kick-backs." It is a conservative assumption that, annually, gas from these sources will be taken at only a 20% load factor. On this basis, the Examiner finds, as a reasonable estimate, that there will be an average of 10,000 Mcf/d from these sources, or 3,650,000 Mcf annually.

A reasonable estimate of the total annual volumes from California sources is as set out in the last column of the table below, and the Examiner so finds.

ADDITIONAL CALIFORNIA SOURCES

Year	Exhibit 290	Trillion cf of repressuring gas (Mcf)	Other additional gas (Mcf)	Total (Mcf)
1963	187,000,000		3,650,000	190,650,000
1964	174,000,000		3,650,000	177,650,000
1965	173,000,000	100,000,000	3,650,000	276,650,000
1966	172,000,000	100,000,000	3,650,000	275,650,000
1967	171,000,000	100,000,000	3,650,000	274,650,000
1968	170,000,000	100,000,000	3,650,000	273,650,000
1969	169,000,000	100,000,000	3,650,000	272,650,000
1970	168,000,000	100,000,000	3,650,000	271,650,000

The Southern Companies' principal source of out-of-state annual supply is the Southern Division of El Paso's system. In the Examiner's opinion, the Southern Companies' maximum contracted daily demand from El Paso, 1,143,000 Mcf, multiplied by 365, or 417,195,000 Mcf, which will be rounded to 417,000,000 Mcf, is a reasonable and justifiable estimate of the annual volume which El Paso will be able to deliver with its existing facilities during the period 1963 through 1970. This view is supported by the following considerations: (1) flow diagrams prepared by El Paso's chief pipeline engineer showing the daily design capacity of the El Paso Southern Division depict that said company is capable of delivering such volumes to the Southern Companies; (2) the fact that El Paso has contracted to deliver up to 1,143,000 Mcf daily to the Southern Companies leads to the inference, at least *prima facie*, that El Paso is, and will continue to be, able to make such delivery; (3) in 1960, El Paso's average daily gas sales were in excess of 1,143,000 Mcf; namely, 1,155,910 Mcf; (4) the Southern Companies, themselves, estimate that they will receive 417,000,000 Mcf annually from El Paso during the period in question; and (5) an expert witness for the Tennessee subsidiaries also utilized the Southern Companies' maximum contracted daily demand in estimating the annual volume which the latter companies would receive from El Paso in 1965, and rounded the annual volume to 417,200,000 Mcf.

The Southern Companies' other out-of-state supplier, Transwestern, has no customers other than the Southern Companies, except two small interruptible

industrials near the eastern end of its system. The volumes which Transwestern can deliver at the California border are not lessened because of these two small sales. The Examiner is justified in finding, and does find, that Transwestern can, and will continue to be able to, deliver to the Southern Companies its present delivery capacity of 350,000 Mcf per day throuhgout the years in question. The volumes thereby made available to the Southern Companies are 127,800,000 Mcf in each of the eight years (not counting the extra day in each of the two leap years).

Tabulating the annual volumes available to the Southern Companies from California sources, from El Paso with its existing facilities, and from Transwestern with its existing facilities, the totals arrived at are as set out in the last column of the table below.

ANNUAL VOLUMES AVAILABLE TO SOUTHERN COMPANIES WITH EXISTING FACILITIES

Year	Available from California sources (Mcf)	Available from El Paso existing facilities (Mcf)	Available from Transwestern existing facilities (Mcf)	Total available from existing sources (Mcf)
1963	190,650,000	417,000,000	127,800,000	735,450,000
1964	177,650,000	417,000,000	127,800,000	722,450,000
1965	276,650,000	417,000,000	127,800,000	821,450,000
1966	275,650,000	417,000,000	127,800,000	820,450,000
1967	274,650,000	417,000,000	127,800,000	819,450,000
1968	273,650,000	417,000,000	127,800,000	818,450,000
1969	272,650,000	417,000,000	127,800,000	817,453,000
1970	271,650,000	417,000,000	127,800,000	816,450,000

Comparing these estimated supplies with the estimated average-year and cold-year requirements set out at page 140, *supra*, it will be seen that the estimated supplies are far above the estimated firm requirements in each of the eight years, but are well below the estimated firm requirements plus the estimated interruptible requirements.

Turning next to the question of the potential annual volumes which can be made available to the Southern Companies from El Paso's Southern Division and from Transwestern, and the resultant potential excess capacity of such systems with which to serve the Southern California market, it will be recalled that the additional 200,000 Mcf/d of gas which would become available from El Paso's Southern Division, if and when the G–15696 and G–18696 facilities are installed, is at a pressure base of 14.9 psia. The equivalent volume at 14.73 psia is 202,300 Mcf. The 202,300 Mcf multiplied by 365 results in 73,839,000 Mcf, which quantity the Examiner estimates is the additional annual volume which would be available from El Paso to the Southern Companies by reason of the construction of such facilities.

The additional daily supply potentially available from Transwestern of 290,000 Mcf (640,000 Mcf minus 350,000 Mcf) times 365 comes to 105,850,000 Mcf.

The Examiner allows, as an estimate, until December 1, 1963, for the installation of the additional El Paso Southern Division and Transwestern facilities. So in the table below, there is included, for 1963, only a one month's increase in the load that the Southern Division of El Paso and Transwestern would carry. For the subsequent years in question, the full additional annual volumes are depicted. The results appear in the last column of the table.

ANNUAL VOLUMES AVAILABLE TO SOUTHERN COMPANIES AFTER ADDITION OF G–15696 AND G–18696 FACILITIES AND TO TOTAL DESIGN CAPACITY OF TRANSWESTERN LINE

Year	Total available from existing sources (Mcf)	El Paso potential supply (Mcf)	Transwestern potential supply (Mcf)	Total available supply including potential capacity existing systems (Mcf)
1963	735, 450, 000	6, 271, 000	8, 990, 000	750, 711, 000
1964	722, 450, 000	73, 839, 000	105, 850, 000	902, 139, 000
1965	821, 450, 000	73, 839, 000	105, 850, 000	1, 001, 139, 000
1966	820, 450, 000	73, 839, 000	105, 850, 000	1, 000, 139, 000
1967	819, 450, 000	73, 839, 000	105, 850, 000	999, 139, 000
1968	818, 450, 000	73, 839, 000	105, 850, 000	998, 139, 000
1969	817, 450, 000	73, 839, 000	105, 850, 000	997, 139, 000
1970	816, 450, 000	73, 839, 000	105, 850, 000	996, 139, 000

The excess annual volumes (for the average year and the cold year, respectively), above the firm and interruptible market requirements estimated by the Southern Companies, which would thereby result, are set out in the last column of the two tables below.

AVERAGE YEAR

EXCESS ANNUAL VOLUMES AFTER ADDITION OF G–15696 AND G–18696 FACILITIES AND AT TOTAL DESIGN CAPACITY OF TRANSWESTERN SYSTEM

Year	Total available supply including potential capacity existing systems (Mcf)	Exhibit 290 firm and interruptible market requirements (Mcf)	Excess supply including potential capacity existing systems (Mcf)
1963	750, 711, 000	753, 000, 000	(2, 289, 000)
1964	902, 139, 000	792, 000, 000	110, 139, 000
1965	1, 001, 139, 000	825, 000, 000	176, 139, 000
1966	1, 000, 139, 000	864, 000, 000	136, 139, 000
1967	999, 139, 000	904, 000, 000	95, 139, 000
1968	998, 139, 000	931, 000, 000	67, 139, 000
1969	997, 139, 000	962, 000, 000	35, 139, 000
1970	996, 139, 000	1, 008, 000, 000	(11, 861, 000)

COLD YEAR

EXCESS ANNUAL VOLUMES AFTER ADDITION OF G–15696 AND G–18696 FACILITIES AND AT TOTAL DESIGN CAPACITY OF TRANSWESTERN SYSTEM

Year	Total available supply including potential capacity existing systems (Mcf)	Exhibit 290 firm and interruptible market requirements (Mcf)	Excess supply including potential capacity existing systems (Mcf)
1963	750, 711, 000	791, 000, 000	(40, 289, 000)
1964	902, 139, 000	828, 000, 000	74, 139, 000
1965	1, 001, 139, 000	865, 000, 000	136, 139, 000
1966	1, 000, 139, 000	904, 000, 000	96, 139, 000
1967	999, 139, 000	945, 000, 000	54, 139, 000
1968	998, 139, 000	974, 000, 000	24, 139, 000
1969	997, 139, 000	1, 007, 000, 000	(9, 861, 000)
1970	996, 139, 000	1, 055, 000, 000	(58, 861, 000)

It will be seen that, even without the Rock Springs project, the estimated supplies will exceed both firm and interruptible requirements in all of the years except 1963 and 1970, and a 1969 cold year. The picture for 1963 would not

be affected by authorization of the Rock Springs project, for it will be remembered that applicants' proposal is that deliveries from the Rock Springs facilities are not to commence until January 1, 1964.

In 1964 to 1968, inclusive, with the potential of the El Paso Southern Division and Transwestern developed, there would be no curtailments whatever. In 1970, there would be a curtailment of a portion of the interruptible load; and also in 1969, if there were to be a cold year. Thus, in the entire five-year period from 1964 through 1968, and probably in 1969 as well, there would be no market at all for any of the Rock Springs gas. When the market did commence, in 1969 or 1970, the only sales would be of a portion of the Rock Springs increment, for boiler fuel. Even these sales would be made way below the cost of service (*i.e.*, cost of purchased gas, cost of transportation to industrial markets, and cost of distribution).

In the face of this situation, there can be no justification for the Rock Springs project.

For the Southern Companies to purchase the Rock Springs gas on top of the excess supplies shown in the last two tables would, of course, be sheer folly because of the vast financial loss to them that would ensue. And the Southern Companies have evinced no intention of doing so.

In their brief, the Southern Companies take the position that the Rock Springs project should be authorized and that the expansion of the El Paso Southern Division and Transwestern systems should be deferred until their market grows to the point where they are ready to purchase the increased volumes from the latter two systems. Such proposition is untoward and contrary to the public interest for the following reasons: (1) the record shows that El Paso has been under heavy expense for prepayments for gas to support the increased deliveries of 202,300 Mcf/d which it expected to make to PG&E, and which are now available to the Southern Companies—if the sale of such gas to the Southern Companies is deferred until said companies have need of it in addition to the Rock Springs gas, El Paso would continue to bear heavy expense for prepayments over a period of years; (2) Transwestern, over a period of years, would lose the increased revenue that would result from utilization of the potential capacity of its system; (3) the consuming public of Southern California would be deprived, during the intervening years, of the El Paso Southern Division and Transwestern increments, which are less costly than the Rock Springs gas; (4) there would be a failure, in the language of the Commission's order of March 22, 1962, to use "existing pipelines * * * in connection with bringing additional volumes of natural gas to the Southern California market," and a failure to make use of "potential delivery capacity to the economic optimum"; and (5) it has been seen (*supra*, p. 116) that the Commission can properly reject applicants' proposal because of the existence of preferable alternatives.

The Southern Companies urge that they should be permitted to contract for the Rock Springs supply because "a package of surplus Colorado Interstate gas" is available, and they should look to the future needs of their market. This argument is wholly without merit. It falls before the weight of the five considerations above noted. Moreover, El Paso's contract with the Southern Companies respecting the Rock Springs gas calls for the sale and purchase of the following volumes: 109,500,000 Mcf in 1964, and 173,528,000 Mcf annually thereafter. And the Southern Companies are obligated to pay for these volumes, at firm rates, even though they fail to take them, with the mere right to make up gas paid for but not taken within a five-year period. The Southern Com-

panies, themselves, make no contention, and could not be heard to contend, that the foregoing arrangement should receive the approval of the Commission if they are to have no market for any of the gas until seven years hence at best.

The Southern Companies argue that deliveries of gas to them should be made at a high load factor, with consequent lesser purchase costs than otherwise. The Southern Companies can maintain deliveries at a plenty high load factor by purchasing gas from the enlarged El Paso Southern Division and Transwestern systems, and the question of just what is a proper load factor in the public interest can await determination in future El Paso Southern Division and Transwestern certificate proceedings.

Without Edison Load. The natural-gas load of Southern California Edison Company, estimated by that company itself and which the Examiner accepts as reasonable, for the years in question is as follows:

	Mcf
1963	85,000,000
1964	91,000,000
1965	97,500,000
1966	107,800,000
1967	118,500,000
1968	124,400,000
1969	132,600,000
1970	140,400,000

Deducting the Edison load from the total estimated requirements set out page 140, *supra*, the estimated annual requirements of the Southern Companies, if Edison ceases to be a customer, are seen to be as follows:

Average Year

	Mcf
1963	668,000,000
1964	701,000,000
1965	727,500,000
1966	756,200,000
1967	785,500,000
1968	806,600,000
1969	829,400,000
1970	867,600,000

Cold Year

	Mcf
1963	706,000,000
1964	737,000,000
1965	765,500,000
1966	796,200,000
1967	826,500,000
1968	849,600,000
1969	874,400,000
1970	914,600,000

The excess of the estimated annual volumes (for the average year and the cold year, respectively), above the firm and interruptible market requirements estimated by the Southern Companies, which would result after the development

of the potential of the El Paso Southern Division and Transwestern systems appears in the last column of the two tables below.

AVERAGE YEAR

EXCESS ANNUAL VOLUMES AFTER ADDITION OF G–15696 AND G–18096 FACILITIES AND AT TOTAL DESIGN CAPACITY OF TRANSWESTERN SYSTEM

Year	Total available supply including potential capacity existing systems	Firm and interruptible requirements excluding Edison load	Excess supply including potential capacity existing systems
1963	750, 711, 000	668, 000, 000	82, 711, 000
1964	902, 139, 000	701, 000, 000	201, 139, 000
1965	1, 001, 139, 000	727, 500, 000	273, 639, 000
1966	1, 000, 139, 000	756, 200, 000	243, 939, 000
1967	999, 139, 000	785, 500, 000	213, 639, 000
1968	998, 139, 000	806, 600, 000	191, 539, 000
1969	997, 139, 000	829, 400, 000	167, 739, 000
1970	996, 139, 000	867, 600, 000	128, 539, 000

COLD YEAR

EXCESS ANNUAL VOLUMES AFTER ADDITION OF G–15696 AND G–18696 FACILITIES AND AT TOTAL DESIGN CAPACITY OF TRANSWESTERN SYSTEM

Year	Total available supply including potential capacity existing systems	Firm and interruptible requirements excluding Edison load	Excess supply including potential capacity existing systems
1963	750, 711, 000	706, 000, 000	44, 711, 000
1964	902, 139, 000	737, 000, 000	165, 139, 000
1965	1, 001, 139, 000	765, 500, 000	235, 639, 000
1966	1, 000, 139, 000	796, 200, 000	203, 939, 000
1967	999, 139, 000	826, 500, 000	172, 639, 000
1968	998, 139, 000	849, 600, 000	148, 539, 000
1969	997, 139, 000	874, 400, 000	122, 739, 000
1970	996, 139, 000	914, 600, 000	81, 539, 000

Thus, it is seen that without the Edison load, there would be no market for any of the Rock Springs gas in any of the years, if the potential of the El Paso Southern Division and Transwestern systems be developed.

It has already been shown that, even with the Edison load, there is a want of a market for the Rock Springs gas, except for some industrial sales in 1970, and maybe in 1969, that would be made below cost. Without the Edison load, the economic infeasibility of the Rock Springs purchase would be worsened; for the Southern Companies would be injured more by not selling gas for which they would be obligated to pay than by selling some of it at a loss for low priority industrial use.

CONCLUSION

For these additional reasons, the applications should be denied.

Question of Violation of Policy of Antitrust Laws

The intervenor Tennessee subsidiaries adduced evidence in the attempt to show that El Paso, Colorado Interstate and the Southern Companies have violated the policy of the antitrust laws, to the financial detriment of the consuming public. They make a strong argument that the facts establish their contention, and that for such reason the applications should be denied. Applicants and the Southern Companies argue stoutly that they have not violated the national antitrust policy.

It does not seem advisable to decide the issue for the following reasons:

(1) We have already demonstrated, time and again, that the applications should be denied. Hence, a ruling on the question of violation of the national antitrust policy is not material (in the sense of being essential to the decision); and need not be made. "* * * there is no requirement in law that every contention or even most of the contentions advanced by the many parties respecting the numerous issues in the lengthy and involved proceedings which come before us, be ruled on *seriatim* and specific findings made on each." *Tennessee Gas Transmission Co.*, 17 FPC 406, 415. To adopt said intervenors' language respecting another issue, there is "no point in 'beating a dead horse.'"

(2) To treat of and determine the complicated question of whether applicants and the Southern Companies have violated the policy of the antitrust laws would unnecessarily prolong the time of issuance of this decision.

(3) An action, hereinbefore referred to, is now pending before the District Court of Utah wherein the federal government charges that El Paso's acquisition of the stock of Pacific Northwest violated Section 7 of the Clayton Act. Apparently such suit involves a similar question to that which the Tennessee subsidiaries raise in the instant proceedings.

The Examiner recognizes, and repeatedly held during the hearing, that, in the language of the Supreme Court in *California* v. *Federal Power Commission*, *supra*, 369 U.S. at page 485, "'antitrust considerations' are relevant to the issue of 'public interest, convenience, and necessity.'" And there is no intention here to abnegate our responsibility. But, in our opinion, the applications cannot be granted in any event; and to labor this decision by going into the violation-of-the-policy-of-the-antitrust-laws question would be a "a needless waste of time and money."

If, despite these reasons, the Commission desire that the Examiner pass upon such question, the proceedings can, of course, be remanded to him.

Benefits to Consumers Served by Pacific Northwest System

The Washington Commission and the Oregon Commissioner take the position that the Rock Springs project is in the public interest and of benefit to the users of natural gas in their states. Also, the Southern Companies assert that the project would "put an undernourished pipeline system on its feet." There is insufficient evidence to support the averment that Pacific Northwest [Northwest Division of El Paso] would be "put on its feet" by applicant's project; but it is perhaps correct to say that the "Northwest Division" is undernourished. No evidence was adduced at the rehearing which affords adequate basis for altering the finding of the Federal Power Commission, made after the original hearing that the project,

> will enable El Paso to make fuller use of its Northwest Division facilities, at a higher load factor, with resulting economies to Northwest Division customers; * * *

These considerations are insufficient to warrant certification of applicants' project. The Examiner agrees with and adopts the following statement of the Tennessee subsidiaries, which he has modified to eliminate the factor that said intervenors do not concede that the project would benefit the Pacific Northwest (Northwest Division) system:

> * * * in appraising [the] benefits to the Northwest Division [Pacific Northwest], * * * [the] benefits * * * must be viewed in perspective. The Rock Springs Project *primarily* proposes a new service to southern California and additional service to the Rocky Mountain area; the fundamental purpose is *not* to provide assistance to the Northwest Division, nor is it to put an "undernourished pipeline system on its feet." If the Northwest

> Division is indeed an "undernourished pipeline system" the estimates and cost studies originally made by its sponsors must have been erroneous. The same thing is true of applicants' estimates and cost studies for the Rock Springs Project. There is nothing to be gained, and much to be lost, by attempting to cure one undernourished system by creating yet another uneconomic and undernourished system, and letting the first feed off the second. * * * it is the needs of southern California and the Rocky Mountain area, which are the areas proposed to be served, which must be considered *first*, and * * * it is the public convenience and necessity of service to *those* areas which must determine this case. [Italics those of Tennessee subsidiaries.]

Also, the aforementioned benefits to the customers served by the Pacific Northwest system may be more than offset by a consideration advanced by Edison. Edison argues forcefully that the Rock Springs project is contrary to the long-range best interests of the Pacific Northwest system in that it denies that system access to the California market.

Claim that Utah and Nevada Communities Could be Served by Provo Line

El Paso avers in its opening brief, without citation to the record, that "this project will make natural-gas service feasible to communities in Utah and Nevada which are not now served by any natural-gas pipeline." The Provo line would be laid in sparsely settled country. The factors of population and distance of towns and villages from the Provo line afford a *prima facie* indication of the economic feasibility or infeasibility of serving a particular town or village. Based upon these criteria, there appear to be only five communities in Utah to which natural-gas service might perhaps, with economic feasibility, be brought; *viz.:*

Community	Population	Distance from proposed Provo line
Milford	1,471	Adjacent to line.
Cedar City	7,543	23 mi.
St. George	5,130	17.4 mi.
Fillmore	1,602	4 or 5 mi.
Nephi	2,566	Adjacent to line.

There is not a single town, village or hamlet in Nevada, not served with natural gas, that could be supplied from the Provo line with economic feasibility.

El Paso does not propose at this time to furnish natural-gas service to any community in Utah or Nevada. However, it correctly says in its reply brief that there would be capacity in the Provo line for service to Utah customers. El Paso further says that if said applicant "concludes that it is not economic to build a lateral to serve a community and the community feels otherwise about it and is willing to build a lateral to the pipeline, El Paso will give it a tap." If said applicant should correctly "conclude" that it would be uneconomic to build a lateral to a community, then its statement of willingness to "give" the town "a tap" is an empty gesture. For the Commission does not authorize a sale of gas to a community unless there is a satisfactory showing that the community's project is economically feasible. See, *e.g.*, *Michigan Wisconsin Pipe Line Co.*, 21 FPC 552, 567–68.

The circumstance that the five Utah communities might receive natural-gas service by reason of the Provo line cannot, of course, be a salient consideration in the determination of these proceedings.

FINDINGS AND CONCLUSIONS

Upon consideration of the evidence adduced and the argument of counsel, it is further found and concluded that:

(1) Colorado Interstate, El Paso and Pacific Northwest are each a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The facilities of Colorado Interstate, hereinbefore referred to and more particularly described in the original initial decision herein and in the application in Docket No. G–16904, that have been constructed under temporary authorization are used in the transportation and sale of natural gas in interstate commerce for resale, subject to the jurisdiction of the Commission, as integral parts of Colorado Interstate's permanently authorized pipeline system; and the construction and operation of such facilities are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Such temporarily authorized facilities are adequate to render the service which Colorado Interstate proposes and which said applicant is hereinafter authorized to provide.

(4) Colorado Interstate has adequate supplies of natural gas to enable it to render the service herein authorized.

(5) Colorado Interstate is able and willing properly to do the acts and to perform the service by means of such temporarily authorized facilities proposed by it; and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(6) The construction and operation of the temporarily authorized facilities as proposed by Colorado Interstate are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered.

(7) The construction and operation of the remainder of the facilities proposed by Colorado Interstate in Docket No. G–16904, and the facilities proposed by El Paso in Docket No. G–16235 and by Pacific Northwest in Docket No. G–16237, would not serve the public convenience or necessity.

(8) The application of Colorado Interstate in Docket No. G–16904 should be denied except as stated in paragraph (6); and the applications of El Paso in Docket No. G–16235 and of Pacific Northwest in Docket No. G–16237, and each of such two applications, should be denied.

ORDER

Wherefore, it is ordered, subject to review by the Commission on appeal, or review by the Commission on its own motion, as provided in its Rules of Practice and Procedure, that:

(A) A certificate of public convenience and necessity be and the same is hereby issued in Docket No. G–16904 authorizing Colorado Interstate Gas Co. to construct and operate the facilities heretofore temporarily authorized in such proceeding, hereinbefore referred to and more particularly described in the original initial decision herein and in Colorado Interstate's application, and to make the transportation of natural gas as therein set forth, upon the terms and conditions of this order.

(B) The certificate herein issued shall be accepted in writing by responsible officials of Colorado Interstate. The general terms and conditions set out in paragraphs (a), (c) (insofar as applicable to facilities which have already been constructed), and (e) of Section 157.20 of the Commission's *Regulations under the Natural Gas Act* shall attach to the issuance of the certificate. Colorado Interstate shall file the applicable information called for by paragraph (c) of Section 157.20 within 30 days from the issue date of this order.

(C) The application of Colorado Interstate in Docket No. G–16904 be and the same is hereby denied in all other respects.

(D) The application of El Paso in Docket No. G–16235 and the application of Pacific Northwest in Docket No. G–16237, and each of such applications, be and the same are hereby denied.

HOWELL PURDUE
Presiding Examiner.

SUPPLEMENTAL NOTE

The writing of this decision was completed on December 7, 1962. While the decision is in the process of being duplicated, a news item of December 13, 1962, has been brought to the attention of the Examiner to the effect that Pacific Lighting Gas Supply Co. has contracted with Transwestern Pipeline Co. for the purchase of 150,000 Mcf per day in addition to present deliveries; that by the terms of the contract, Pacific Lighting is to increase its purchases from Transwestern to 350,000 Mcf per day by November 1, 1963, and to 450,000 Mcf per day by November 1, 1965, subject to approval by this Commission.

HOWELL PURDUE
Presiding Examiner.

MEMORANDUM OPINION NO. 394

MIDWESTERN GAS TRANSMISSION COMPANY, DOCKET NOS. G–16841, RP61–19; PEOPLES GAS LIGHT AND COKE COMPANY v. MIDWESTERN GAS TRANSMISSION COMPANY, DOCKET NO. RP63–11

ORDER DETERMINING REFUND OBLIGATION AND DENYING MOTION TO CONSOLIDATE

(Issued July 12, 1963)*

Syllabus

1. Interpreting *Opinion No. 320*, Commission *rules* Midwestern is obligated to pass on to its customers all refunds received for period April 5, 1960 to October 1, 1962, constituting reduction in gas purchase costs below level upon which rates initially allowed Midwestern were predicated. P. 152.
2. Fact that suppliers' further increased rates were filed subsequent to Opinion 320 is irrelevant—in suggesting otherwise Midwestern attempts ex post facto rewriting of the Opinion. P. 152.
3. Commission *determines* refund obligation in proceeding arising under Section 1.6(b) of the Rules.

Commissioners O'Connor and Woodward *dissenting.*

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

On June 6, 1963, Peoples Gas, Light, and Coke Company filed a motion which is in substance a request that Docket No. RP63–11 be consolidated with the proceedings in Docket No. RP61–19, *et al.* Docket No. RP63–11 was instituted by complaint of Peoples against Midwestern Gas Transmission Company, and it raises two issues regarding the nature and extent of Midwestern's obligation to make refunds and rate reductions passing on the refunds and rate reductions of its supplier, Tennessee Gas Transmission Company. Peoples' contention that Midwestern is obliged to make prospective rate reductions effective as of Oc-

*Rehearing denied by order issued September 6, 1963, 30 FPC 659. Order approving settlement issued October 30, 1963, 30 FPC 1149.

tober 1, 1962, appears to be identical with the issue which the Commission raised *sua sponte* by letter of April 11, 1963, and which was included for decision in Docket No. RP61–19, *et al.* by the order of May 10, 1963.[1] Peoples is a party to the consolidated proceedings in Docket No. RP61–19, *et al.*, and thus it would serve no purpose whatever to order a further consolidation with respect to this first portion of its complaint.

The second contention raised in Peoples' complaint is that Midwestern is obliged, by the terms of Opinion No. 320, 21 FPC 653, to pass on to its customers the refunds received from Tennessee for the G–19983 period to the extent that these refunds bring Midwestern's gas purchase costs for that period below what they would have been at the G–17166 level of rates.

It appears that Midwestern, without questioning its obligation to do so, has passed on to its customers substantially all of the refunds received from Tennessee with respect to the G–17166 period. In a letter of January 25, 1963, to the Commission's Secretary, Midwestern stated its understanding of its obligations under Opinion No. 320:

> Opinion No. 320 issued by the Federal Power Commission on May 12, 1959, granting a Certicate of Public Convenience and Necessity for the construction of the Southern System of Midwestern Gas Transmission Company provided that if Midwestern should receive refunds from Tennessee Gas Transmission Company under Docket Nos. G–11980 and G–17166, Midwestern should make corresponding refunds to its customers, subject to the approval of the Commission.

On the subject of G–19983 refunds, Midwestern stated in the January 25, letter only that it had not increased its rates to pass on that increase from Tennessee and that therefore it did not propose to pass through any of the refunds received from Tennessee. This letter did not include a calculation showing whether or not the G–19983 refunds from Tennessee had reduced Midwestern's gas purchase costs for the period from April 5, 1960, to October 1, 1962, below what it would have experienced under the G–17166 rates. Since January 25, Midwestern received from Tennessee two further refunds with respect to the G–19983 period (on February 7 and May 3, 1963). Subsequent to the latest of the Tennessee refunds, Midwestern, at the request of our Staff, submitted a calculation which indicated that its gas purchase costs for the G–19983 period, taking account of all refunds, were still about $30,000 in excess of what they would have been at the G–17166 rates.

In an answer to Peoples' complaint filed on April 22, 1963, Midwestern takes the position that regardless of whether the refunds from Tennessee have brought its costs below the G–17166 level, it is not obligated to pass on any refunds applicable to the period from April 5, 1960 to October 1, 1962. Thus Midwestern states, "Peoples' position * * * ignores the fact that the paragraph here involved of Opinion No. 320 not only makes no reference to Docket No. G–19983 but could not have made any such reference. At the time Opinion No. 320 was issued, only two Tennessee rate cases were pending, namely, Docket Nos. G–11980 and G–17166." Midwestern further argues that Peoples' contention involves an "*ex post facto* revision of Opinion No. 320" which "would violate the fundamental principles of fairness and equity embraced in the concept of the process of law."

---

[1] In the order of May 10, 1963, 29 FPC 903, we indicated that it was appropriate to give further consideration to Midwestern's alternative contention that Opinion No. 320 imposed an obligation to make prospective rate reductions only if Midwestern has experienced a net reduction in its cost of service. Our present order does not affect or prejudge that issue.

We have concluded that Peoples' interpretation of Opinion No. 320 is the proper one and that therefore Midwestern is and will be obligated to pass on to its customers all the refunds received and to be received that represent a reduction in its gas purchase costs for the period from April 5, 1960, to October 1, 1962, below the level of costs that would have been incurred at the G–17166 rates. Midwestern should, within ten days of this order, submit to the Commission and serve on all Southern System customers the calculations necessary to determine the current dollar amount of Midwestern's refund obligations, if any, as a consequence of our ruling herein.

The reasons which have led us to this interpretation of Opinion No. 320 may be stated simply. As one of the conditions to issuance of certificate of public convenience and necessity for construction and operation of Midwestern's Southern system, the Commission undertook to determine the rates which Midwestern would be permitted to charge initially. In doing so, the Commission had before it Midwestern's estimate of its cost of service. By far the largest element of the estimated cost of service was the expense of gas purchased from Tennessee computed at the rate which was soon to be in effect, subject to the obligation of Tennessee to refund amounts ultimately found not to be justified. The rates which the Commission allowed Midwestern included in full Midwestern's estimated gas purchase costs. Thus, it was plainly necessary to take account of the possibility that Midwestern, having been allowed a rate that recovered the full gas purchase costs, would later receive a refund of a portion of those costs. This the Commission did by the following provision of Opinion No. 320 (21 FPC at 662):

> Of course, should a reduction in Tennessee's filed rates result in a refund, Midwestern should make a corresponding refund to its customers subject to our approval.

With this background it will be apparent that Tennessee's later filing of further increased rates, which merely added another layer of possible future refunds, could not terminate the protection that Opinion No. 320 gave Midwestern's customers. Regardless of whether they were to result from Docket No. G–17166 or Docket No. G–19983, the refunds that Tennessee might be ordered to pay Midwestern could still bring the actual experienced gas purchase costs below the level of costs upon which the rates allowed Midwestern had been predicated. Regardless of whether the refunds were to result from Docket No. G–17166 or G–19983, they would still be refunds resulting from "a reduction in Tennessee's filed rates." The fact that further increased rates were filed by Tennessee subsequent to Opinion No. 320 is, in short, entirely irrelevant; and, in suggesting otherwise, Midwestern, rather than Peoples, attempts an *ex post facto* rewriting of the Opinion. The unsoundness of Midwestern's position is accentuated in the light of its status as a subsidiary of Tennessee. Under Midwestern's reading, the Commission imposed an obligation that was subject to complete frustration the next day, or anytime thereafter, by the unilateral act of the Tennessee-Midwestern management. While the Supreme Court has noted the "somewhat illusory" nature of the protection afforded consumers by the Section 4(e) refund power, *F.P.C.* v. *Tennessee Gas Transmission Co.*, 371 U.S. 145, 154, we are certain that it is not that illusory.

In view of the decision we have reached on the G–19983 aspect of Peoples' complaint, its motion to consolidate has become moot.

The Commission orders:

(A) Peoples' motion of June 6, 1963 is denied.

(B) Midwestern shall within ten days of the date of this order, submit to the Commission and serve upon all Southern System customers the calculation described in the body of this order.

(C) Midwestern is and will be obligated to pass on to its Southern System customers all refunds received and to be received from Tennessee with respect to the period from April 5, 1960, to October 1, 1962, which constitute a reduction in Midwestern's gas purchase costs for that period below what they would have been at the G–17166 level of rates.

Commissioners O'Connor and Woodward *dissenting.*

OPINION NO. 378–A

TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NOS. G–12446, G–12447; CONTINENTAL OIL COMPANY, DOCKET NO. G–12432

OPINION AND ORDER ON REHEARING

(Issued July 12, 1963)*

Syllabus

1. In rejecting producers' argument that under Louisiana law there is no such thing as sale of gas in place, Commission is interpreting and applying Natural Gas Act, not state law. P. 154.
2. Commission *rejects* contention that Internal Revenue treatment of lease transaction as capital gain is conclusive and binding—citing *Colorado Interstate.* P. 154.
3. Discussing *Panhandle* Commission *states* that here lease transaction, however designated and under whatever provision of local law, was means by which producers were paid for gas by pipeline which transported and delivered it to buyers in other states. Pp. 154–155.
4. Reaffirming that jurisdictional question was properly considered, Commission *observes* it is a well-known principle that competency of administrative agency to act upon such matters is always open for judicial determination. P. 155.
5. It is not necessary to discuss extent of Commission power to reform contracts under the Natural Gas Act, since it did not attempt to do so here. P. 156.
6. Upon rehearing, Commission *modifies* prior opinion by clarifying filing requirements; *confirms* opinion as modified; *denies* rehearing and *grants* stay pending judicial review. Pp. 156–157.

Commissioner Woodward *dissenting.*

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

This opinion and order relates to the merits of applications for rehearing by Texas Eastern Transmission Corporation, Continental Oil Company, Sun Oil Company, General Crude Oil Company and M. H. Marr, as well as by intervener H. E. Dishman, filed with respect to our Opinion No. 378 and Order issued February 6, 1963, 29 FPC 249. In Opinion No. 378 we found that the transaction by which the producers conveyed their leasehold interests in the Rayne Field to Texas Eastern was a sale for resale in interstate commerce subject to our jurisdiction. We therefore deferred decision on Texas Eastern's certificate application until the company and the producers should enter into a new arrangement and make appropriate filings.

In their applications for rehearing Continental and Marr contended that they did not have proper notice that the jurisdictional question was to be considered

*For appearances see Opinion No. 378, 29 FPC 249. Reversed, *sub nom M. H. Marr* v. *F.P.C.*, 336 F. 2d 320 (CA5–1964). Affirmed, *U.G.I.* v. *Continental Oil Co.*, 381 U.S. 392 (1965).

and were denied due process. We granted rehearing by order of April 2, 1963, 29 FPC 692, which specified that the producers should notify the Commission within thirty days thereafter if they desired to present evidence on the jurisdictional question. On March 6, 1963, H. E. Dishman, a minority leaseholder in the Rayne Field, had petitioned for intervention or in the alternative for rehearing and stay, and by order of May 1, 1963, 29 FPC 875, we permitted him to intervene, granted rehearing with provision for notifying the Commission within thirty days if he wanted to present evidence and denied his request for a stay of the Commission's Opinion No. 378 and Order pending judicial review.

Continental, General Crude, Sun, Marr, and Texas Eastern have filed applications for rehearing of our April 2, 1963 order granting rehearing and have rejected any opportunity to present further evidence.[1] Within the 30-day period specified in the May 1, 1963 order, Dishman has filed no request to present further evidence. By letters of May 14, 1963, the Secretary of this Commission stated to each of the five applicants for rehearing that the application was not addressed to a final order and as such was not acceptable for filing, but would be processed as a motion for reconsideration of the April 2, 1963 order. While it is now clear that no additional evidentiary hearing is desired by the parties, the issues raised in the original applications for rehearing supplemented by the second round of applications for rehearing are still before us for disposition.

In our opinion No. 378 we discussed at length the principal issue here, namely our jurisdiction over the transfer of gas leases by the producers to Texas Eastern. We see no need to repeat our discussion of this basic issue. The quick answer to the producers' additional argument that under the law of Louisiana there is no such thing as a sale of gas in place is that we are interpreting and applying the Natural Gas Act, not State law.

Some of the producers also argue that the Internal Revenue Service treatment of the transaction as a capital gain is conclusive and binding upon us. Here again the producers rely on an entirely different statute with different purposes. In *Colorado Interstate Gas Co.* v. *F.P.C.*, 209 F. 2d 717, 727 (CA10), reversed on other grounds 348 U.S. 492, we were upheld in using a value for depletion at variance with one fixed by the Internal Revenue Service. In support of their contention the producers cite *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U.S. 381. In that case the Bituminous Coal Commission had determined that the Sunshine Company's coal was bituminous and was not exempt under the Bituminous Coal Act which included provisions for taxation (50 Stat. 72). This determination was affirmed by the Court of Appeals. In a suit to enjoin collection of the tax on bituminous coal the Court held the question of the nature of the coal had already been determined. However, this case is distinguishable from the present case, for the taxing provision was in the Bituminous Coal Act and the Bituminous Coal Commission was given authority to determine who was exempt from the Act and hence exempt from the tax.

The producers again cite *F.P.C.* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498, in support of their position, but fail to appreciate the significance of the fact that contrary to the situation in the *Panhandle* case the leases in this case were transferred to a pipeline which intended to transport the gas in interstate commerce. The lease transfer transaction, however designated and under whatever provisions of local law, was a means by which the producers were paid

---

[1] The applications of Continental and General Crude contain statements that could be classified as scurrilous. Section 1.15(f) of our Rules of Practice and Procedure.

for their gas by a pipeline which transported the gas and delivered it to buyers in other States.[2]

Arguing that the question of jurisdiction has already been settled, Continental cites several cases where a prior determination of a question has been held controlling. These include *Morand Bros. Beverage Co.* v. *N.L.R.B.*, 204 F. 2d 529 (CA7), certiorari denied 346 U.S. 909, where on remand of a proceeding the Board expressed its disagreement with the court's view of the law on lockout of employees during a strike, *International Union* v. *Eagle Picher M. & S. Co.*, 325 U.S. 335, where the Board attempted to change its order with respect to a back-pay formula after the Court of Appeals had held[3] the Board's order should be enforced with minor modifications, and *City of Tacoma* v. *Taxpayers of Tacoma*, 357 U.S. 320, where the State of Washington argued that the city could not condemn property although this question had already been settled in favor of the city on appeal from this Commission's order granting a license (*State of Washington Dept. of Comm.* v. *F.P.C.*, 207 F. 2d 391, 396 (CA9), certiorari denied 347 U.S. 936). None of these cases involved, as did this one, questions of the basic jurisdiction of the agency over a particular type of transaction. It is a well-known principle that the question of jurisdiction, that is the competency of the administrative agency to act upon the subject matter, is always open for judicial determination. *Borax Ltd.* v. *Los Angeles*, 296 U.S. 10, 18. This principle has also been applied to reconsideration of jurisdictional questions by administrative agencies where the equities involved so required. See Davis, *Administrative Law* (1958), § 18.07. Moreover in each of the above cases the original holding apparently was fully considered by the court and involved an important issue in the case. In the present case the question of jurisdiction was not in issue and, as the opinions make clear, received little attention. The court found that the Commission in granting a certificate to Texas Eastern had appeared to confer general approval on the pricing aspects of the gas lease acquisitions without sufficient support in the record. The question of jurisdiction over the producer's disposition of the gas was not an issue to be decided, and neither the New York Commission nor any other party contended that this Commission had jurisdiction, or argued any of the considerations in support of such jurisdiction. The two short allusions of the court to the jurisdictional question merely put the quite different problem which was presented for its deci-

[2] There are several other matters relating to the jurisdictional problem that deserve comment. We had stated (p. 255, lines 20–23) that the seller retained management of the field. We did not mean all sellers but only Continental as explained previously (p. 254, paragraph (4)).

We agree with General Crude that in the *Panhandle* case (337 U.S. at p. 500) the seller of the gas reserves, Panhandle, retained an interest in the reserves sold, namely an option to purchase the gas. However, the most important distinction between this case and *Panhandle* remains, for here the sale was made in order to supply the interstate market.

Several of the producers contend that we were incorrect in using 79 percent and 81.5 percent as representing Texas Eastern's original and later interest in the Rayne Field reserves. They argue that the total interest assigned was around 95 percent subject to royalties. This is true enough, but we recognized the distinction between Texas Eastern's own interest and the royalty interest. While the producers argue that there is no royalty gas owned as such, Texas Eastern's vice president referred to Texas Eastern's own gas and the royalty gas as separate and subject to different methods of payment (Tr. 1930). Thus, irrespective of State law, the purchaser thought in terms of buying gas, not merely a leasehold interest.

The producers also point out that for the purposes of the present arrangement Texas Eastern bought and operates a gathering system and central dehydration facilities. With respect to the leasehold transaction they add that instead of 16 promissory notes, there were 16 for each seller. Neither of these corrections we think is material or would change our view of the transaction.

[3] *Eagle-Picher M. & S. Co.* v. *N.L.R.B.*, 119 F. 2d 903 (CA8).

sion in context. The court itself recognized they were not necessary to the decision stating "[I]t is of no importance here that the transactions by which Texas Eastern proposed to acquire the gas will themselves be, by virtue of a change in form, beyond the regulatory control of the Commission," since the pipeline's construction project was within the Commission's jurisdiction and the Commission was warranted in inquiring into Texas Eastern's costs "regardless of the status of the seller." [4] The question of jurisdiction has now been raised; we find the question of importance to the execution of our regulatory functions as explained in our Opinion No. 378; and we are of the opinion that it was properly considered.

The producers and Texas Eastern contend that we should not and do not have power to require them to rescind the lease sale arrangement. In our Opinion No. 378 we have already discussed why we consider that it is not in the public interest for the Commission to certificate this transaction; it is not necessary to discuss the extent of our power to reform contracts under the Natural Gas Act, for we did not attempt to do so here. In our Opinion No. 378 we required that the producers, Continental, Sun, Marr and General Crude within six months of the issuance of this order make filings of appropriate rate schedules and applications for certificates of public convenience and necessity, and required Texas Eastern to file a revised application for a certificate within the same period. By this we intended to give the parties further opportunity to obtain certificates in these proceedings for a sale of gas which they have consummated at least in part. Without such revised filings we would be constrained to deny certificates, and, in such case, the parties would be in the position of being in violation of the Natural Gas Act. We did not intend to order the parties to execute a particular kind of contract, or any contract, apart from the necessity of completing the present proceedings. In order to make our meaning clearer we shall revise our finding (7) and ordering clause (B) as shown below. In doing so we shall provide that ordering clause (B) apply to Dishman and any other Rayne Field producers who have entered into lease sale arrangements with Texas Eastern.

Certain of the producers have requested a stay of our Opinion and order. In view of the fact that court proceedings are already in progress, we shall grant such a stay as provided in revised ordering clause (B) below.

The Commission finds:

The applications for rehearing filed by Continental, Sun, Marr, General Crude, Texas Eastern and Dishman present no new facts or principles of law which were not considered by the Commission when it issued its Opinion No. 378 on February 6, 1963, or which having now been considered warrant any change or modification of said order except as stated in our orders of April 2, 1963 and May 1, 1963 or as specified in this Opinion No. 378–A and Order.

The Commission orders:

(A) Our Opinion No. 378 and Order issued February 6, 1963 is hereby confirmed as the order of the Commission except as modified by our orders issued April 2, 1963 and May 1, 1963 and by this Opinion No. 378–A and Order, and the motions for reconsideration filed by Continental, General Crude, Sun, Marr, and Texas Eastern are hereby denied.

(B) Finding clause (7) in our Opinion No. 378 and Order [page 258] issued February 6, 1963 is amended to read as follows:

(7) It is appropriate in the administration of the Natural Gas Act that decision on Texas Eastern's application for a certificate of public convenience and

[4] *P.S.C. of New York v. F.P.C.*, 287 F. 2d at page 146.

necessity be deferred and that opportunity be afforded for further filings on the part of Texas Eastern and its suppliers of gas.

(C) Ordering clause (B) in our Opinion No. 378 and Order issued February 6, 1963 is amended to read as follows:

(B) Continental, Sun, Marr, General Crude, Dishman and any other Rayne Field producers who have transferred gas leases to Texas Eastern are granted opportunity to make filings of appropriate rate schedules and applications for certificates of public convenience and necessity until six months after the issuance of final mandate upon the completion of court review proceedings herein, and in the same period Texas Eastern may file a revised application for a certificate to put into effect any new arrangement for supply of gas to Texas Eastern from the Rayne Field in conformity with this opinion, the public interest and the Natural Gas Act.

Commissioner Woodward *dissenting.*

WOODWARD, Commissioner *dissenting:*

On February 6, 1963 when the original Opinion issued in this proceeding, I did not participate but now that the matter is before us on a Petition For Rehearing, I would prefer to make my views known by issuing the following dissent:

Prior to February 6, 1963, this Commission consistently recognized its unqualified lack of jurisdiction over the sale, purchase or transfer of leasehold interests by natural gas companies. The Supreme Court of the United States, at the conclusion of its opinion in *Federal Power Commission* vs. *Panhandle Eastern Pipe Line Co.*, 337 U.S. at pp. 515–516 (1949) told the Commission what it could do if it wished to obtain such authority:

> If the Commission is of the opinion that it should have power to control the disposition of leases by natural gas companies, it is authorized to call the attention of Congress to that fact.

In its annual reports to Congress for the past twelve years, the Commission has advocated an amendment to Section 7 of the Natural Gas Act which would vest it with jurisdiction over transfer of leaseholds by natural gas companies.[1] In spite of these pleas in each instance the Congress has not acted to confer upon this Commission the power which, clearly, it does not presently possess. In this proceeding, the Commission commits grave error in attempting to exercise jurisdiction in areas forbidden to it by the Congress and the Supreme Court of the United States. To attain its objective, the Commission is now saying that any sale of property which contains gas in formation is subject to its jurisdiction. Without question, this is an unlawful assumption of jurisdiction.

"Great weight" must be given to an agency's consistent interpretation of the law it administers, especially where the agency has sought to have the law amended, but Congress has declined to do so and has thereby acquiesced in the agency's historical interpretation.[2]

The Commission's assertion of jurisdictional authority over the sale of leasehold rights in Rayne Field, on the basis of an unsupported vague and obscure dissertation, is a complete reversal of its prior position in these proceedings. At no time did the Commission so much as infer that it might possess or exercise jurisdiction over the Rayne Field leaseholds. Opinion 322, issued June 23, 1959,

---

[1] 31 FPC Ann. Rep. 145 (1951); 32 FPC Ann. Rep. 152 (1952); 33 FPC Ann. Rep. 125 (1953); 34 FPC Ann. Rep. 170 (1954); 35 FPC Ann. Rep. 182 (1955); 36 FPC Ann. Rep. 19 (1956); 37 FPC Ann. Rep. 25 (1957); 38 FPC Ann. Rep. 18 (1958); 39 FPC Ann. Rep. 21 (1959); 40 FPC Ann. Rep. 19 (1960); 41 FPC Ann. Rep. 3 (1961); 42 FPC Ann. Rep. 14 (1962).

[2] *United States* v. *Bergh*, 352 U.S. 40, 47 (1956); *Gas Service Company* v. *Federal Power Commission*, 282 F. 2d 496, 499 (D.C. Cir., 1960); *Mississippi Valley Gas Co.* v. *Federal Power Commission*, 294 F. 2d 588, 592 (5th Cir., 1961).

granted Texas Eastern's application for certification and the Commission explicitly declared (21 FPC 860 at p. 864) :

> Texas Eastern has not filed an application for a certificate authorizing acquisition of the Rayne Field leases and *we have no authority to issue such a certificate.* [Emphasis supplied.]

The Public Service Commission of the State of New York appealed Opinion 322 before the U.S. Court of Appeals for the District of Columbia Circuit. In its brief, the Commission affirmed its position that it lacked jurisdiction over the Rayne Field leasehold sale stating;

> The Commission order does not authorize the purchase of lease—*undisputably such authorization is outside its jurisdiction* [*Infra*, p. 17, emphasis supplied.]

The Court of Appeals disposed of the New York Commission appeal by holding (287 F. 2d at pp. 145, 146) :

> It is of no importance here that the transaction by which Texas Eastern proposes to acquire gas will themselves be, by virtue of the change in form, beyond the regulatory control of the Commission.

In my judgment, that opinion conclusively settled the jurisdictional question. The leasehold sale was not a sale in interstate commerce; it affected only rights and interests in real property located wholly within the State of Louisiana. Any other conclusion disparages the Court of Appeals adjudication—this fact is indisputable. If permitted, this Commission's course of action would destroy the rights of parties to court review and render the decision of the courts meaningless.

Apart from its misapplication of the statute, the majority errs in attempting to force the parties herein to revise their contracts. The Natural Gas Act is the only source of this Commission's authority and there is nothing in the Act which confers such absolute power on the Commission. The majority cannot, by decree, force a meeting of the minds of the parties here involved.

Moreover, in a Section 7 proceding, the Commission must make findings, in accordance with the statute, of present or future, rather than past, public convenience and necessity, *City of Pittsburgh* v. *F.P.C.*, 237 F. 2d 741, 752; *Panhandle Eastern Pipe Line Co.* v. *F.P.C.*, 236 F. 2d 289, 292. Here, the Commission's attempt to impart retroactive effect to its findings is totally invalid.

Rehearing should be granted and Opinion No. 378 and Order, issued February 6, 1963, should be reversed and set aside.

OPINION NO. 396

CITIES SERVICE GAS COMPANY, DOCKET NO. G–18799

OPINION AND ORDER DETERMINING TAX ALLOWANCE, DISALLOWING RATES AND REQUIRING REFUND

(Issued July 15, 1963)*

Syllabus

1. Parents' intra-system methods of allocating consolidated tax payments among subsidiaries cannot be the basis of determining amount allowed regulated company as operating expense in rate case. P. 160.

*Initial decision appears on p. 176. Stay granted by order issued August 29, 1963, 30 FPC 623. Order issued September 10, 1963, rescinding paragraph (H) and denying rehearing in all other respects, 30 FPC 676. Set aside, *Cities Service Gas Co.* v. *F.P.C.*, 337 F. 2d 97 (CA10–1964). See order terminating proceedings, 33 FPC 233.

2. Tax allowances in cost of service are to permit regulated company to secure rate which, after taxes, will provide reasonable return on jurisdictional investment—not to insure that other components of complex corporate system are enabled to "cash-in" on tax losses. P. 162.
3. Fundamental rate-making principle governing disposition of consolidated tax issue requires separation between regulated and un-regulated costs and revenues. P. 162.
4. It is inappropriate to assign any tax liability to non-regulated affiliates which had no taxable income in period considered. P. 164.
5. Commission *concludes* that actual tax paid by Cities Service system, as normalized, is reasonably allocable among the regulated companies. P. 164.
6. Commission *determines* proper method for computing Federal income taxes to be included in the cost of service of regulated company where company has joined in consolidated tax return with affiliates. P. 164.
7. In proceeding arising under Section 4(d), Commission *determines* tax allowance; *disallows* rates and *requires* refunds. Pp. 164–166.

Commissioner Morgan *concurring.*

Commissioner Woodward *dissenting,* joined by Commissioner O'Connor.

Harry S. Littman, Jack Werner, Conrad C. Mount, Henry L. O'Brien and *Richard Littell* for Cities Service Gas Company.

Charles E. McGee, James D. McKinney, Jr. and *R. E. Christiansen* for Missouri Public Service Company and The Gas Service Company.

Irvin Fane, Arthur J. Doyle and *Lowell L. Smithson* for Kansas City Power & Light Company.

Donald W. Steward for Union Gas System, Inc.

J. David Mann, Jr., William W. Ross, Robert D. Youle and *Stanley C. Whiteaker* for Midwest Industrial & Commercial Gas Users Association.

Robert D. Youle, Richard S. Righter, J. David Mann, Jr. and *William W. Ross* for Sheffield Steel, Division Armco Steel Corp.

William Carl Zimmerman for City of Topeka, Kansas.

Charles S. Rhyne, J. Weston Miller, Herzel H. E. Plaine, Benjamin M. Powers and *John F. Thice* for The Municipal Group.

Glenn D. Evans for Missouri Public Service Commission.

John F. Thice for Missouri Portland Cement Company.

J. Weston Miller, Charles S. Rhyne and *Herzel H. E. Plaine* for City of Springfield and City Utilities of Springfield.

John F. Thice for the City of Independence, Missouri.

Leo E. Forquer and *Cyril S. Wofsy* for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

Ross, *Commissioner:*

This proceeding is before us on the single question of the proper tax allowance to be included in the cost of service of Cities Service Gas Company (Gas Company) and to be reflected in its rates after our approval on March 27, 1961, 25 FPC 582, of a rate settlement agreement between Gas Company and customers representing almost the entire volume of gas sold by it.[1] The settlement cost of service included federal income taxes in the amount of $7,055,981, calculated at the statutory rate of 52 percent upon Gas Company's return after mak-

[1] This proceeding involves a locked-in period because Gas Company made a further filing increasing its rates in Docket No. RP62–1, which rates became effective on December 23, 1961, except for Rate Schedules I–1 and I–2 which became effective July 23, 1961.

ing all deductions applicable to Gas Company as a separate corporate entity but the Settlement Agreement specifically reserved for future determination the issue of the proper amount of federal income taxes to be allowed Gas Company in this proceeding and provided for refunds as a result of a final order on the tax question.

Gas Company is a member of the Cities Service system. The parent corporation is Cities Service Company, which, through its wholly owned subsidiary, Empire Gas and Fuel Company, owns all the outstanding stock of Gas Company and, altogether, directly or indirectly owns the stock of 37 corporations. Among these Gas Company is the only company engaged in the interstate transportation and sale of natural gas. The other subsidiaries are engaged in a wide range of petroleum activities. Subsidiaries explore for and produce oil and natural gas, not only domestically in Oklahoma, Louisiana, Texas, Illinois, Kansas, Mississippi and New Mexico, but also in the offshore areas of the Gulf of Mexico. Other subsidiaries produce petroleum products in Canada, Columbia, Venezuela, Peru, Arabia and the French Sahara. Still other subsidiaries own and operate refineries, oceangoing oil tankers, railroad tank cars, and an office building.

The parent has filed a consolidated tax return for a number of years and Gas Company has been included in the consolidated return except for the years 1950, 1951 and 1952. Under the Internal Revenue Code (Sections 1501–1504) when a consolidated return is filed, all corporations whose stock is owned 80 percent or more by the Parent Company, must be joined in the consolidated return. In the return the losses of any company can be set off against the taxable income of other companies in the group. A net loss in any year can be carried back to the three preceding years or carried forward to the succeeding five years (Sections 172 of the Code). The tax rate on the consolidated return is 54 percent, instead of the usual 52 percent for a separate corporate income tax return, but the 2 percent penalty applies only to the amount of the consolidated taxable income which exceeds the taxable income that is derived from a utility, such as Gas Company (Section 1503 of the Internal Revenue Code).

The Parent Company has allocated the burden of the consolidated tax payments among the various subsidiaries on the following basis. The regulated companies, such as the Gas Company, were charged 52 percent of their net taxable income while the remainder of the consolidated tax, if any, was then allocated among the nonregulated subsidiaries showing a profit in proportion to their respective taxable incomes. Their intrasystem methods of allocation, of course, cannot be the basis of determining the amount allowable to Gas Company as an operating expense in a rate case.

The staff argues that in computing an allowance for federal income tax to be included in the cost of service the Commission should adhere to its interpretation of the doctrine of actual taxes payable. When any company participates in the filing of a consolidated tax return, it should also participate in any saving generated whichever company is responsible for the saving. The important fact, the staff says, is that Gas Company joins in the Parent Company's consolidated tax returns, so that the taxable income or loss becomes a "fused mass" in which each dollar is indistinguishable from any other dollar. The filing of the consolidated tax return, the staff adds, does not produce any separate income tax liability on the taxable income of the Gas Company, but instead, produces a tax liability for the whole group.

As a result of these views the staff did not apply the statutory rate to Gas Company's taxable income, but rather employed a consolidated effective tax rate of 10.53 percent for the purpose of determining the proper allowance for federal income taxes in Gas Company's cost of service. This tax rate was de-

rived, in essence, by dividing the consolidated tax paid by the Cities Service system by the total taxable income of all the profit making affiliates computed separately for the years 1957, 1958 and 1959.[2] By this method the staff computed an effective tax rate of 23.92 percent for 1957, 0 percent for 1958 (where there was a consolidated tax loss), and 7.67 percent for 1959. It averaged these three figures to obtain its effective tax rate of 10.53 percent which it applied to the Gas Company's income in the test year 1958 to obtain a tax allowance of $785,565.

Cities Service argues that the tax rate actually payable on the Gas Company's stipulated return is 52 percent. It says that taking into account the carry-back of losses, there are no tax savings which can be attributed to the Gas Company's inclusion in the consolidated return. Furthermore, it contends that it is the Gas Company's rates which are in issue here not the rates for the oil, or gasoline, or petro-chemicals, or the other products produced and sold by the companies in the Cities Service system. It says that where rates are being set for a utility operation, the costs applicable to that operation are germane, not the costs of the unrelated non-utility operations. It adds that if there is any saving from the non-utility operations they belong to the stockholder who incurred the losses and not to the ratepayer, who has paid no obligation of the non-jurisdictional subsidiaries and has not contributed to their losses. The staff's proposal, the companies say, would take away from the investors a portion of the incentive provided by Congress to encourage exploration for oil, domestically and abroad, would put the company at a competitive disadvantage with other oil companies, and would penalize the Parent Company for its own form of corporate organization. Cities Service claims that the staff's consolidated effective tax rate is a clear deprivation of property without due process of law, because it takes the benefits of the large tax deductions from the non-jurisdictional companies and passes them along to the gas customers in the form of rate reductions.

In his decision issued April 23, 1962, the Examiner agrees with Cities Service. He holds that the staff's position is basically wrong because it would thwart the true congressional intent of the tax law permitting the filing of a consolidated return, which was to encourage holding companies to expand their overall businesses for the betterment of the national and international economy. He cannot see the justice of permitting Gas Company's customers to receive what he considers a windfall from losses occurring in businesses unrelated to that of the regulated natural gas company merely because Gas Company and the corporations having the losses happen to have a common corporate owner. The Examiner adds that the regulated businesses should not have the right to take away from the non-regulated entity any part of the losses it utilizes for tax purposes. The Examiner thinks that, if driven to it, the Parent Company could rearrange its system of corporations in such manner as to eliminate tax losses, and there would then be no tax saving to allot to the gain companies, including Gas Company. Exceptions were filed by the staff and a large Municipal Group[3] which had intervened and the issue is before us for decision.

The authorities do not give us a clear answer to the question of whether the tax allowance for the regulated company should take into account the losses

---

[2] Since the test year 1958 showed a consolidated loss, the staff used the three year period in order to reach a more representative result.

[3] Consisting of the Kansas Cities of Altamont, Atchison, Chanute, Cherryvale, Downs, Erie, Gerard, Grenola, Howard, Iola, Melvern, Meriden, Osage City, and Perry; the Missouri Cities of Carl Junction, Carrollton, Carthage, Clinton, Independence, Joplin, Kansas City, Marshall, Neosho, Nevada, Oronogo, Pierce, Platte City, Springfield, St. Joseph, Waverly and Webb City; and City Utilities of Springfield, Missouri.

of affiliates. Some authorities appear to support the "actual taxes" concept as advanced here by the staff. *City of Pittsburgh* v. *Pennsylvania PUC*, 128 A. 2d 372, 385–387 (Pa. Super. Ct. 1956); *Re New Jersey Power & Light Co.*, 9 N.J. 498, 89 A. 2d 26, 41 (1952). Other authorities eliminate the losses of affiliated companies or of separable operations of the same company. *Southern Union Gas Co.* v. *New Mexico PSC*, No. 31074 (D. Santa Fe County, June 9, 1961); "Rates and Rate Structure," 29 PUR (N.S.) 391, 481–842 (N.Y.P.S.C., 1938).

The starting point in resolving the consolidated tax issue is the amount of the consolidated tax payment. This is the only real cost which was incurred by Gas Company in conjunction with the other Cities Service affiliates. The task is then to determine the proportion of the consolidated tax which is reasonably attributable to the Gas Company *vis-a-vis* the other Cities Service affiliates. The basic error in the position of Cities Service is that it ignores this point and claims an amount of Federal income taxes in Gas Company's cost of service on the basis of a hypothetical figure which Gas Company would have paid if it were a separate company. The simple truth of the matter is that Gas Company paid no separate Federal income tax but participated in the filing of a consolidated return with the other Cities Service affiliates. To accept Cities Service's position would be to approve fixing of jurisdictional rates on the basis of converting a hypothetical tax payment into a prudent operating expense. In effect, Cities Service argues that Gas Company ratepayers should make Cities Service stockholders whole for the tax losses of nonregulated enterprises even though this means an allowance for taxes over and beyond that which the consolidated system as a whole actually paid. We reject this view as neither just nor reasonable. Tax allowances in a cost of service are for the purpose of permitting the regulated entity to secure a rate which, after taxes, will provide a reasonable return on jurisdictional investment, not to insure that other components of a complex corporate system are enabled to "cash-in" on their tax losses.

However, we agree with Cities Service that the fundamental rate making principle governing our disposition of this issue requires a separation between regulated and unregulated costs and revenues. This principle controls our allocation of other costs which are jointly incurred by regulated and unregulated companies, or departments within the same company, and is controlling here.[4] If we were to allocate the consolidated system tax return among all profit companies including those in whole or part engaged in unregulated activities, there would be no sound reason for refusing to fix jurisdictional rates at a level sufficient to make up any real losses these companies might suffer.

Staff's approach possesses a quality of artificiality and instability which renders it unsatisfactory for ratemaking purposes. In effect, staff's effective tax rate is derived by taking the ratio Gas Company's income bears to the total income of the profit making companies, and applying this percentage to the system tax paid. It would be easy for Cities Service to escape from this onerous assessment by rearranging affiliates, mergers or intrasystem pricing arrangements in order to eliminate all or most of the other profit entities and thus increase the effective tax rate of the Gas Company. Significantly, the record shows that Cities Service could accomplish this result.

There are three preliminary matters to resolve before computing Gas Company's tax allowance according to the principles stated above. First, we must decide the period of time to be used in the computation. The Parent Company paid no federal income tax for 1958, the test year. If this test period were

[4] As shown above, this principle is inconsistent with Cities Service's position that Gas Company's tax allowance should be computed as if it were a separate company.

representative, we would include no tax allowance in Gas Company's cost of service. However, the tax liability of a complex such as Cities Service for a single year is not apt to be representative. As stated above, the record shows extensive tax data for each of the companies of the Cities Service system for the years 1957 through 1959. While data for a longer period of time might be useful for normalization purposes, in our opinion the detailed data for this three year period of time is sufficient to determine the tax rate applicable to Gas Company.[5]

A second preliminary matter requires us to compute taxable income by normalizing deductions for accelerated amortization and liberalized depreciation, consistent with our treatment in *Alabama-Tennessee Natural Gas Company*, 27 FPC 1180. This is done in Appendix A. However, here as in other rate cases following *Alabama-Tennessee*, the order herein will be made dependent upon our determination in that proceeding regarding the propriety of normalization for rate making purposes. In the event the so called flow through approach is adopted, the rates herein approved on a tentative basis will be appropriately modified.

The third problem is that there are certain companies in the Cities Service system a portion of whose business is subject to regulation. The taxable income of these companies should first be allocated into regulated and nonregulated categories. Cities Service, however, has failed to present any evidence upon which to make such an allocation. We can, however, make an appropriate allocation of the taxable income of Cities Service Oil Company, (which represents nearly 99% of the total taxable income of the mixed companies, i.e., those companies having both regulated and nonregulated income), by taking official notice of certain evidence presented in the Oil Company's rate case in Docket No. G–9519, *et al.* This evidence (taken directly from the Oil Company's own books), shows that 6.28% of Oil Company's gross investment in net plant is devoted to regulated activities (production of natural gas).[6] The data relative to the production of casinghead gas is not included in this figure. Inasmuch as casinghead gas represents 13.51 percent of Oil Company's gas revenues,[7] we will adjust the 6.28 percent figure to take this additional investment into account. Applying the resulting 7.13 percent[8] to Oil Company's total taxable income of $51,252,182 produces regulated income for Oil Company of $3,654,281.[9] A similar allocation with respect to Cities Service Production Company results in 24.16 percent or $6,464,235 of that Company's tax losses attributable to regulated activities.[10]

---

[5] We recognize that the record contains limited information for earlier years, i.e., 1954 through 1956. However, the information for the earlier years in this case is not sufficiently detailed to be used in computing the tax allowance for Gas Company in the manner determined appropriate herein; and to the extent that it indicated a different profit and loss picture may have obtained earlier, the subsequent history of Cities Service indicates that such earlier periods could not be considered as representative for rate making purposes.

[6] Docket No. G–9510, et al., Exhibit 38, Schedule 3.

[7] *Ibid.*, Exhibit 35, Schedule 3, Sheet 3.

[8] This figure was obtained by multiplying $29,775,181 (investment in gas plant excluding casinghead) by 1.1351. The resulting figure of $33,797,808 is divided by total plant investment of $473,788,545 which produces 7.13%.

[9] We wish to make it clear that a simple manner of allocating the taxable income of mixed companies should be used in any future cases involving this issue. Obviously, it is administratively infeasible to compute a detailed cost of service for large integrated corporations to determine one element of a regulated company's cost of service.

[10] $12,970,603 or 17.46 percent of Production Company's average net investment of $14,276,476 relates to gas production, exclusive of casinghead gas. Casinghead gas represents 38.34 percent of the Company's gas revenues, and the 17.46 percent figure adjusted to take this further investment into account produces 24.16 percent. (Docket No. G–9510, Exhibit 32, Schedule 2, Sheet 1, and Exhibit 35, Schedule 2, Sheet 2.)

Having made these adjustments, we can now allocate the tax cost of the Cities Service system between regulated and nonregulated companies. For the three year period under consideration, the nonregulated affiliates, including nonregulated income of Oil Company, had no taxable income. In fact, the record shows they had a substantial tax loss. It is therefore inappropriate to assign any tax liability to this group of companies. Accordingly, we conclude that the actual tax paid by the Cities Service system, as normalized, is reasonably allocable among the regulated companies.

In sum, the proper method to be applied in computing the Federal income taxes to be included in the cost of service of a regulated company where that company has joined in a consolidated tax return with affiliates is (1) separate the companies into regulated and unregulated groups, (2) determine the net aggregate taxable income of each group, and (3) apportion the net total consolidated tax liability over a representative period of time between the two groups, and among the companies in the regulated group, on the basis of their respective taxable incomes; provided that the allowance so computed for the regulated company shall not exceed what its tax liability would be for rate making purposes, if computed on a separate return basis.

The computation of Gas Company's tax allowance is computed in Appendix B. As this Appendix shows, we based this computation on the ratio Gas Company's taxable income bears to the total taxable income of the regulated group. This, of course, is similar to staff's approach which we consider reasonable when the nonregulated affiliates have been excluded.

The Commission further finds:

(1) Gas Company's proper tax allowance is $5,866,847.

(2) The rates filed by Gas Company filed pursuant to the Settlement Agreement and our order of March 27, 1961, subject to the reservation of the tax issue are excessive and should be disallowed.

(3) Gas Company should file tariff sheets and make refunds in accordance with this opinion.

The Commission orders:

(A) The rates filed by Gas Company pursuant to the Settlement Agreement and our order of March 27, 1961, are hereby disallowed.

(B) Gas Company shall, within 45 days of the date of this order, file appropriate substitute tariff sheets to its FPC Gas Tariffs except for Rate Schedules I–1 and I–2 containing rates satisfactory to the Commission based on a tax allowance of $5,866,847 for the test year, found to be appropriate in this opinion and order. Gas Company shall accompany its rate filing with supporting cost of service and allocation data presented in the same form and manner as that contained in the exhibits attached to the stipulation approved in our order of March 27, 1961, revised only to reflect the change in the allowance for federal income taxes. Gas Company shall further furnish with its filing a statement setting forth the method of computation of such rates and showing the derivation thereof. Gas Company shall also accompany its tariff sheets and supporting data with a certificate showing service of copies thereof on all purchasers under the rate schedules involved, interveners in this proceeding, and interested state commissions. Comments by such parties shall be submitted to the Commission within ten days after service by Gas Company as required herein.

(C) Upon acceptance by the Commission of the tariff sheets filed by Gas Company pursuant to paragraph (B) above, the rates, charges and classifica-

tions set forth therein shall become effective for the period November 23, 1959, through December 22, 1961.

(D) Gas Company shall, within 70 days of the date of this order, file with the Commission a statement showing the distribution to its jurisdictional customers of appropriate amounts to be refunded with interest at 6 percent. With respect to Rate Schedules F–1, F–2, C–1, C–2, E, P and X–5 the refund shall represent the differences between (1) the amounts collected under rates charged in accordance with the stipulation of October 21, 1960, and our order of March 27, 1961, and (2) the amounts that would have been collected under the rates filed pursuant to this opinion and order, from November 23, 1959, to December 22, 1961, with interest at 6 percent. With respect to Rate Schedules I–1 and I–2 the refund shall, in accordance with the stipulation, represent an amount equal to 50 percent of the difference between (1) the sum that would have been payable under I–1 and I–2 Rate Schedules made effective February 23, 1961, for natural gas purchased from Gas Company during the period from June 23, 1959, through July 22, 1961, and (2) the charges which would have been payable for such service during the same period if I–1 and I–2 rates reflecting the Commission's determination of the reserved tax issue had been in effect.

(E) Gas Company shall accompany its statement of refunds with a computation of the refunds and interest, and the derivation thereof, and with a certificate showing service of copies thereof on all purchasers under the rate schedules involved, interveners in this proceeding, and interested state commissions. Comments by such parties shall be submitted to the Commission within ten days after service by Gas Company as required herein.

(F) Within 10 days of the approval of the statements of refunds by the Commission, Gas Company shall make the required refunds so computed and within 15 days thereafter shall report to the Commission in writing and under oath the amount of refund made to each of its customers, showing separately the amount of principal and interest so paid and shall serve a copy of such report upon each of the customers receiving a refund. Concurrently therewith, Gas Company shall file with respect to such refunds, releases from its jurisdictional customers showing receipt of the principal and interest in conformity with this opinion and order.

(G) As provided in the Settlement Agreement approved by our order of March 27, 1961, Gas Company shall file further rate reductions and make further refunds as a result of refunds to it by its suppliers or a reduction in its cost of purchased gas.

(H) The rates required to be filed herein are specifically subject to such further adjustment as may be required as a result of the application of a final decision by the Commission in *Alabama-Tennessee Natural Gas Co.*, Docket No. G–5471, *et al.*,* on the treatment of deferred federal income taxes to the computation of the tax allowance made herein but only from and after the date of such decision or a later date if specified by the Commission therein.

(I) Exceptions not granted herein are hereby denied.

Commissioner Morgan *concurring.*

Commissioner Woodward *dissenting*, joined by Commissioner O'Connor.

[*Issued February 2, 1964, 31 FPC 208.]

APPENDIX A

CITIES SERVICE GAS COMPANY DOCKET NO. G–18799

NORMALIZATION OF CITIES SERVICE CONSOLIDATED TAX

(1) Particulars	Calendar year (2) 1957	(3) 1958	(4) 1959	(5) Total
CALCULATION OF TAX ON CONSOLIDATED BASIS USING STRAIGHT LINE DEPRECIATION				
Consolidated taxable income (Form 1120)	$23,637,088	($7,145,571)	$7,003,440	$23,494,957
Add: Excess of liberalized depreciation and accelerated amortization over straight line	9,147,913	10,245,432	9,153,089	28,546,434
Subtotal	32,785,001	3,099,861	16,156,529	52,041,391
Deduct: Long-term gain	(808,323)	(2,248,731)	(2,486,203)	(5,543,257)
Income subject to 54 percent	(18,073,798)			(18,073,798)
Balance taxable at 52 percent	13,902,880	851,130	13,670,326	28,424,336
52 percent of utility income normalized	7,229,498	442,588	7,108,570	14,780,656
54 percent of non utility income normalized	9,759,851			9,759,851
25 percent of capital gains	202,081	562,183	621,551	1,385,815
Total	17,191,430	1,004,771	7,730,121	25,926,322
Less surtax exemption	5,500	5,500	5,500	16,500
Tax assuming straight line depreciation	17,185,930	999,271	7,724,621	25,909,822

APPENDIX B

CITIES SERVICE GAS COMPANY DOCKET NO. G–18799

COMPUTATION OF GAS COMPANY F.I.T.

Income (normalized)	1957	1958	1959	Total
Cities Service Gas Company	$11,280,832	$12,256,412	$18,340,470	$41,877,714
Cities Service Gas Producing	2,158,402	2,085,416	2,183,609	6,427,427
Cities Service Pipe Line Co	2,622,047	2,686,669	3,093,433	8,402,149
Lafitte Oil Traders, Inc	22,562	125,455	275,155	423,172
Kansas Gas Supply Company	215,128	339,359	313,433	867,919
Cities Service Oil Co., Del. (regulated portion)	1,499,006	1,259,798	895,477	3,654,281
				61,652,662
Percent of Cities Service Gas Co. to total regulated companies [1]				67.93
Consolidated tax allowance for years 1957–1959 (Appendix A)				25,909,822
Average consolidated tax allowance ($25,909,822÷3 years)				8,636,607
Tax allowance for Cities Service Gas Co. (67.93 percent × $8,636,607)				5,866,847

[1] No portion of the consolidated tax is allowable to Cities Service Production Company because that company had no taxable income.

MORGAN, Commissioner, *concurring:*

On the basis of the record before us it appears that, by virtue of filing a consolidated Federal income tax return for the years 1957 through 1959, the Cities Service System companies collectively enjoyed a Federal income tax saving in the order of some $48 million.

It also appears from the record before us that with few exceptions, one of which is discussed below, the parent company allocated this enormous saving

among the members of its corporate family on the proportionate basis of the taxable income each of them produced. This appears eminently fair, and this, moreover, is the method the tax regulations suggest for distributing these savings among the corporate family.

It is the "few exceptions" that concern us—most particularly, the Cities Service Gas Company. We are concerned with this "exception," first because that company sells a commodity vested with a public interest, at rates having the force of law, to consumers whose ratepaying welfare we are charged by Congress with protecting; second, because on the basis of allocating this saving which parent has chosen for its *unregulated* companies (that is, in proportion to taxable income), this particular public utility *should have* enjoyed savings of about $17.7 million during the period mentioned; third, because utility regulation traditionally and without detectable exception has always required savings in utility tax costs to flow through in the form of reduced rates to the consumers who alone and by law must bear the utility's entire tax burden; and fourth, because the parent in this case has refused to apportion, distribute, allocate or grant a single penny of the entire tax saving to the public utility that has been placed under what should be the watchful eye of the Federal Power Commission.

The vociferous legalisms and cries of outrage that the company has raised as a result of staff's suggestion that this utility, like its sister affiliates, should share fairly, equitably, and proportionately in the tax saving in question—a tax saving made possible in large part by the utility's taxable income—have created a large and to some degree confusing record here.

But the company's cries of outrage are no more heartfelt than the cries and suggestions of "outrage," "fraud," "fictitious," "dishonest," "indefensible," "sinful" and other expletives that were uttered in the United States Senate and House of Representatives when, despite the same defenses offered there as here, the details of the selfsame practices by the selfsame company were made known to the Congress during its consideration of the bill that became the Public Utility Holding Company Act of 1935.[1]

The practice was not then and there outlawed because—and it is safe to say *only* because—that very practice had been forbidden for any and all corpora-

---

[1] Specifically, see pages 477–482 of Volume 72A, "Utility Corporations," setting forth the results of certain financial practices uncovered in the course of the Federal Trade Commission's massive investigation in this utility area from 1928 to 1935; see the hearings on the bill before the House Commerce Committee at pages 153–155; Senate hearings at pages 234–255 and 514; the debate on the bill in the Senate at 79 Cong. Rec. 8392 and 8525–26; and in the House at 10323.

The comment of Senator Norris was typical:

> Practically all the systems I have shown on the various charts, together with others not shown, made what the law formerly permitted—that is, returns for taxation purposes on a consolidated basis—resulting in a great saving of taxes to the holding-company groups, although, as a matter of fact, operating groups as a rule were subject to a tax. However, the holding companies, taking advantage of the law permitting consolidated returns, collected the taxes from their operating companies, and then, by setting off losses sustained by some of the operating companies, it was possible in this way to retain these taxes by balancing losses of some operating companies against profits of other operating companies. Thus it has often happened that operating companies have paid taxes which ordinarily would have been due the Federal Government, and the holding companies by balancing off losses from other operating companies paid no tax to the Federal Government, but retained the money the operating company had paid as taxes. So some operating companies actually paid their taxes, expecting the money to go to the Federal Government through the holding companies, but by the process I have just described the holding companies kept the taxes and paid nothing to the Federal Government. If anybody can square that with honesty, I should like to have him do it.

tions, except railroads owning 95% of their operating subsidiaries, by the Revenue Act of 1934. But, with the imposition of the wartime excess profits tax, Congress by the Revenue Act of 1942 allowed the practice to be resumed. The matter is now before us, a Federal public utility commission, for disposition in the light of the basic tenents of the public utility law we are charged with administering.

If this were a matter of tax law, as company and the dissenting opinion would have us treat it, we, like the Internal Revenue Service, would only be interested in checking the accuracy of company's arithmetic. But this is a rate proceeding, not a tax audit. The problem here is only the problem of determining how the utility's share of the system's actual tax liability should be determined; or the extent to which a regulated utility's tax and ratepaying consumers should realize or be deprived of a saving in tax charges which in utility law are imposed upon and chargeable exclusively to utility ratepayers.[2]

The difficulty is not in determining whether this utility's share of the tax saving should benefit the consumers who pay its taxes: the difficulty is in estimating this utility's proper share of the saving. Many methods for allocating that saving or estimating the utility's share thereof have been explored, but each has been found wanting by my colleagues. Speaking for myself, I must say that the method used by Cities Service for allocating its total tax liability and tax saving among *some* of its subsidiaries, and by the staff for allocating that total liability and saving among *all* of Cities Service's subsidiaries, is the most logical method and the one which best meets the standards and requirements of utility regulation. Further, it alone of all methods considered here is the one which reflects those vigorous expressions of Congressional intent in this particular matter which should guide the exercise of our discretion.

Briefly, the facts in this case relating to the three-year period under review are these: The system of which Gas company is a part consists of 37 separate corporations, about 6 of which are regulated; and the tax losses of some of the system's companies reduce the taxable profits of its regulated and unregulated companies and thereby reduce the system's over-all actual tax liability. The amount of the system's actual liability—or its tax saving (i.e., the difference between the total tax that would have been paid if each company in the system had been taxed separately, and the tax actually paid on the profits of those companies as reduced by the losses of the other companies)—properly should be distributed or apportioned over the system's profit companies on the basis of the separate taxable income each profit company had; and the record before us is totally barren of any sensible reason for differentiating between regulated and unregulated companies. At least it is barren of any reason which will stand scrutiny in the light of the public interest.

Here the total profits of the system's profit companies for the three-year period were $123.4 million; other system companies had tax losses totalling $100 mil-

[2] Consolidating the income of several wholly-owned corporations for the purpose of determining system income is especially appropriate in the case of public utility systems, because management often chooses to organize those systems into a series of separate corporations to facilitate doing business in each of the states in which the utility system operates. This is the reason used to justify the use of the consolidated return by utilities before Congress; and this also is the reason Congress removed the 2% penalty tax for public utilities that file consolidated returns (see House Ways and Means and Senate Finance Committee hearings on H.R. 8400 in the 84th Congress, the bill that became Internal Revenue Code of 1954). And in removing that penalty tax, as well as in making the privilege of filing consolidated returns available to public utilities as well as to other taxpayers. Congress was aware that from the time of the Supreme Court's opinion in the *Galveston* case, 258 U.S. 388 (1922), if not earlier, where the law of public utility regulation operates it requires utility consumers to pay the full amount, but not more than the full amount, of the utility's actual tax liability, or its allocated share of the system's actual tax liability.

lion; taxable system income thus was $23.4 million; and consolidated system tax liability for the three-year period was $11.4 million. The tax saving thus realized was the difference between the $63.2 million that the profit-making companies would have paid if they had been taxed separately, and the $11.4 million that the system actually paid, or (excluding a $4 million refund in 1958 of 1955 taxes) roughly $48 million.

Taxable profits of Gas company alone were $42 million; and it would have paid a tax of about $22 million *if* it had been taxed separately.

If the system's over-all tax liability or tax saving had been distributed among the profit companies proportionately on the basis of their separate taxable incomes, since Gas company's $42 million of taxable income was about 35% of total system taxable income ($123.4 million), Gas Company should bear about 35% (or $4 million) of the system's actual $11.4 million tax liability; and should benefit by about 35% (or $17 million) of the system's $48 million tax saving.

But Gas company did not charge its customers $4 million for taxes. It charged them the $22 million Gas company would have had to pay *if* it had been taxed separately. Gas company turned over the $17 million saving to the parent company, which, the record shows, used these funds to subsidize its non-regulated activities.[3]

Gas company says this is all right. It says it really did have a "tax" bill of $22 million, because the parent company on its books did not allocate any of the system's $48 million tax saving to Gas company. The parent company purposefully assumed that its tax losses wiped out the taxable income of its unregulated companies (only), and that the whole 37-company system's tax liability was chargeable to the regulated companies alone. The result of this "allocation theory"—to use a very dignified term—is that Gas company's consumers were charged an amount for "taxes" that was larger than the actual tax liability of the entire 37-company system.[4] Moreover, Gas company did not reduce its "tax" charge to its consumers even in years when the amount of system tax loss was so large that, after wiping out all unregulated company profits, it *should have* reduced Gas company's separately computed "tax" charge. The parent company did not give Gas company's consumers the benefit of Gas company's share of the tax savings as computed, *even under its own arbitrary allocation method.* The position of Cities Service company is that none of the system's tax savings should be used to reduce Gas company's hypothetical "tax" charges to its consumers, because those consumers did not finance the tax losses that gave rise to those savings. But, as we shall see, that is exactly what the consumers did, although involuntarily.

This entire practice is in complete conflict with the established principle that because a utility's consumers alone must pay its entire tax bill under rates having the force of law, a utility cannot charge its consumers more for taxes than the actual amount, estimated where necessary, that the utility actually paid or contributed to the U.S. Treasury, or more than the utility's *proper and equitable share* of the system tax actually paid. In the utility field, stockholders are entitled to a fair, constitutional rate of return, and the tax thereon is paid by utility consumers so that the fair return will not be reduced by taxes. Once the utility or its stockholders have received that return, they may not obtain

[3] We are only concerned with Gas company's $17 million share of the system's $48 million tax saving, because that $17 million was actually paid in cash by Gas company's consumers who pay its "taxes." We are not concerned with the other $31 million. To the extent it is attributable to the system's unregulated companies, it belongs to the stockholders and management who must see that the taxes of those companies are paid.

[4] During the three-year period in question, although total system actual tax liability was (only) $11.4 million, Gas company's consumers were charged $22 million for "taxes."

more by claiming higher, fictitious, or hypothetical costs they might have incurred *if* they had been organized or operated in some other, *unreal* manner. To allow additional return—over and above a fair return as defined by the courts—is to countenance unjust enrichment of the utility or its owners at the expense of the ratepayer.

My colleagues, perhaps unwilling to chart clear regulatory policy amid the consolidated tax legalisms raised herein, prefer (a) to separate the system's business into its regulated and unregulated portions; (b) to apply all of the system's tax losses (which normally stem from some of its unregulated activities) to reduce the profits or tax liability of its unregulated profit companies first, and then (c) to use whatever loss deductions may remain to reduce the liability that the utility or utilities would have had if they were separately taxed. This, it will be noted, gives the priority of use of the system's tax loss benefits primarily or even entirely to its unregulated profit companies.[5]

In passing, it may be noted that if this policy is equitable and if "turn about is fair play," the priority could and perhaps should be reversed for regulatory purposes. That is, if preference is to be given either group of subsidiaries, regulatory authority might properly apply the tax loss benefits first to wipe out the tax liability of the *regulated* subsidiaries (which almost invariably operate at a taxable profit), and then to use whatever loss deductions may remain to reduce the tax liability that the *unregulated* subsidiaries would have had if their taxes had been separately computed. This would not alter the system's over-all tax liability. But it would produce significantly larger tax reductions for the regulated companies, which would eventually be translated by regulatory authority into reduced rates and gross revenues. It would likewise greatly reduce the expendable funds, generated in the guise of "taxes" paid by utility ratepayers, which the parent company now disburses across the face of the earth to operate the speculative ventures of its various non-regulated corporations.[6] It is these specific corporate operations, *in large part financed and underwritten by "taxes" extracted from ratepayers,* which give rise to the tax loss benefits which the parent company claims it has the *exclusive* right to enjoy on the ground that the ratepayers had nothing to do with them!

It naturally follows that reversal of the priorities herein approved would produce another barrage of legalisms and redoubled screams of rage and pain from the parent company. The reader, whether he is a judge, a corporate lawyer or a utility ratepayer, can reach his own conclusions as to the validity of such protests. For if he has followed the discussion this far he can see clearly what has been happening and he knows exactly to whom it has been happening.

In any event, it is clear that the policy adopted here gives priority and favored treatment to the non-regulated companies rather than to those whose rates are subject to regulatory control by this and other commissions. I should have preferred that no priority or favored treatment be given to either group; and, speaking only for myself, I therefore believe that the actual tax and actual

[5] On the basis of Gas company's average "tax" charged during the three-year test period used herein, Gas company here claimed an average annual "tax" allowance of $7,055,981; on the basis of an allocation of the system's average actual tax during that period, staff claimed, properly, in my opinion, that Gas company should receive a tax allowance of $789,082; the majority opinion herein (after normalizing tax deductions for liberalized depreciation and accelerated amortization and making other refinements) grants Gas company $5,866,847. This is not regulation at its best. My reasons for accepting this result are set forth hereinafter.

[6] That the great bulk of these far-flung speculative enterprises are of no benefit or advantage to consumers who are served by Gas company—and who pay its "taxes"—is made abundantly clear by the majority opinion in the second paragraph thereof.

tax allocation method here urged by the staff is the preferred solution to this problem.

Most reluctantly, however, and solely for the purpose of enabling a decision to be reached in this case, I concur in the policy adopted by my colleagues of the majority. Though far from perfect, it is a discernible improvement over the situation that has existed here and in numerous other corporate families for many years. The approach of the majority, which is more in the nature of an assignment than an allocation, will serve at least to limit the tax liability of Gas Company's ratepayers to the actual liability of the entire system as a whole. It at least will prevent them from having to pay a tax charge that is *larger* than the actual liability of the entire system of which Gas company is a minor part.[7] This is no small matter, for Gas company's lawyers have been unable to obscure the fact that in 1958, when the tax liability of the total system was zero, the parent company nevertheless imposed a "tax" charge upon the ratepayers of the regulated utility in the amount of $6,367,534, not one penny of which was paid to the Federal Treasury.

In sum, this method of apportioning the tax saving and tax burden has the limited virtue of accommodating, to a very small and unsatisfactory degree, the two irreconcilable concepts at war with one another here. That is, it permits company and stockholder to enjoy an overly generous portion of the benefits which they erroneously claim are entirely theirs by virtue of the tax law alone; and it goes some small way toward producing a more equitable charge to ratepayers for the estimated amount of tax liability actually incurred by or attributable to the regulated utility that serves them.

I should have preferred that we face our responsibilities squarely and discharge them fully. Regrettably, that is not possible; and without my concurrence the little that has been accomplished herein will be lost. It is only on that account that I concur in the result reached by my colleagues of the majority.

WOODWARD, Commissioner, joined by O'CONNOR, Commissioner, *dissenting:*

This is a major rate case in which the Commission must decide a fundamental and critical question. While the Commission, in the past, has properly insisted that certain tax advantages to be obtained from filing a consolidated return for groups composed entirely, or predominantly, of regulated companies, be passed on to consumers, it has not held that business losses of unregulated and unrelated corporations participating in a consolidated return should be utilized for the benefit of the consumers of a regulated natural gas company. The latter issue is before us for the first time.

The majority concludes that the proper method to be applied in computing the Federal income taxes to be included in the cost of service of a regulated company where that company has joined in a consolidated tax return with affiliates is (1) separate the companies into regulated and unregulated groups, (2) determine the net aggregate taxable income of each group, and (3) apportion the net total consolidated tax liability over a representative period of time between the two groups, and among the companies in the regulated group on the basis of their respective taxable incomes. If each of the resulting groups shows a net taxable income, this formula would fairly allocate the total tax in accordance with the respective amounts of taxable income. But where, as here, the unregulated group has a net loss for the test period, the formula appropriates that loss which was the result of expenses and losses financed by the stockholders and deducts it from the tax allowance to be charged the ratepayers, thereby granting to them the entire benefit emanating from the tax loss. As applied here, the $2.4 million net taxable loss of the unregulated group is handed over to the ratepayers by deduct-

[7] Gas company's jurisdictional revenues represent about 5% of the system's gross revenues.

ing it from the taxable income of Gas Company, thereby reducing its tax allowance by $1.2 million.

The Opinion and Order adopted by the majority is based on the false premise that, as to industries regulated by it, the Commission has the authority to limit the effect of a mandate of Congress as expressed in Section 1501 of the Internal Revenue Code. Depriving Gas Company of a tax allowance which would be routinely granted to it by the Commission if it were not for its having a common owner with an unregulated and unrelated petroleum business, should not be done without some very persuasive reasons based upon sound rate-making policies which impose no confiscatory rates, which balance equitable consumer and investor interests and which take fully into consideration the impact of such action upon national economic policies. At the root of regulation is economic policy. The problem of economic growth in the United States is crucially important and inseparably related to economic growth is investment. Under the majority view, the consolidated return would not result in stimulating investment and growth because it has the effect of converting non-jurisdictional losses within the parent company's system into a rate reduction for gas consumers. The majority opinion is not supported by persuasive reasons based on sound policy.

Since this Commission possesses only the legislative powers which the Congress has granted to us, clearly we have no power to amend Section 1501 of the Code. Apart from the fact that there are no tax savings attributable to the inclusion of Gas Company in the consolidated return, the majority view is unlawful because it has the effect of regulating non-utility enterprises beyond the Commission's jurisdiction; it would strip the parent company of congressionally-conferred rights to tax deductions of its non-jurisdictional subsidiaries. The Majority is in error and I dissent.

The Cities Service system is operated principally as an integrated petroleum operation. The jurisdictional revenues of Cities Service Gas Company, a wholly owned subsidiary of Cities Service Company, comprised approximately 4.88%, 5.14% and 6.16% of the total system revenues in 1957, 1958, and 1959 respectively. Only 3% of the gross revenues of two other companies in the system are subject to Commission jurisdiction.[1]

In this proceeding, the Commission is to determine the proper Federal income tax allowance to be included in the cost of service of Gas Company, one of 37 subsidiaries joining the parent company in the filing of a consolidated return.[2]

Chapter 6 of the Internal Revenue Code, "Consolidated Returns," Section 1501, "Privilege to File Consolidated Returns" gives to "an affiliated group of corporations the privilege of making a consolidated return with respect to the income tax imposed" on corporations of which the parent company owns 80% or more of the outstanding stock. When corporations join in such returns, the Code, Section 1503, levies an additional 2% tax upon all includable taxable income except that of utilities such as Gas Company whose tax rate remains at the statutory rate of 52%.

The precise intent of Congress in granting the privilege of the consolidated return to an affiliated group of corporations was to encourage companies to expand their overall businesses for the betterment of the national and interna-

---

[1] Cities Service Production Company and Cities Service Oil Company (Delaware).

[2] Consolidated returns are based on the principle of levying a tax on the true income of a single enterprise even though the business is operated through more than one corporation. The primary advantages of filing a consolidated return may be summarized as follows:
(1) The offsetting of operating losses of one company against the profits of another.
(2) The consummation of inter-company transactions without the recognition of income.
(3) The designation of the parent company as agent of the group for all tax purposes.

tional economy and to eliminate any tax disadvantages of doing such through subsidiaries.

The parent company here owns, directly or indirectly, 100% of the stock of every corporation which participates in the filing of its consolidated return. As such stockholder it owns 100% of the assets of each corporation, and it is entitled to 100% of all net income of each, subject to income tax levies. Also, as the sole stockholder, it bears 100% of every risk, expense and loss sustained by its subsidiaries. These expenses and losses should not be appropriated for the consumers of a regulated natural gas company who bore no part of them, assumed no risks in relation to them, and have no right to use them to reduce their gas costs.

The parent's conducting of its petroleum business through many subsidiaries is a matter of lawful choice and the permission given by the Internal Revenue Code for the filing of one consolidated return by qualified affiliated subsidiaries recognizes such lawfulness. Gas Company performs no activity or function in relation to the parent company's primary business of conducting its petroleum operations. Gas Company is a regulated natural gas company transporting and selling natural gas for resale in interstate commerce and it is operated as such entirely separately from the petroleum operations of the parent company. *Whether one of the included corporations has a taxable gain or loss is determined from its individual tax return calculated separately. It is in the separate return where all lawful expenses of operation are deducted to determine whether there is income of the individual corporation subject to tax.* [Emphasis supplied.]

The examiner clearly determined, on the basis of record, that no part of the cost of producing the revenues of the petroleum business contributes in any way to produce Gas Company's revenues. No part of Gas Company's costs, including its income tax allowance, contributes in any way to producing revenues of the petroleum entity. No part of any loss of any subsidiary corporation in the petroleum business, operated as an entity, is reflected in Gas Company's agreed cost of service. The net taxable income of Gas Company gave rise to no tax savings by the parent; the parent, in effect, see p. 174 *infra*, paid the full 52% statutory rate on the taxable income of the Gas Company.

I see no justification for crediting the Gas Company with part of the losses, thereby reducing its allowance for income taxes. To do so would result in a windfall to the Gas Company's customers and would deprive the parent of tax deductions to which it is lawfully entitled. Stated simply, the tax savings were the result of non-jurisdictional operations and were not financed by Gas Company nor in any way made possible by the inclusion of the Gas Company in the consolidated tax return group. Most assuredly, Gas Company is not entitled to tax savings arising out of foreign and domestic exploration, production, refineries, gas station operations, petrochemical, tanker and other non-jurisdictional operations. The majority view would inflict harmful consequences on the unregulated subsidiaries which the Commission is without power to cure. Unlike the case when it regulates Gas Company alone, the Commission lacks authority either to increase or decrease the prices which the non-utility subsidiaries charge for their petroleum products. Briefly, the majority proposal is a regulatory one way street.

As Examiner Kelly has correctly declared, "The Code does not contain the criteria for rate making in this case. Under the Code, one only considers whether the corporations involved are qualified to participate in the consolidated return, whether such qualified corporations have lawfully computed their respective tax liabilities, what the consolidated tax should be, and whether all other tax laws or regulations have been met * * * The Commission determines

the proper return to be allowed upon the rate base and the proper income tax allowance to make the return net to the investor, and no tax law or regulations should interfere with the performance of this function by the Commission. * * * The Commission has the full right to examine all figures in such consolidated tax return, and to ascertain from what situations or circumstances they may have resulted. There considerations are demanded by the public interest. The public interest demands that a petroleum business receive, at the hands of the Commission at least as much encouragement and incentive in the conduct of its exploration and development activities as the national policy particularly as expressed in the income tax laws, dictates."

The uncontraverted evidence of record conclusively establishes that for each of the test years selected, the inclusion of Gas Company added a cost to the consolidated return in an amount equal to 52% of Gas Company's taxable income. In 1957, the parent company paid a consolidated tax of $12,251,639 on the income of its subsidiaries of which $5,860,398 was attributable to and equal to 52% of Gas Company's taxable income. In 1958 the parent company received a tax refund of $6,367,534, but it would have received a total refund of $10,224,666 if Gas Company had not participated in the consolidated return. Thus, the parent company, in effect, paid a tax of $6,367,534, representing 52% of Gas Company's 1958 taxable income, by forgoing the additional refund in that amount. In 1959, the parent company paid a tax of $2,965,014, but it would have received a refund in the amount of $6,566,531, if Gas Company had not been included in the consolidated return. Thus, the parent, in effect, paid $9,531,545 in payment of the tax at the rate of 52% on Gas Company's taxable income. The record shows that Gas Company's taxable income was not necessary to produce tax savings in the test years.

There is no question that Gas Company would pay a 52% tax had it been considered on a separate basis. The parent, by including Gas Company in the consolidated return, added a cost thereto equal to 52% and allocated a 52% cost to the Gas Company. I fail to see where the inequity of such an allocation lies. The parent company obtains no tax or other advantage from including Gas Company in its consolidated return. Owning 100% of the stock of Gas Company, the law requires that it include this subsidiary in its consolidated return. Gas Company, being a regulated monopoly with a practically assured net income each year, is not among the subsidiaries with losses to offset against the total net taxable income of all subsidiaries having such losses. Therefore, no tax saving whatever results to the parent company from the inclusion of Gas Company in the consolidated return.

The examiner noted further, "Any immediate but perhaps temporary tax saving accomplished by the filing of a consolidated return is not in any sense comparable to a real and permanent tax saving effected by taking a lawful deduction and passing on the benefit thereof to consumers. The tax saving effected by proper deductions is a definitely known and fixed saving for the tax year, which is certainly not true of any temporary saving effected through the offsetting of business losses against business gains. It is not the mere filing of the consolidated return but the fact of business losses having been sustained in the particular tax year which permit the temporary tax saving. The distinction must be acknowledged between the fixed and certain tax saving, and the temporary, uncertain and unascertained tax saving acomplished by utilizing business losses in a consolidated return. The latter should not be used to lower a tax allowance in a cost of service."

Completely ignoring the fact that Congress has provided that taxpayers may lawfully use their tax losses to offset their taxable income in the manner pro-

vided by statute, the majority imparts its own preemptory economic and regulatory philosophy to strike down an act of Congress.

The majority cites no authority of the Commission or the Courts to sustain this onerous theory. This proceeding cannot be resolved on the basis of an imagined rationale which is in fact contradicted by the record or by the reciting of an appealing slogan. This is a clear deprivation of property without due process of law since the majority proposes to take away from the non-utility subsidiaries and the parent company valuable property rights which belong to those companies. The tax deductions given by Congress as incentives to non-utility investment should not be taken away in such manner. No company owes anyone a duty either moral or legal to incur, or to continue to incur, losses in non-jurisdictional business so that jurisdictional rates can be reduced. Following the theory of the majority, how can an integrated oil company, which also has a natural gas pipeline company within its corporate structure, compete on equal terms with an oil company not having similar pipeline operations, if the latter can use all of its tax savings in its oil business but the former cannot? Clearly, it cannot so compete.

I would reflect on a point that deserves serious consideration. All but three of the 37 corporations involved in this proceeding are, in some way, connected with the petroleum business operated by the parent company. Conceivably, the parent's business could be conducted by a departmentalized single corporate entity. If this be true, there would be no losses to offset against taxable income since the single corporation would show an overall profit although some of its departments would lose money. Under such circumstances no consolidated return would be filed and the Commission would routinely grant to the Gas Company a tax allowance based on the statutory rate of 52%. In the instant proceeding, the majority places a penalty on the parent company because it has lawfully chosen to operate its world wide business through subsidiaries. Such a regulatory policy is unsound and inequitable.

The fact remains that Congress has given the parent company, not this Commission, the right to decide whether or not it will take advantage of the consolidated return and the benefits and obligations accruing thereunder. The Commission cannot interfere with this lawful decision of management so to conduct its business. The tax laws recognize this and they have given companies the opportunity to so operate without sustaining a tax loss because of their business activities. Congress did not commit management judgments to an administrative agency; this is the line past which a regulatory commission such as ours may not go.

If the economic advantage arising out of the filing of a consolidated tax return is to be passed on to Gas Company's ratepayers, which is the effect of the majority decision, the intent of Congress will be defeated. Here, the language of the statute is plain and unambiguous and it must be given effect according to its obvious meaning. By allowing the taxpayer the full advantage provided by the consolidated return, no attendant harm results to the ratepayers. This method does not result in higher rates to the consumer, it simply does not operate to reduce them. This view is in harmony with Section 1501 of the Internal Revenue Code, is fair to the ratepayer yet it does not constitute an expropriation of the constitutional powers of Congress.

The majority decision results in glaring defects and inequities; they have not offered any valid and compelling reasons for their decision. Contrary to the views expressed by the majority, I believe every effort should be made to afford all legitimate and necessary incentives to private enterprise while, at the same time, protecting the consumer ratepayer.

The examiner who heard the testimony in this proceeding correctly concluded, upon the basis of the record evidence and the pertinent law and regulatory policy, that the Federal income tax allowance included in the cost of service supporting the settlement agreement approved by the Commission in its order of May 27, 1961, computed at the statutory rate of 52%, is not excessive or in any way improper, and should be approved. In my judgment, the examiner's decision should be affirmed.

INITIAL DECISION
UPON THE SINGLE QUESTION OF INCOME TAX ALLOWANCE

(Issued April 23, 1962)

KELLY, *Presiding Examiner:* Cities Service Gas Company (Gas Company), a corporation engaged in the transportation and sale for resale of natural gas in interstate commerce subject to the jurisdiction of the Commission, proposed, pursuant to Section 4 of the Natural Gas Act (Act), an annual increase in its jurisdictional rates and charges, by tendering for filing revised tariff sheets on May 21, 1959. The proposed increased rates were suspended by Commission order of June 19, 1959, and they became effective subject to refund pursuant to Commission order of November 23, 1959. By order of March 27, 1961, the Commission approved and made effective the "Stipulation of Settlement filed October 21, 1960, as amended" which had been agreed upon by the parties, and which reserved for future determination only the single issue of what amount of Federal income taxes was properly to be included in the cost of service underlying the approved settlement. Tariff sheets, revised to be in keeping with the agreed settlement, were ordered to be, and have been, filed by Gas Company.[1] Gas Company was required by said order to make refunds to each of its jurisdictional customers in accordance with the settlement agreement; and such refunds have been made. The Commission found that good cause existed for the termination of this proceeding except as to the one reserved issue.

On June 28, 1961, the Commission ordered a public hearing to be held on July 19, 1961, concerning the lawfulness of the rates and charges contained in the revised tariff sheets here involved, to the extent that they are, or may be, "affected by a determination of the issue of the proper amount of federal income tax allowance to be included in the cost of service underlying the settlement agreement" approved and made effective by the Commission order of March 27, 1961.

Sessions of the hearing were held on July 19, September 21 and 22, and on November 20, 21 and 22, 1961. On October 6, 1961, the Commission permitted intervention by Cities Service Company (parent company), the owner through a subsidiary, of all of the outstanding stock of Gas Company. No evidence was presented at the hearing except by Gas Company and the parent company jointly, and by the Staff of the Commission. Gas Company and the parent company have jointly filed an initial brief and a final reply brief to the brief of the Staff which was the only other party to file a brief. The final reply brief was filed March 9, 1962. While there were interveners in this proceeding who represented customer and consumer interests, no briefs were filed by any of them.

On February 28, 1961, Gas Company filed a written motion seeking the approval by the Commission of the proposed settlement which was contained in the "Stipulation of Settlement Pursuant to Section 1.18 of the Commission's Rules of Practice and Procedure", filed October 21, 1960, as modified in certain particulars. The motion recited the pertinent facts concerning the filing of the

[1] A footnote at 25 FPC 582 of the Commission order of March 27, 1961, gives the designation of the tariff sheets here involved.

proposed revised tariff sheets containing its proposed annual rate increase, and told of the negotiations among the parties which led to the proposed settlement. The motion pointed out that the settlement agreement was "subject to the condition that the income tax issue be reserved for future determination in this proceeding with provision made for any appropriate adjustments of refunds and rates in the event such adjustments are required as a result of such determination." In connection with this reserved issue the motion showed

> That there was included in the cost of service on which the settlement herein was based income taxes at the rate of 52 percent upon Cities' taxable income as a separate corporate entity, but the Staff has indicated that the proper allowance should be some possible lesser amount, based upon the consolidated income tax return of the entire Cities Service system.

The issuance of this decision has been given priority and expedited because of the averment in the aforesaid motion by Gas Company filed February 28, 1961,

> That it is necessary for Cities to acquire new gas supplies and construct facilities which will require additional borrowing, but in view of the contingent liability, if any, created by the reserved issue and particularly the unknown extent thereof, Cities will be handicapped in doing additional borrowing as long as such issue remains unresolved.

In the body of the Commission order of March 27, 1961, appeared the following:

> We believe, in accordance with the agreement of the parties, that further study is required to determine whether the federal income tax allowances included in the cost of service supporting this proposed settlement are appropriate. Accordingly, upon investigation by the Commission, in the event the allowances for federal income tax in Cities Service's cost of service supporting this settlement shall be found to be excessive, then Cities Service shall refund such amounts as may be ordered, together with interest thereon at the rate of 6% per annum, and shall file revised rates as may be ordered, to reflect the reduction in the cost of service resulting from such tax adjustments. A hearing as to this issue will be held as soon as practicable.

With regard to the aforesaid reserved issue, it was ordered therein that

> (H) The settlement approved by this order is subject to the following condition and reservation: In the event it is determined by a subsequent order or orders of the Commission that the computation of the federal income tax allowance included in the cost of service is improper and that a lesser amount should have been included, Cities Service shall be required to make further refunds and reductions in its rates. A public hearing will be held on a date to be fixed by notice from the Secretary concerning the issue of the proper allowance for federal income taxes to be reflected in Cities total cost of service.

Attached to the Commission order which approved the settlement, as Schedule 2 of Exhibit B thereto, is a document entitled "Classification of Cost of Service for Settlement Purposes Year 1958". In Columns (1) and (2) of this document is the list of the various items constituting the "Total Cost of Service", which is referred to in said order as the "cost of service supporting this settlement." In this list appear the "Return at 6.25% $8,708,532" and the "Federal Income Tax" $7,055,981. The amount of the return is calculated at the agreed rate of 6.25 percent upon the agreed rate base for the test year 1958. The amount of the Federal income tax was calculated at the statutory rate of 52 percent upon this calculated return, after making all proper deductions related to the operation of Gas Company as a separate corporate entity. No question is raised in this proceeding concerning the propriety of said calculated income tax, as an item of cost for the test year 1958 for Gas Company as a separate

corporate entity filing a separate income tax return without participation in a consolidated tax return. The Staffs contention that the income tax allowance in the cost of service should be less than the amount calculated as aforesaid is based entirely upon the fact that Gas Company participates in the consolidated tax return filed by the parent company, pursuant to Sections 1501 *et. seq.* of the Internal Revenue Code, by the provisions of which a tax saving is permitted to be accomplished by offsetting the losses of participating subsidiaries against the net taxable income of the other qualified subsidiaries who participate in the consolidated return. It is argued by the Staff that a part of such tax saving should be applied in accordance with a formula devised by it so as to reduce the income tax allowance in Gas Company's cost of service. Gas Company vigorously contends that it is entitled to the full amount of the income tax allowance now shown in the cost of service supporting the settlement.

The Commission order of June 28, 1961, which fixed the hearing date as July 19, 1961, directed that Gas Company present, at the commencement of the hearing, its case-in-chief in respect to the limited issue, and that immediately following such presentation the "Commission staff and all other parties desirous of submitting a direct case into the record with respect to such issue shall do so." This prescribed procedure was followed at the opening session of the hearing, and the "case-in-chief" of Gas Company and the "direct case" of the Staff were received into the record on July 19, 1961. A recess was then taken and cross-examination of the Gas Company witness and the Staff witnesses was conducted on September 21 and 22, 1961. Direct examination and cross-examination were conducted on November 20, 21 and 22, 1961, of the witnesses who presented the rebuttal evidence on behalf of Gas Company.

At the initial session of the hearing on July 19, 1961, Gas Company's case-in-chief was presented through a single witness, a qualified accountant with extensive experience in the field of natural gas rates. As a part of his testimony this witness presented Exhibit No. 1, which is a computation of Federal income tax for the test year 1958 on the basis of figures set forth in Schedule 2 of Exhibit B to the Commission order approving the settlement. The return calculated at the agreed rate of 6.25 percent upon the agreed rate base is shown on both Exhibit 1 and said Schedule 2 as $8,703,532. From this return are deducted the "Tax Adjustments", totaling $2,190,319, which were the actual deductions taken by Gas Company in its income tax return for 1958. The "Balance of Return," shown on Exhibit No. 1 as $6,513,213, results from this subtraction. The Federal income tax allowance for the cost of service is calculated by taking 108.3333 percent of the return so reduced, which is $7,055,981. This tax allowance in Exhibit No. 1 is the same as that shown on said Schedule 2. Adding the "Balance of Return" and the income tax allowance, the net taxable income of Gas Company for the test year 1958 is $13,569,194. This witness testified that Gas Company participated in the consolidated income tax return of 1958 of the parent company and that under such consolidated return, the parent company "pays 52% Federal Income Tax on the taxable net income of Cities Service Gas Company, which is the same tax as would be paid by Cities Service Gas Company if no consolidated income tax return were filed." He testified also that the participation of Gas Company in the consolidated tax return did not result in "any tax savings or benefits from the regulated business" of Gas Company either to it or to the parent company. Gas Company rested its case-in-chief upon this evidence.

The Staff presented three witnesses, all Commission employees. The first was a Certified Public Accountant who serves the Commission as a "Supervisory Auditor specializing in matters concerning the appropriate allowance for taxes to be included in cost-of-service studies for rate-making purposes." He had ex-

tensive experience in income tax matters as an employee of the Internal Revenue Service. His assignment in this case was "the task of computing a consolidated effective tax rate to be used in determining the federal income tax allowance in the cost of service"; and he defined such tax rate as "reflecting the tax savings achieved through the filing of a consolidated federal income tax return." His Exhibit No. 2 discloses the mathematical computation employed by him in deriving the "consolidated effective income tax rate" of 10.53 percent which he recommends to be used in calculating the Federal income tax allowance for Gas Company in its cost of service. The second Staff witness was likewise a qualified accountant employed as a Supervisory Auditor. He made a computation, presented in his Exhibit No. 6, to show the effect of the use of the tax rate of 10.53 percent instead of the regular statutory tax rate of 52 percent for corporations, when applied to the cost-of-service figures given in Schedule 2 of Exhibit B of the stipulation of settlement attached to, and approved by, the Commission order of March 27, 1961. In said Schedule 2 the amount of the Federal income tax there shown, calculated at 52 percent of the agreed return after proper deductions, was $7,055,981, and the amount calculated by this witness at the rate of 10.53 percent was $785,565, or $6,270,416 less than the amount of tax taken from said Schedule 2. The third Staff witness was a qualified engineer whose assignment in this proceeding "was to adjust the rates agreed to by the parties and accepted by the Commission in its order issued March 27, 1961, to reflect the staff's adjustment to the jurisdictional cost of service necessitated by the staff's adjustment of the Federal income tax and return allowance."

The testimony of four witnesses constituted the rebuttal evidence of Gas Company. One of these was the same qualified accountant whose testimony was presented as the "case-in-chief" of Gas Company. His rebuttal testimony was in refutation of the Staff's position concerning the computation of its "consolidated effective tax rate," which he contended was improper and inappropriate as a rate-making procedure. The second witness was the Chief Accounting Officer of the parent company, who was likewise a Director and Vice President of that corporation. He gave in very considerable detail information concerning the stock holdings of the parent company in quite numerous corporations, particularly those included each year in the filing of its consolidated income tax return with the Bureau of Internal Revenue, among which was, of course, Gas Company. He discussed the business of the parent company conducted through such included subsidiary corporations, in relation to its financial affairs, accounting policies, business transactions between the affiliated corporations, its Federal income tax problems, and other related affairs. The third witness was a lawyer who had specialized in Federal income tax laws and regulations over a period of 25 years, and he gave his opinion of the validity and propriety of the computation by the Staff of its "consolidated effective tax rate," in the light of the applicable and pertinent Federal income tax laws and regulations. He had not theretofore ever advised the parent company or any of its subsidiaries in connection with the preparation of their consolidated income tax returns. The fourth witness was a consulting economist and attorney who testified concerning the impact to be expected from the acceptance of the Staff's position here, upon the American economy generally, and particularly in relation to economic stability and upon the objective of the national and international economic policies of the Government.

All of the adduced evidence has been carefully reviewed and it is the basis of this decision. The conclusions reached therefrom are hereinafter stated. In making the decision here it is necessary, upon the basis of the record evidence, to adopt either the position of Gas Company and its parent or that of the Staff. Gas Company contends that the computation of the income tax allowance in

the cost of service should be made at the statutory rate of 52 percent of the net taxable income. The Staff contends that its computed "consolidated effective income tax rate" of 10.53 percent, which is the average of its computed tax rate respectively for the years 1957, 1958, and 1959, should be substituted for the statutory rate of 52 percent in the calculation of the tax allowance. The burden of proof is upon Gas Company to establish that its proposed rate increase is just and reasonable, and to do this in relation to the single issue here for decision, it must show that the tax allowance appearing in the cost of service supporting the rate settlement approved by the Commission order of March 27, 1961, is not excessive when properly computed at the tax rate of 52 percent, regardless of its participation in the consolidated income tax return filed by the parent company.

The parent company was incorporated as a holding company in 1910, under the laws of Delaware. It acquired interests in numerous public utility companies. To supply the needs of such companies, the parent company, operating through subsidiary corporations, began exploration for natural gas, discovered oil, and thus became engaged in the oil business. As a result of the provisions of the Public Utility Holding Company Act of 1935, the parent company gradually disposed of its interests by 1954 in approximately 55 public utility corporations which it had acquired. It did not dispose of its interests in Gas Company, which it had owned indirectly since this corporation was organized in 1922, as said company was not a public utility as defined in said Act. Over the years both the public utility company holdings and its oil business expanded greatly, and after it had disposed of the former it became predominantly engaged in the petroleum products business on a quite large scale. The parent company has remained throughout strictly a holding company, and its petroleum operations are today conducted through subsidiary corporations organized by it.

Exhibit 10 in the record, a part of the testimony of the Chief Accounting Officer of the parent company, is entitled "Directory of Cities Service Company and its subsidiaries included in the consolidated tax returns of Cities Service Company for the period 1954 through 1959." There are listed in the index to this exhibit 47 corporations, including the parent company, which participated in the filing of said consolidated tax returns for one or more years in the period from 1954 to 1959, inclusive. Following the index is a succinct description and history of each of such corporations, and this shows that 9 of said listed corporations have since been absorbed by merger into one of the other corporations so listed, leaving a balance of 37 corporations, of the outstanding stock of which the parent company owns 100 percent either directly or through other corporations among the 37. The parent company owns all of the stock of Empire Gas and Fuel Company (Empire) which, in turn, owns all of the outstanding stock of Gas Company. Gas Company owns all of the stock of Cities Service Gas Producing Company, which, like Empire and Gas Company, participated in the filing of a consolidated income tax return with the parent company in all years from 1954 to 1959, inclusive. The parent company owns stock interests of less than 80 percent in several other corporations, and also in corporations organized under the laws of Canada, but these are not includable lawfully in a consolidated income tax return.

As a pipeline company transporting and selling natural gas for resale in interstate commerce, Gas Company is a natural gas company regulated by the Commission under the Act. As a producer of natural gas which sells its entire production to Gas Company for resale in interstate commerce, Cities Service Gas Producing Company (Producing Company) is likewise a natural gas company regulated by the Commission. Among the 35 other companies joining in

the consolidated return there are two other regulated companies, namely, the Cities Service Pipe Line Company and the Kansas Gas Supply Company. The former owns and operates crude oil gathering and trunk pipelines in interstate commerce, and its tariff for transportation charges is regulated by the Interstate Commerce Commission, although it is owned 100 percent by, and transports only for, Cities Service Oil Company (Delaware), one of the 37 corporations joining in the consolidated return. The Kansas Gas Supply Company operates an intrastate natural gas pipeline which is regulated by the Kansas Commission. Cities Service Oil Company (Delaware) and Cities Service Production Company both are indirectly owned 100 percent by the parent company and join in the consolidated return. Approximately 3 percent of the gross revenues of these two companies is derived from the sale of natural gas in interstate commerce at rates regulated by the Commission. With the exception of the 6 companies mentioned in this paragraph, all other subsidiaries of the parent company are entirely unregulated in their businesses.

Gas Company purchases gas in Texas, Oklahoma and Kansas, either from its wholly owned Producing Company or from unaffiliated producers and relatively a very small amount of gas is purchased from Cities Service Oil Company (Delaware) and Cities Service Production Company. This gas is sold from its transmission lines in Texas, Oklahoma, Kansas, Missouri and Nebraska. Approximately 70 percent of such sales of gas are for resale and thus subject to the jurisdiction of the Commission and the remainder of approximately 30 percent is sold directly to industrial customers mostly located in Kansas and Missouri. Gas Company, and its wholly owned Producing Company, whose entire production of gas it purchases, are in no way connected with the petroleum business conducted by the parent company through its numerous subsidiary corporations. Nor is Kansas Gas Supply Company, described above, so connected. All corporations, other than these 3 regulated companies, which participate in the filing of the consolidated income tax return of the parent company are primarily engaged in some phase of the most extensive unregulated petroleum business owned and operated by the parent company through them.

The testimony of the Chief Accounting Officer of the parent company established certain facts concerning its petroleum operations carried on by its 100 percent owned subsidiaries as they existed in 1958, the test year. Exploration for and development and production of crude oil and natural gas are conducted through various subsidiaries both in the United States and foreign countries, including Canada, Italy, French Sahara, Egypt, Colombia, Arabia, Peru and Venezuela. Through the activities of the other subsidiaries the petroleum operations include the refining, at four refineries, of crude oil, of which some is asphalt or heavy crude oil; the purchase and sale of crude oil and natural gas; operation of 19 wholly or jointly owned gasoline extraction plants, the transportation of crude oil and petroleum products by pipelines, tank cars, and ocean-going tankers; the marketing of all of its petroleum products, scientific research in relation to petroleum and products derived from it; the operation of filling stations selling products ordinarily found at such places; owning and operating office buildings to house the officials and office employees of the parent company and various subsidiaries; the fiscal and financial activities needed for such an extensive petroleum business; and all other activity incident to the operation of such a giant industry. This officer's testimony points out in detail just which corporations conduct respectively the various activities and functions set forth above. Also it shows the relationship of the parent company to these numerous corporations in directing and coordinating their separate operations in the management of the total petroleum business. Attention should here be called to the fact that Gas Company performs no activity or function in relation to the parent company's primary

business of conducting its vast petroleum operations. Gas Company is a regulated natural gas company transporting and selling natural gas for resale in interstate commerce, and it is operated as such entirely separately from the petroleum operations of the parent company.

This official of the parent company testified that his company's activities were directed toward two ends, namely, (1) the "coordination of an integrated petroleum operation," and (2) "the protection of its various investments." He then gave, at Transcript page 480, a concise description of the services and activities performed by the parent company in relation to its "petroleum operations," as follows:

> With respect to the petroleum operations of Cities Service Company and its subsidiaries, the services performed by the parent holding company, Cities Service Company, relate to the coordination, correlation, evaluation and development of the various aspects of the integrated petroleum operation carried on by it through its various operating petroleum subsidiaries. Typical of this would be the evaluation of various exploratory operations, the negotiation for concessions, both domestically and overseas, the organization of the companies to engage in exploration operations, the staffing of those companies, the advising and assisting in the financing for those companies, the financing of a transportation system, both marine and pipeline, to move oil and refined products, the conduct of negotiations with governmental authorities on matters of interest to the integrated petroleum operation and the conduct of negotiations for the acquisition of new properties, such as plants or developed producing properties.
>
> Speaking generally, the parent holding company undertakes to do whatever is required to benefit the petroleum operation without inquiring as to whether the particular project or activity being undertaken will benefit one subsidiary or another in the integrated petroleum operation. The various operating petroleum subsidiaries concern themselves mainly with day to day operation of the various properties owned or operated by them. Everything other than day to day operations is the responsibility of Cities Service Company.

Of course, the parent company incurs expenses in the performance of the foregoing activities and functions, and in the protection of its various investments. However, the expenses incident to the latter are not great, as it is not necessary at the present time for the company "to spend much of its productive time in the protection of its investments." The parent company is now in a position to "spend the great bulk of its time in developing new opportunities for its petroleum subsidiaries and expanding into new lines of endeavor associated with the petroleum business." It has been the policy of the parent company for more than 20 years to impose no part of such expenses upon any subsidiary. It being strictly a holding company, it is assumed that its only revenues are derived from dividends declared by its subsidiaries, and the Staff evidence establishes that such dividends are eliminated in the preparation of a consolidated tax return. participants which showed losses for 1957, 1958 and 1959.

The conducting of its petroleum business through numerous subsidiaries, rather than through a single departmentalized corporation, is a matter of choice. The management of the parent company had the right to make this choice. For the purposes of this decision there is accepted the legal presumption that this manner of doing business is lawful in all respects. The permission given by the Code for the filing of one consolidated return by numerous qualified affiliated subsidiaries recognizes such lawfulness. It is also a matter of choice by the parent company management as to which of its subsidiaries organized by it

under corporation laws, shall have the qualifications required to participate in a consolidated tax return. Operating its business in this entirely lawful manner, the parent company should not be penalized in any way merely because it has chosen to operate a petroleum business through numerous corporations rather than through a single corporation. The Chief Accounting Officer of the parent company explained in considerable detail the reasons for doing business in this manner, and such reasons are here found to be in keeping with prudent management. There is no necessity to relate all of such reasons in this decision when there is here recognized the right of management to choose to operate its business in this lawful manner without being in any way penalized therefor. This is especially true when this manner of doing business in no way prevents a fair balancing of consumer and investor interests in this rate proceeding. Also, there must ever be present the realization that the parent company is not conducting its petroleum business through subsidiaries to gain tax advantage.

Chapter 6 of the Internal Revenue Code is entitled "Consolidated Return"; and Section 1501, the first section of this chapter, is entitled "Privilege to File Consolidated Returns." This section gives to "an affiliated group of corporations" the "privilege of making a consolidated return with respect to the income tax imposed" by the Code "in lieu of separate returns." The parent company has availed itself of this "privilege" every year since its organization when the Federal income tax laws permitted it. Gas Company has joined in all such consolidated returns since its organization except for those years when it was permitted by a tax law of 1950, as a utility, to file a separate return in spite of its being owned indirectly 100 percent by the parent company. Prior to the Code of 1954, only corporations owned 95 percent could join in such return but this Code reduced this to 80 percent and required that all includable utilities likewise join in the consolidated return. The Code requires the inclusion of all corporations of which the parent company owns 80 percent or more of the outstanding stock. When corporations join in such returns the Code, Section 1503, levies an additional 2 percent tax upon all includable taxable income except that of utilities such as Gas Company, upon the income of which the tax rate remains at the regular statutory rate of 52 percent on corporate net income.

In the filing of a consolidated return, the Code permits the aggregate losses of all of the includable corporations having such, to be offset against the total net taxable income of the other corporations. The losses of the corporations having them are thus used to reduce the amount of net income which is taxable. It is in this use of losses that a reduction in the total tax to be paid under the consolidated return is accomplished for the particular tax year. Whether one of the included corporations has a taxable gain or a loss is determined from its individual tax return calculated separately. It is in the separate returns where all lawful expenses of operation are deducted to determine whether there is income of the individual corporation subject to tax. However, in considering the issue here the distinction must be kept in mind between tax deductions used to arrive at the net taxable income, if any, of the individual corporation, and the net losses of a corporation, if any, which result from taking all lawful deductions from gross income.

The Staff would classify as a "tax saving" the difference between the total of the Federal income taxes payable upon the basis of the separate returns of all participating corporations having taxable income, and the Federal income tax payable upon such total after its reduction by offsetting against it the aggregate losses of all participating corporations having such, as is permitted when a consolidated return is filed. The Staff would then allot to each participating

corporation having taxable income a portion of this "tax saving" based upon the "ratio of each company's separate return income to the total separate return income". In the agreed cost of service which is Schedule 2 of Exhibit B to the Commission's order of March 27, 1961, Gas Company's income tax allowance is based upon the regular statutory corporate income tax rate of 52 percent, which would be here granted routinely if Gas Company did not participate in a consolidated tax return. The Staff has devised a "consolidated effective tax rate" of 10.53 percent to be used instead of the statutory rate of 52 percent in calculating the income tax allowance so as to reflect the "tax savings."

The Staff's formula for deriving a "consolidated effective tax rate" is not greatly complicated. There is first ascertained the income tax of each participating corporation having taxable income upon a separate return basis, and these are totaled. The total of the consolidated income tax paid by the parent company, as shown by its consolidated return, is then subtracted from the first total above, and the difference is classified by the Staff as the "tax saving" for the year. It is then determined what percentage the "tax saving" is of the total of the taxes payable upon the basis of the separate returns of all the participating corporations having taxable income. The statutory tax rate of 52 percent is then multiplied by such percentage, and the result is subtracted from the 52 percent to obtain the "consolidated effective tax rate" for the particular year. Thus, in 1957 the "tax saving" was 54 percent of the total of the taxes payable upon a separate return basis by all corporations having taxable gains. It was then calculated that 54 percent of the 52 percent statutory rate was 28.08 percent, which was subtracted from the 52 percent to arrive at the "consolidated effective tax rate" for 1957 of 23.92 percent. By this same arithmetical procedure, the "consolidated effective tax rate" for 1959 was calculated to be 7.67 percent. For 1958, the test year, the "tax saving" was 100 percent of the total income taxes payable on a separate return basis by the corporations having gains, by reason of the fact that the losses of other corporations were very considerably in excess of the total taxable income of the gain corporations. Therefore, the "consolidated effective tax rate" for 1958 was zero percent. The consolidated effective tax rates for 1957 of 23.92 percent, for 1958 of zero percent and for 1959 of 7.67 percent were then simply added together and divided by three to arrive at the 10.53 percent, which the Staff recommends as the "consolidated effective tax rate" to be used to calculate Gas Company's income tax allowance for the test year of 1958. As shown heretofore, this reduction of 52 percent to 10.53 percent would reduce the income tax allowance in the cost of service by $6,270,416 according to the Staff's calculations, and Gas Company's rates would be calculated for the future on this basis.

Depriving Gas Company of $6,270,416 which would be routinely granted to it by the Commission if it were not for its having a common owner with an unregulated and unrelated petroleum business, should not be done without some very cogent reasons based upon sound rate-making policies which impose no confiscatory rates, which balance equitably consumer and investor interests, and which take fully into consideration the impact of such action upon national economic policies. The Staff's recommendation that its "consolidated effective tax rate" be utilized to make rates for Gas Company for the indefinite future is not supported by cogent reasons so based.

The Staff's position is basically wrong because it would thwart the true Congressional intent behind the tax law permitting the filing of a consolidated tax return by a holding company and its subsidiaries which are owned 80 percent or more by it. This law is not comparable to that which permits the expensing of intangible drilling costs or to that which grants the depletion allowance of 27.5 percent to oil and gas companies. It is not comparable to any tax law

which permits a corporation to take deductions of various expenses of operation. It was the failure of certain gas companies to take such deductions for rate purposes as well as tax purposes that has been condemned upon the occasions in recent years when there was invoked the principle of granting a tax allowance in the cost of service which reflected only actual taxes payable (the actual tax rule). And while the Commission has insisted in the past that certain tax advantages to be obtained from filing a consolidated return for groups composed entirely or predominantly of regulated companies, be passed on to consumers, it has not held that business losses of unregulated and unrelated corporations participating in a consolidated return should be utilized for the benefit of the consumers of a regulated natural gas company.

The true intent of the Congress in granting the "privilege" of the consolidated return to an "affiliated group" of corporations "connected through stock ownership with a common parent corporation," in the relationship defined in Section 1504 of the Code, was most obviously to encourage holding companies to expand their overall businesses for the betterment of the national and international economy. This encouragement consisted of the recognition of the right of a parent company to do business through numerous subsidiaries, while not suffering the full impact of business losses sustained by some subsidiaries in new and yet unproductive ventures, or in the more hazardous activities. This impact of business losses was lessened by permitting the total of them to be offset against the total of the net taxable income of those subsidiaries having such. These business losses represent cash out of pocket due to the expenses of subsidiaries exceeding their revenues. They are not just some ordinary expenses of operation to be deducted when computing to ascertain net taxable income. In the case of business losses the computation has already been made with a minus tax resulting.

It must be borne in mind that the parent company here owns, directly or indirectly, 100 percent of the stock of every corporation which participates in the filing of its consolidated return. As such stockholder it owns 100 percent of the assets of each corporation, and it is entitled to 100 percent of all net income of each, subject to income tax levies. Also, as the sole stockholder, it bears 100 percent of every loss sustained by its subsidiaries. While net losses are permitted by the tax laws to be offset in the next five years against net taxable income which the taxpayer may have in those years, as is more fully hereinafter shown, it must be kept in mind that the right to use such losses for such purpose is vested in the one sustaining the loss originally. These losses should not be permitted to be used to benefit, in the tax year sustained, the consumers of a regulated natural gas company who bore no part of them, assumed no risks in relation to them, and have no right to use them to reduce their gas costs.

We are not dealing here with any so-called "phantom taxes", which result from utilizing certain lawful tax deductions for tax purposes and not for rate purposes. There is no doubt that a tax saving thus accomplished and not passed on to the consumers effects additional return to the regulated company. Any immediate but perhaps temporary tax saving accomplished by the filing of a consolidated return is not in any sense comparable to a real and permanent tax saving effected by taking a lawful deduction and passing on the benefit thereof to the consumers. The tax saving effected by proper deductions in a definitely known and fixed saving for the tax year, which is certainly not true of any temporary saving effected through the offsetting of business losses against business gains under the existing laws, as hereinafter shown. It must always be remembered that it is not the mere filing of the consolidated return but the fact of business losses having been sustained in the particular tax year which permits

the temporary tax saving. And the distinction must in fairness be acknowledged between the fixed and certain tax saving, and the temporary, uncertain and unascertained tax saving accomplished by utilizing business losses in a consolidated return. The latter should not be used to lower a tax allowance in a cost of service. The many reasons for this conclusion appear hereinafter.

If it were assumed, *arguendo*, that there should be passed on to the customers of Gas Company some portion of the immediate benefit which may be derived by the parent company each year by exercising the "privilege" of filing a consolidated return, the Staff offers no logical or fair way to measure what that portion should be. To begin with, the so-called "separate return income" of Gas Company shown in Schedules 1, 2 and 3 of the Staff's Exhibit 2 is in each instance very considerably larger than it would be if it reflected revenues derived from rates based upon a cost of service which included a Federal income tax allowance calculated at any rate even remotely approximating 10.53 percent, rather than being calculated as it was, at the 52 percent statutory tax rate, heretofore routinely allowed to Gas Company by the Commission. The figures in the aforesaid Schedules 1, 2 and 3 were taken from the consolidated income tax return of the parent company and its subsidiaries. Thus, the "tax saving" allotted to Gas Company by the Staff on the basis of its larger taxable income, would be less and the "consolidated effective tax rate" would be more, if its taxable income included only an income tax allowance of 10.53 percent.

For the test year 1958 no tax at all was paid by the parent company, but instead it received from the Government a tax refund. Thus, for the test year, according to the Staff theory, there was a 100 percent tax saving by all corporations having taxable income and participating in the consolidated return for that year. In rate cases the Commission strives to arrive at a rate determined to be just and reasonable for the indefinite future. In the process of making this determination, there is sought to be ascertained, on the basis of actual book figures for a normal test year, an estimate of expected sales and expenses for some months in the future. Any item of revenue or expense for the test year shown by evidence to be abnormal may be made normal on the basis of some reasonable estimation. The Staff recognizes as abnormal the zero income tax allowance that would result in 1958 from its method of allocating the "tax saving" for that year to the various corporations with taxable income which participated in the consolidated return. Does the Staff method of calculating the "consolidated effective tax rate" provide a means of producing arithmetically a reasonable estimation of what the normal Federal income tax allowance for Gas Company should be for the indefinite future, which would effect a fair balance of the interests of the consumers and the investor here involved?

The answer must be in the negative, because there is positively no way to make any fair estimate of what the "tax savings" may be for the indefinite future, as calculated by the Staff method, and it is they which cause the Staff's "consolidated effective tax rate" to increase or decrease. The "consolidated effective tax rate" must rise and fall with the tide of the national and international economy, and from many other factors, which may be affected by innumerable and unpredictable happenings. It is conceivable, although not immediately probable, that all of the corporations now participating in the consolidated return may, through good management and good fortune, have taxable income in the future. On the other hand, the aggregate losses of some such corporations may frequently, through misfortune or otherwise, exceed the aggregate taxable income of the others. Thus it is possible for the "consolidated effective tax rate" to be at various times in the future, by the Staff's manner of calculation, anywhere from zero percent to 52 percent. And there is no fair way to strike an average between zero and 52 percent which would balance equitably consumer and investor interests.

Business losses are not sought. They may be anticipated in the early years of a business venture, but large expenditures are not made with the purpose of losing money in the long run. When they occur for whatever reason the consolidated return procedure offers some relief, in that the losses bring a reduction in the total net taxable income for the particular tax year in which the actual outlay of cash occurs. But business losses are not something that are arranged. While business expenses may be budgeted, business losses are not determined and planned in advance. There is no way to ascertain them in advance with any degree of accuracy, so as to give validity to the Staff's formula which utilizes a most inaccurate estimate of them as a basis for making just and reasonable rates for the indefinite future.

At this point it would be well to assert the importance of realizing that we are not here dealing with a group of regulated corporations, as were the Commission and the Courts in many cases cited in the Staff brief. It may be assumed that with prudent management and a nonconfiscatory net rate of return above taxes, a regulated company will have relatively stable revenues and expenses. Any group of such companies might see no advantage to filing a consolidated return, due to the fact that none of the group would have losses to offset against gains under normal conditions. The "privilege" of filing such a return might be exercised by such a group only because of the expenses of a parent company incurred in the management and operation of its several regulated subsidiaries, which might be offset against their gains, so as to effect a reduction of the 52 percent income tax rate by a small number of percentage points, which would be used to calculate the income tax allowance for the cost of service of each participating regulated company. And each one of such group of regulated companies would receive proportionately a true tax saving which might well be used as a basis for just and reasonable rates for the indefinite future. Thus, such actual tax saving might be accomplished by this reasonable method, in which the tax reduction would be effected by the use of a deduction of expenses, which might well not vary greatly from year to year, as distinguished from immediate but possibly only temporary, tax benefits derived from losses suffered largely by companies engaged in hazardous businesses, which may vary greatly from year to year.

The Code of 1954 permits the carrying back and carrying forward of operating losses. A loss in the tax year may be carried back and offset against net taxable income in any of the three preceding years. To the extent that such losses cannot be thus carried back, they may be carried forward and used against such income of any of the five succeeding years. It was the carrying back of the aggregate losses of 1958 against income of 1955 that resulted in the parent company receiving a tax refund for 1958. Thus, it cannot be known with anything approaching definiteness or exactness just what the losses for any tax year will be until the expiration of the fifth year thereafter.

These factors are briefly pointed out to show that there could be no such thing as "normalizing" the income tax allowance in Gas Company's cost of service, if it is to be calculated on the basis of losses incurred by other corporations engaged in businesses which are hazardous, unregulated and unrelated to, and unlike, that of Gas Company. Considering the manner of operation of the parent company, as shown by the evidence, there is absolutely no way of making a fair estimate of the ratio between the corporate gains and corporate losses which its subsidiaries may have in any future year.

The Staff witness who devised the "consolidated effective tax rate" defined it as "a tax rate reflecting the tax savings achieved through the filing of a consolidated federal income tax return"; and he asserted that the "basis for using a consolidated effective tax rate is the regulatory principle that a utility

should be allowed only actual taxes payable in its cost of service." He then contends that the filing of a consolidated tax return by the parent company "results in the payment of the lower tax", and that "in order to adhere to the principle that a utility should be allowed only actual taxes payable in its cost of service, a proportionate part of the tax saving occasioned by the filing of a consolidated return should be reflected in the federal income tax allowance through the use of a consolidated effective tax rate." He then explains how the filing of the consolidated return enables the parent company to offset the losses sustained by some subsidiaries against the gains of others so as to reduce the income tax of the group of subsidiaries. This "tax saving", according to his theory, should be divided among the gain companies in proportion to their respective income taxes calculated on a separate return basis. It must be remembered throughout this proceeding that, in support of its use of its "consolidated effective tax rate" to calculate an income tax allowance for Gas Company's cost of service, the Staff invokes only the single rate-making principle that such allowance should be "only actual taxes payable."

This rate-making principle is of unquestionable validity. Numerous efforts have been made by regulated companies in rate proceedings before the Commission, to obtain an income tax allowance in the cost of service which would be something greater than the amount to be paid to the tax collector by the regulated company and thus to achieve additional return. If these efforts had succeeded, the consumers involved would have paid this additional amount which was not a cost of service to them. It was not a cost of producing the net return to the investor. This principle requires that the regulated company pass on to the consumer every actual tax saving, just as it should pass on any other saving in cost. One question in this rate proceeding is whether it is within the power of Gas Company to bring about a tax saving by participating in a consolidated tax return, which it should pass on to its consumers. There is no doubt that Gas Company would routinely be given an income tax allowance based on the regular statutory tax rate of 52 percent but for the fact that it participates in the consolidated tax return with the parent company and its subsidiaries. This brings us to the question of what rights Gas Company may have to demand any benefit from the immediate effects of the filing of the consolidated return.

The evidence shows the possibility of an actual tax loss resulting from the filing of a consolidated tax return, due to the levying of an additional tax of 2 percent, for a total rate of 54 percent upon the net taxable income of all participants other than utilities which remain at the 52 percent rate. The filing of the consolidated tax return may greatly reduce the amount of taxable income for the tax year, and the immediate effect of such filing would be to reduce the total tax of the group of participants for that particular year. However, when losses may be carried back and used against earnings of the three preceding years or carried forward against earnings for the next five years to the extent they cannot be carried back to the preceding years, it is possible, as pointed out in the evidence, for the tax losses of a particular year to be used in their entirety against earnings of prior or subsequent years, so as to make every dollar of the taxable income of the gain corporations for that year subject to the tax rate of 54 percent. While no such result may be anticipated in the normal course of events considering the hazardous business in which the parent company predominantly engages through its subsidiaries, this possibility, under the tax laws, well illustrates that no particular gain corporation has a legally enforceable right to demand at the end of a particular tax year that it then be given a share in the immediate tax benefit resulting from business losses which may eventually be eliminated by being offset against income of subsequent

years. It would appear that the Staff is claiming such a right to be vested in Gas Company for assertion each year.

It is true that the foregoing is an extreme illustration. However, the carrying back and carrying forward of losses may eliminate a great portion of the tax losses of a particular tax year. At least the actual tax losses may be considerably less than as first indicated in the consolidated tax return for the particular tax year. Furthermore, the net taxable incomes of some participants reflected in the consolidated return for a particular year may conceivably be wiped out or greatly reduced by their losses of the next three succeeding years being carried back to them under the tax laws, and this would play havoc with the Staff's ratio for distributing the "tax savings" among the gain companies of that particular tax year. In any event, it is impossible to determine until five years after the particular tax year, just what tax benefits for the tax year have resulted. Gas Company has no right, legal or moral, to demand a portion of such unascertained benefits. It may be stated definitely also that no such unascertained benefit is an actual and known saving in taxes which should be passed on to the Gas Company's consumers, under any fair interpretation of the actual tax rule laid down by the Commission and the Courts.

When pointing out that the "underlying theory" for its recommended usage of its designed "consolidated effective tax rates" was the regulatory principle that only actual taxes payable should be included in the cost of service," the Staff brief cited the relatively recent El Paso rate case,[2] and quoted therefrom as follows:

> We think, in short that there is no statutory authority for the Commission to treat actual savings in taxes to which natural gas companies are entitled any differently than savings in any other cost of service. It is the obligation of all regulated public utilities to operate with all reasonable economies. This applies to tax savings as well as economies of management. The net result of this, of course, is that such savings as are effected are passed on to the consuming public. This we consider to be the natural and necessary consequence of rate regulation.

In the foregoing quotation the word "entitled" stands out. The Court said that the Commission has no statutory authority "to treat actual savings in taxes to which natural gas companies are entitled" any differently "than savings in any other cost of service." It speaks of the "obligation of all regulated public utilities to operate with all reasonable economies", including tax savings. All such savings are to be "passed on to the consuming public". But the Court was thinking of and spoke about only such "actual savings in taxes" as regulated natural gas companies were "entitled" to obtain and enjoy. No question has been raised by the Staff that Gas Company has not availed itself of every possible actual tax saving to which it was "entitled", in calculating its income tax allowance in the cost of service for the 1958 test year, as a separate corporate entity filing a separate tax return without participating in a consolidated tax return. This brings us to the question of what "actual savings in taxes" Gas Company becomes "entitled" to, by law or regulatory policy, merely by virtue of participating in the consolidated tax return of the parent company and its many subsidiaries, under the pertinent facts and circumstances here established by the evidence.

The first thought which comes to mind in respect to Gas Company's *rights* as a participant in the consolidated return, is that the immediate benefits to be derived from such return are entirely the result of *business losses* suffered by some unregulated participants in the consolidated return. The parent company simply would not exercise in any year its "privilege" of filing a consolidated return

[2] *El Paso Natural Gas Co., et al., v. F.P.C.*, 281 F. 2d 567, cert. denied 366 U.S. 912.

but for the fact that some of its subsidiaries sustain losses. Certainly Gas Company is not "entitled" to demand that losses occur each year so that a consolidated return may be filed by the parent company for its benefit. At the very outset, wonderment arises as to the justice of permitting Gas Company's customers to receive a windfall from losses occurring in businesses utterly unrelated to that of the regulated natural gas company whose rates are here involved, merely because Gas Company and the corporations having the losses happen to have a common corporate owner. Furthermore, the wonderment becomes astonishment when it is shown that the losses which are the basis of the Staff's calculation of its "consolidated effective tax rate" of 10.53 percent, may under tax laws be actually much less, or possibly entirely eliminated, by a mere change in the business fortunes of the loss subsidiaries in early subsequent years. Considering the fact that Gas Company would be routinely granted an income tax allowance calculated at the statutory rate of 52 percent, if it were not for the common ownership of it and these loss subsidiaries, there can be no justice to reducing Gas Company's tax allowance on the basis of losses, the extent of which may not be known definitely for five years.

It might be well to give at this point a simple arithmetical hypotheses to illustrate how damaging may be the effect of using business losses of unregulated companies for the benefit of consumers by reducing the income tax allowance on the basis of the results shown in a consolidated tax return of a particular year, in keeping with the Staff theory. If the regulated company has net taxable income in 1961 of $1000 and an unregulated company has a loss of $1000, neither pays any income tax under the consolidated return for that year, and the regulated company has a "tax saving" of $520. In 1962 each of these companies makes $1000 and no consolidated return is filed because there are no losses to offset against gains. Each pays $520 tax in 1962. Thus, the regulated company pays $520 tax on $2000 for the two years instead of $1040 at the tax rate of 52 percent. The unregulated company pays $520 and has no income for the two-year period. In all fairness the unregulated company should be allowed to carry forward its loss of 1961 and pay no tax for the two-year period, and the regulated company should be required to pay its full tax of $1040. If this $520 in so-called "tax saving" for 1961 is taken away from the parent of the two companies and passed on to the consumers of the regulated company, the parent is $520 out of pocket.

The evidence clearly establishes, as heretofore shown, that all but three of the 37 corporations which joined the parent company in the filing of the consolidated return are in some way conected with the petroleum operations conducted by the parent company. This immense petroleum business of the parent company could conceivably be conducted by an extensively departmentalized single corporate entity. If this were the case there would be no losses to offset against taxable income as the single corporation would show an overall profit even though some of its departments would lose money, just as some of the existing subsidiaries now do. In these circumstances no consolidated tax return would be filed, and the Commission would routinely grant to the Gas Company a tax allowance based on the statutory tax rate of 52 percent. This being true, the Staff is seeking to penalize the parent company merely because it conducts its large petroleum business through numerous subsidiaries in a perfectly lawful way. The tax impact, according to the evidence, would be just about the same whether one or a number of corporations operate the petroleum business.

The Chief Accounting Officer of the parent company gave sound business reasons why it was advisable to conduct its business in the present manner. The Commission should not interfere with the decision of management so to conduct

its unregulated, non-jurisdictional business. Although the subsidiaries doing business abroad are organized as domestic corporations, there is a separate corporation for each foreign country in which business is done. This officer testified that there was a reluctance among American oil companies "to expose to the laws of various foreign jurisdictions any assets not located or required in connection with operations in that foreign country", and that a separate corporation for each foreign country was advisable for this and other reasons, including the reduction of the "problem of allocations of income and expense in connection with the calculation annually of foreign taxes and other assessments." With these subsidiaries doing extensive exploration and development in each such foreign country, it is easy to see the advantage of separate corporations. These corporations and the subsidiary which conducts the domestic exploration and development for the parent company,[3] sustain a high percentage of the losses by the separate corporations which are reflected in the consolidated tax return. Most of these subsidiaries operating in foreign countries are relatively new corporations, and it is a matter of common knowledge in the oil business that corporations will have financial losses in the early days of their exploration and development activities, before the revenues begin to be adequate to cover the vast expense involved. It would not be equitable or just to permit the consumers of Gas Company to profit from these business losses which result from a wise manner of doing business, and thus penalize unnecessarily and unfairly the parent company.

The petroleum business is highly competitive. Every competitor of the parent company has the right to conduct its business in this same wise manner of having separate corporations to conduct the various natural divisions of its petroleum business, particularly of having separate corporations to engage in exploration and development activities. No detailed explanation is necessary to convince that financing in this country by the parent company or any of its domestically operated subsidiaries is made vastly easier by having separate corporations to conduct these hazardous operations of the petroleum business in foreign countries. There are any number of other sound business reasons for the parent company to have numerous subsidiaries rather than a single corporation to operate its petroleum business. It would be particularly unfair to deprive the parent company of this means of doing business wisely when meeting strong competition.

The parent company does not have this system of numerous subsidiaries for tax purposes. The evidence shows that no tax advantage is obtained by having it. The tax laws recognize the lawfulness of it, and give opportunity to a parent company to conduct its business in this wise manner without sustaining tax loss because of it. There is no reason why a regulatory commission should reach beyond the periphery of its jurisdiction to take away this opportunity to wisely conduct a vast petroleum operation, in the face of the national policy expressed in the tax laws, merely because the parent company happens to own as much as 80 percent of the stock of a regulated natural gas company.

The parent company most certainly obtains no tax, or other, advantage from including Gas Company in its consolidated return. Owning 100 percent of the stock of Gas Company, the law requires that it include this subsidiary in its consolidated return. Gas Company, being a regulated monopoly with a practically assured net income each year, is not among the subsidiaries with losses to offset against the total net taxable income of all subsidiaries having such.

[3] Cities Service Production Company which is not to be confused with Cities Service Gas Producing Company, a wholly-owned subsidiary of Gas Company. Production Company is engaged in exploration and development activities in this country including the offshore operations in the Gulf of Mexico by the CATCO group.

Therefore, no tax saving whatever to the parent company results from the inclusion of Gas Company in the consolidated return.

It is the position of the parent company that it pays each year to the Government the full 52 percent tax on the net taxable income of Gas Company, calculated on a separate return basis. In this connection there is made at page 9 of the Joint Initial Brief the following statement:

> In this case, a simple and direct way of testing whether the Federal income tax claimed on the Gas Company exceeds the taxes actually payable on the stipulated return is to compare the total consolidated tax liability of all of the subsidiaries in the Cities Service system, other than the Gas Company, (1) *before* and (2) *after* including the Gas Company in the consolidated return.

Concerning the position stated above, the Staff brief makes at page 22, the following statement:

> * * * The important fact here is that the Gas Company does join in the Parent Company's consolidated tax return filed with the Internal Revenue Service. The taxable income or loss reported in the Parent Company's consolidated tax return becomes a fused mass in which each dollar is indistinguishable from any other dollar of the consolidated income or loss.

The question presented by the above contradictory positions is whether Gas Company should be regarded, in determining the single issue here, as merely an integral part of a total business conducted by the parent company, or as a subsidiary engaged in a regulated business completely separate from the parent company's unregulated primary business, and under operating conditions totally different. It is unimportant here how this question is answered for tax purposes. The importance is in determining the question for purposes of rate making.

If the petroleum business of the parent company, operated by it through its numerous subsidiaries, is essentially a business unit, of which Gas Company is no part, then in fairness it has the right to be considered entirely separately from Gas Company in determining the reserve issue in this proceeding. This petroleum business produces profits, although some phases of the business may be operated unprofitably in some tax years. The business losses occurring from year to year in the operation of this business are in the long run exceeded by the total revenues of the business. Otherwise, the parent company would soon be out of business. The only reason at all that there are any annual losses to be reflected in a consolidated return is that the parent company chooses, for sound business reasons shown hereinbefore, to conduct its integrated petroleum business through numerous corporations rather than a single corporation. It would be a perfectly lawful act for the parent company to merge into its own corporate entity every unregulated subsidiary which operates any part of its petroleum business. Therefore, it would be definitely unfair not to consider the total petroleum business of the parent company as a separate business entity, when deciding the reserved issue.

Considering the petroleum business, headed and directed by the parent company, as an entity, it has no losses to use in a consolidated return. Of course, it does not now exist as a legal corporate entity but it is here regarded as such for the practical and just purpose of illustrating how its costs are attempted to be used by the Staff to reduce Gas Company's net taxable income for tax purposes. This entity has revenues which it is entitled to have reduced for tax purposes by the total of all costs of producing the revenues. No separate corporation, conducting a regulated and wholly unrelated business, should have any right to take away from such entirely unregulated entity any part of its costs to utilize for tax purposes. No part of the cost of producing the revenues

of the petroleum business contributes in any way to produce Gas Company's revenues. No part of Gas Company's costs, including its income tax allowance, contribute in any way to producing revenues of the petroleum entity. No part of any loss of any subsidiary corporation in the petroleum business, operated as an entity, is reflected in Gas Company's agreed cost of service. The effect of the use of the Staff's "consolidated effective tax rate" upon the financial affairs of this hypothetical entity, must in justice be examined.

This hypothetical entity should be permitted to use its own costs to reduce its own net taxable income for tax purposes. It would not be so permitted if the income tax allowance of Gas Company is reduced by using a lower income tax rate than 52 percent. The difference between the tax allowance of 52 percent and that calculated at 10.53 percent would have to be absorbed by the hypothetical entity. This is true because the parent company has to pay each year the full 52 percent tax rate on the full amount of the net taxable income of Gas Company, when it is considered separatety from the petroleum entity for rate-making puropses, as distinguished from tax purposes. If the tax allowance in Gas Company's cost of service is reduced as proposed by the Staff it will definitely be at the cost of the petroleum business. The mere fact that the parent company is the sole owner and operator of the petroleum business is no valid reason for treating it any differently as the sole stockholder of Gas Company, than would be treated any group of the public owning the stock of Gas Company. The public group would be entitled to have a tax allowance which would make its return on its investment net to it each year, and there is no valid reason for not giving to the parent company here, under rate-making policies, the same net return. There is an agreed rate of return of 6.25 percent in the stipulated cost of service in this proceeding. Exhibit No. 16 presented by the parent company shows lucidly how the use of the Staff's proposed "consolidated effective tax rate" would reduce the return on the agreed rate base to 4.06 percent.

As shown above it is the Staff position that all "taxable income or loss reported in the Parent Company's consolidated tax return becomes a fused mass in which each dollar is indistinguishable from any other dollar of the consolidated income or loss." Under the Code, all taxable incomes and tax losses, separately computed for each corporation participating in the consolidated income tax return, are indeed considered in the aggregate, and the difference between the total taxable incomes and the total tax losses, constitutes the consolidated net taxable income or the consolidated net tax loss. But the Code does not contain the criteria for rate making in this proceeding. Under the Code, one only considers whether the corporations involved are qualified to participate in the consolidated return, whether such qualified corporations have lawfully computed their respective tax liabilities, what the consolidated tax should be, and whether all other tax laws or tax regulations have been met. The Internal Revenue Service is concerned with the proper computation of the actual net taxable income of Gas Company for a particular year, but it is not interested in the manner in which just and reasonable natural gas rates were determined which produced the taxable income. All gains and all losses may become, for tax purposes, what the Staff calls "a fused mass" of indistinguishable dollars, but for rate making purposes under the Act, Gas Company's dollars of taxable income remain entirely distinguishable from all other dollars reflected in the consolidated return. The Commission determines the proper return to be allowed upon the rate base and the proper income tax allowance to make the return net to the investor; and no tax law or regulation should interfere with the performance of this function by the Commission. The Commission, of course, considers the tax laws to determine what amount of tax allowance will make such return net; but it may look to many other factors in making this determination. The Commission is indeed not required by any law or rate-making policy to accept blindly figures taken from a consolidated tax

return of a group of corporations quite predominantly unregulated as a basis for an income tax allowance in the cost of service of a regulated natural gas company. Instead, the Commission should fully consider the equities of each such situation, and carefully balance the interests of consumer and investor in fixing the income tax allowance in the cost of service. The Commission has the full right to examine all figures in such consolidated tax return, and to ascertain from what situations or circumstances they may have resulted. These considerations are demanded by the public interest.

The public interest demands that a petroleum business receive, at the hands of the Commission, at least as much encouragement and incentive in the conduct of its exploration and development activities as the national policy, particularly as expressed in the income tax laws, dictates. Such hazardous activities are more fully discussed hereinafter, and it is only necessary to say at this point that the "consolidated effective tax rate" of the Staff would violate such national policy by removing incentive and bringing discouragement to the petroleum business here involved. To realize this fully one has to keep separate in his mind the business of Gas Company from that of the parent company operating its petroleum business. Looking at them separately, one easily realizes that what the Staff proposes amounts to the Commission regulating a petroleum business over which it has no jurisdiction. The Commission would be driving the parent company to abandon a wise manner of conducting its petroleum business through a group of subsidiaries rather than as a single corporate entity, because the latter corporate arrangement would, under all foreseeable circumstances, do away with all tax losses to be utilized in a consolidated income tax return.

If driven to it, the parent company could rearrange its system of corporations in such manner as to eliminate business losses, and there would then be no "tax saving" to allot to the gain companies, including Gas Company. And the ultimate consumers of the jurisidictional gas sold by Gas Company have no right whatever to insist that the present system arrangement of corporations be continued for their benefit. In the Staff Exhibit No. 2, only the gain corporations in the consolidated return are listed by name. The parent company has introduced Exhibit No. 18 which lists respectively in three separate schedules, the names of the loss corporations, together with the amounts of their losses, for the years 1957, 1958 and 1959. Those loss corporations which engage in exploration and development activities are separately shown, and all such are doing business in foreign countries, except Cities Service Production Company (Production). This company had substantial losses for each of these three years. However, it was pointed out in the testimony that Cities Service Oil Company (Delaware), whose own personnel was actually developing the properties owned by Production, had for each of these three years net profits which would have easily absorbed all such losses of Production. A simple merger of these two companies would wipe out much of the "tax savings" which the Staff would distribute in part to Gas Company's consumers. There would be no justice to giving to these consumers any benefits resulting from these losses of Production; they bore no part of the cost in connection with these losses.

When Gas Company and the petroleum business of the parent company are kept separately in mind, there is no doubt that the parent company pays each year the full income tax of Gas Company calculated at 52 percent. In keeping Gas Company and the petroleum business separate for the purpose of considering the issue here fairly and justly, there are no business losses and no "tax savings" and it will be necessary that the parent company pay the full 52 percent tax each year on Gas Company's net taxable income. This payment may be made in cash, Government bonds, tax credits or whatnot, but it is made. For the year 1958 a tax refund of $3,857,132 was received by the parent company

from the Government. The tax due at 52 percent on the net taxable income of Gas Company for 1958 was $6,367,534 and, of course, this tax liability prevented the refund for that year from being $10,224,666 instead of the smaller amount. Gas Company's full tax liability was thus met and paid for the year 1958.

The evidence shows that all losses reflected in the consolidated returns of the parent company for the years 1957 through 1959 were by subsidiaries engaged in its petroleum operations. Over this period of three years a high percentage of such losses were by subsidiaries engaged in exploration and development activities, all in foreign countries with the exception of Production. In Exhibit 15 the gross investment in these subsidiaries is given, as are their tax losses taken in consolidated returns, through 1959. Approximately $27 million of tax losses incurred by Production were utilized in the three consolidated returns of 1957 through 1959, and were used by the Staff in its calculation of "tax savings" for those years. It was brought out in the evidence that in 1961 Production sold a portion of the oil reserves developed by it, in connection with the production of which tax losses were sustained and taken in consolidated returns of the parent company. The sale of these reserves produced a taxable gain of approximately $30 million which must be reflected in the 1961 consolidated return of the parent company. It is anticipated by the parent company management that there will be additional substantial profits of Production in future years to constitute taxable income. This is, indeed, illustrative of the unfairness of permitting this subsidiary's losses to be used as proposed by the Staff.

Other injustices in the Staff's proposal are seen when certain types of losses reflected in the consolidated returns are considered. Exploration and development of oil properties in this and foreign countries produce large tax losses, but there will be taxable gains from these oil properties in the future. There are the liberalized depreciation and rapid amortization tax benefits which are allowed under Sections 167 and 168 of the Code, but these, as is well known to the Commission, are merely deferrals of tax payments to future years. There are capital gains and losses reflected in the consolidated return. There are investment losses to the parent company by reason of taking the business losses of certain subsidiaries in the consolidated return, of which these subsidiaries could not avail themselves. There is present also the possibility of certain losses taken in a return, being disallowed when the separate returns and the consolidated return for the particular year are finally audited by the Internal Revenue Service. At the time of the hearing, the last such audit was for the tax year 1952. While these particular types of losses are pointed out for emphasis, there is no cogent reason given by the Staff why any business losses of the unregulated and entirely separate petroleum business, operated lawfully by the parent company through its subsidiaries, should be utilized to bring a windfall to the consumers of a regulated natural gas company in the manner proposed by the Staff.

The Staff complains about the manner of allocating tax liability among the gain subsidiaries by the parent company. It contends that Gas Company and the few other regulated companies are discriminated against in such allocation. We are concerned here with one issue, namely, whether Gas Company is entitled to receive an income tax allowance in its cost of service based on a tax rate of 52 percent or on the "consolidated effective tax rate" of 10.53 percent. The parent company, being entitled to 100 percent of the gains and liable for 100 percent of the losses, we are not here concerned with what it does with its revenues after they are lawfully obtained, so long as it interferes in no way with the rendering of that adequate service to its customers by Gas Company for

which it is compensated in its cost of service. The parent company deals with the tax collector, and it is its duty to pay all lawful income taxes of the participating subsidiaries, including Gas Company. The parent company's bookkeeping in relation to its 100 percent owned unregulated subsidiaries, is not subject to Commission regulation. The consumers of the gas sold by Gas Company are in no way hurt by any bookkeeping of the parent company so long as Gas Company's cost of service, including the return and the related income tax, is not excessive and produces a just and reasonable rate. Consumers are expected to pay the income tax allowance in a cost of service at the full tax rate of 52 percent, unless there is some cogent reason for reducing such rate. It is specifically found that no such reason has been shown in this record.

The Staff cites no authority of the Commission or the Courts to sustain its theory that consumers of natural gas sold in interstate commerce should have the benefit of "tax savings" derived from business losses of unregulated corporations whose business activities are entirely unconnected with and dissimilar to those of the regulated natural gas company transporting and selling such gas. Among the Commission decisions cited by the Staff is the case of *United Fuel Gas Company*, 12 FPC 251, 254–265, in which the Commission was considering tax savings resulting from the filing of a consolidated return by the companies in the Columbia System. The Commission had a situation there of a consolidated return filed by a group of regulated companies with relatively stable revenues and expenses. Nothing is disclosed in the decision as to what feature of the consolidated return effected the tax saving of approximately "10 percent," which presumably would reduce the effective tax rate to 46.8 percent. No business losses were mentioned in this decision. The Commission merely made the comment that the "Columbia Gas System, of which United Fuel is a part, files a consolidated tax return, resulting in a tax savings benefitting each constituent company." The situation here is in no sense comparable to the situation there, because it is not shown by this record that "each constituent company", participating in the parent company's consolidated return, receives a benefit from the Staff proposal here. Certainly the loss companies would receive no such benefit.

It has been reiterated frequently in this decision that the Commission would routinely grant a tax allowance in Gas Company's cost of service based upon the statutory tax rate of 52 percent but for the fact that it and a vast petroleum business, not subject to regulation, have a common owner. This reiteration is for emphasis. No subsidiary owned less than 80 percent, directly or indirectly, by the parent company may be included in a consolidated income tax return. It would be the simplest matter for the parent company to dispose of 21 percent of its stock holdings in Gas Company and thus put Gas Company in a position to receive routinely its full tax allowance of 52 percent, and there would be nothing within the limits of the Commission's regulatory powers to prevent this action. While the parent company would then lose 21 percent of the dividends declared annually by Gas Company, it would not lose in excess of $6 million, as it would by the tax computation of the Staff. The evidence shows that the parent company has stock holdings of less than 80 percent in other corporations, the businesses of some of which are subject to regulation. Valid reasons have been hereinbefore given why the consumers of the gas sold by Gas Company should not profit by the business losses of certain departments of the parent company's petroleum business operated as subsidiary corporations. The parent company should not be compelled to sell 21 percent of Gas Company's stock and be forced to encounter the rights of minority stockholders, when valid reasons exist for not doing so. The parent company has not threatened to sell such a block of stock if it received an unfavor-

able decision here, but it would be entirely justified in doing so. The right of the parent company to take this action is not to be brushed off lightly merely by saying that it has not yet exercised such right, but has included Gas Company in its consolidated return. It has had no warning, until in this case, that the Staff would devise its "consolidated effective tax rate" to reduce the income tax allowance in the cost of service, as Gas Company has been receiving for many years an income tax allowance calculated at the regular statutory rate of 52 percent, although it has participted with the parent company in the filing of a consolidated return in many tax years.

The Staff is to be commended for its zeal to protect the consuming public against excessive rates. However, in rate making there is a "zone of reasonableness" which has a floor and a ceiling, neither of which should be violated. The actual tax rule is not without limits to its applicability. To show a violation of this rule it must be established that dollars are taken away from the consumers involved to which they are entitled. No such situation is shown by this record.

It is concluded, upon the basis of the record evidence and the pertinent law and regulatory policy, that the Federal income tax allowance included in the cost of service supporting the settlement agreement approved by the Commission in its order of March 27, 1961, computed at the statutory rate of 52 percent, is not excessive or in any way improper, and should be approved.

ORDER

Wherefore, it is ordered, subject to review by the Commission pursuant to its Rules of Practice and Procedure, that the aforesaid Federal income tax allowance in Gas Company's cost of service computed at the rate of 52 percent, is hereby approved and this proceeding is hereby terminated.

DANIEL J. KELLY,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

GEORGIA POWER COMPANY, DOCKET NO. E-7099

ORDER ACCEPTING RATE SCHEDULE FOR FILING AND AMENDING ORDER TO SHOW CAUSE

(Issued July 15, 1963)

On June 5, 1963, Georgia Power Company, Atlanta, Georgia (Georgia Power), submitted for filing as a rate schedule, pursuant to Section 205 of the Federal Power Act, a primary service agreement and amendments thereto with the City of Thomaston, for wholesale electric service to a new delivery point, No. 2. The submittals are designated as Georgia Power Company Rate Schedule FPC No. 634, Supplement No. 1 to Rate Schedule FPC No. 634, and Supplement No. 2 to Rate Schedule FPC No. 634. As proffered the rate schedules are to become effective upon the commencement of Georgia Power's service to the City of Thomaston at delivery point No. 2, estimated to be on or about July 6, 1963.

Rate Schedule FPC No. 634 provides for the delivery of power and energy requirements under Georgia Power's standard "WR-4" rate for municipalities. The City of Thomaston is presently receiving service from Georgia Power at delivery point No. 1, under Rate Schedule FPC No. 327, also under the "WR-4" rate. The Commission, by order issued May 27, 1963, 29 FPC 1049, ordered Georgia Power to show cause why certain designated provisions in Georgia Power's "WR-4" Rate Schedules and contracts, among others should not be

found to be unjust or unreasonable. Rate Schedule FPC No. 327, for service to the City of Thomaston, is listed in Appendix C to that Order.

The Commission finds:

(1) It is necessary and appropriate for purposes of the Federal Power Act, particularly Section 205 thereof, that Georgia Power's Rate Schedule FPC No. 634, Supplement No. 1 to Rate Schedule FPC No. 634, and Supplement No. 2 to Rate Schedule FPC No. 634 be accepted for filing, to become effective on the date of initial service, but not prior to July 6, 1963, 30 days after filing.

(2) It is necessary and appropriate for purposes of the Federal Power Act, particularly Sections 205, 206, 307, 308 and 309 thereof, that the Order issued May 27, 1963, in this docket be amended to include in the list of rate schedules in Appendix C the following designated rate schedule: Georgia Power Company, Rate Schedule FPC No. 634, for service to City of Thomaston at delivery point No. 2.

The Commission orders:

(A) Georgia Power Company Rate Schedule FPC No. 634, Supplement No. 1 to Rate Schedule FPC No. 634, and Supplement No. 2 to rate schedule FPC No. 634 are hereby accepted for filing and shall become effective on the date of initial service, but not prior to July 6, 1963.

(B) Georgia Power Company shall notify the Commission in writing of the date on which service under the above designated rate schedule commences.

(C) The order issued May 27, 1963, in Docket No. E-7099, is hereby amended to include in the list of rate schedules in Appendix C Georgia Power Company Rate Schedule FPC No. 634, City of Thomaston delivery point No. 2.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

MISSISSIPPI POWER COMPANY, DOCKET NO. E-7112

ORDER TO SHOW CAUSE

(Issued July 15, 1963)

Mississippi Power Company (Mississippi Power), Gulfport, Mississippi, a corporation organized under the laws of the State of Maine, has filed with the Federal Power Commission, from time to time, pursuant to Section 205 of the Federal Power Act, rate schedules and contracts for service to rural electric cooperatives, including those listed below. These rate schedules and contracts contain a provision which may have the effect of restricting the rural electric cooperatives from reselling to certain classes of potential customers power purchased from Mississippi Power under the filed rate schedules and contracts.

The following provision which may be restrictive is contained in rate schedules on file with the Commission, designated below:

Contract for Electric Service for Resale By Rural Cooperative Associations

Electric Service: * * * provided, however, the Customer agrees, in consideration of the Company's obligation hereunder to supply the Customer's wholesale electric service for the Customer's resale to consumers other than farms and homes, that it will pay, in addition to all other charges made pursuant to this contract and rate schedule, the following charges for that portion of the service hereunder which is resold to all consumers whose individual maxi-

mum electric service requirement during any month is in excess of 175 kilowatts:

$1.75 per month per kilowatt for each of the first 500 kilowatts of each such consumer's maximum requirement in the month that is in excess of 175 kilowatts, plus

$1.30 per month per kilowatt for each of such consumer's maximum requirement in the month that is in excess of 675 kilowatts.

The sum of the kilowatt requirements of all such consumers so billed in the month shall not be less than 75% of the greatest sum of kilowatt requirements so billed during any of the preceding eleven months.

Provided, the additional charge above specified shall not apply to electric service resold to a consumer whose maximum electric service requirement during any month of the twelve month period preceding the effective date of this contract exceeded 175 kilowatts.

The above provision is contained in the following rate schedules of Mississippi Power on file with the Commission:

Customer	Designation of currently effective rate schedules (FPC No.)	Delivery point
Coast EPA	54	Picayune (South).
Do	55	Landon.
Do	56	Poplarville (Derby).
Do	57	Bay St. Louis.
Do	58	Biloxi.
Do	59	Picayune (North).
Do	60	Westonia.
Do	66	Biloxi (Gay Road).
Do	67	Salem.
Do	72	Saucier.
Pearl River Valley EPA	68	South Columbia.
Do	69	Tatum Salt Dome.
Singing River EPA	70	Cumbest Bluff.
Do	71	Gulf Hills (St. Martin's).

The provision set out above may have the effect of restricting the rural electric cooperatives from reselling to certain classes of potential customers power purchased from Mississippi Power under the above rate schedules. It constitutes rates, charges or classifications or rules, regulations, practices or contracts affecting rates, charges or classifications within the meaning of Sections 205 and 206 of the Federal Power Act and may be unjust, unreasonable, and, therefore, unlawful.

The Commission further finds:

(1) It is necessary and appropriate for the purposes of the Federal Power Act, particularly Sections 205, 206, 307, 308 and 309 thereof, that Mississippi Power Company be directed to show cause in writing why the Commission should not find and determine the above-mentioned provision in Mississippi Power Company's filed rate schedules to be unjust or unreasonable.

(2) In the event that the above-mentioned provision is found to be unjust or unreasonable it may be appropriate for purposes of the Federal Power Act, particularly Sections 205, 206, 304, 307, 308 and 309 thereof, for the Commission to order a hearing to determine and fix the just and reasonable rates, charges, classifications, rules, regulations, practices or contracts to be thereafter observed and in force for service by Mississippi Power Company to rural electric cooperatives.

The Commission orders:

(A) On or before August 19, 1963, Mississippi Power Company shall respond to this order through Answer as provided in Section 1.9(c) of the Commission's Rules of Practice and Procedure, 18 CFR 1.9(c).

(B) Notices of intervention or petitions to intervene in this proceeding may be filed with the Commission on or before August 6, 1963, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8).

OPINION NO. 395

MONTANA-DAKOTA UTILITIES CO., DOCKET NOS. CP61-234, CP61-297; AMERADA PETROLEUM CORPORATION, DOCKET NO. CI61-1133; SIGNAL OIL AND GAS COMPANY, DOCKET NO. CI61-1271; LYDA HUNT-HERBERT TRUSTS, ET AL., DOCKET NO. CI61-1621; TEXACO INC., DOCKET NO. CI61-1687; CONTINENTAL OIL COMPANY, OPERATOR, ET AL., DOCKET NO. G-14440

OPINION AND ORDER DETERMINING JURISDICTION

(Issued July 15, 1963)*

Syllabus

1. Distinguishing prior *Montana-Dakota* case Commission *notes* that here Amerada and Signal gas is commingled with gas from other producers, admittedly sold in interstate commerce, so it can no longer be stated with certainty that all gas sold in North Dakota came from Amerada and Signal. P. 203.
2. Under Lo-Vaca, contractual arrangements of parties cannot be used to deprive Commission of jurisdiction over sales where part of gas in reality flows across state lines. P. 205.
3. Noting *Lo-Vaca* is now controlling, Commission *holds* all gas sold at Tioga is sold in interstate commerce and such sales and related contracts are jurisdictional. P. 206.
4. Commission *determines* jurisdiction over producers' sales, and *requires* contracts be filed as rate schedules in accordance with Section 4 of the Natural Gas Act. Pp. 206-207.

Commissioner Woodward, joined by *Commissioner O'Connor*, dissenting.

Earl H. A. Isensee and *Armin Johnson* for Montana-Dakota Utilities Co.

William R. Allen and *Cecil E. Munn* for Signal Oil and Gas Company.

N. Kenneth Scott, Jr., Cecil E. Munn and *Joseph W. Morris* for Amerada Petroleum Corp.

Robert W. Henderson and *Robert Kennedy* for Lyda Hunt-Herbert Trusts, *et al.*

George B. Mickum, III, Richard Taylor and *James R. Townsend* for Texaco Inc.

Martin Vaaler, Bruce Hagen and *Wallace Owen* for North Dakota Public Service Commission.

Richard C. Steffey for the Staff of the Federal Power Commission.

---

*Initial decision appears on p. 210. Rehearing denied by order issued September 10, 1963, 30 FPC 677. Set aside, *sub nom Amerada Petroleum Corp.* v. *F.P.C.*, 334 F. 2d 404 (CA8-1964). Affirmed *F.P.C.* v. *Amerada Petroleum Corp.*, 379 U.S. 687 (1965).

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

Ross, *Commissioner:*

This is a proceeding upon applications for certificates of public convenience and necessity under Section 7 of the Natural Gas Act. On September 5, 1962, the presiding examiner issued the second of two decisions in this proceeding. The sole question presented in this second decision, is the Commission's jurisdiction over certain sales by Amerada Petroleum Corporation (Amerada) and Signal Oil and Gas Company (Signal) to Montana Dakota Utilities Co. (MDU) at Signal's liquids plant at Tioga in northwestern North Dakota. It is the examiner's conclusion that the Commission has jurisdiction over these sales. This question, which is the only question remaining to be decided in this case is before us now on exceptions to the examiner's decision filed by Amerada and Signal.

In an earlier decision, issued May 16, 1962, 27 FPC 1094, the examiner disposed of the certificate applications of Lyda Hunt-Herbert Trusts, *et al.* (Hunt Herbert), Texaco Inc. (successor to the original applicant The TXL Oil Corporation), and Continental Oil Company, *et al.* At that time the examiner severed for subsequent decision the applications of Amerada and Signal which involved disputed issues as to price and jurisdiction. By order issued June 1, 1962, 27 FPC 1092, the Commission adopted this earlier decision of the examiner. Thereafter, on August 28, 1962, 28 FPC 367, upon motion of Amerada and Signal, the Commission disposed of the price issue, granting certificates to these applicants at an agreed upon reduced initial price of 16 cents per Mcf at 14.73 psia instead of the 17-cent price applied for, and upon condition that the applicants file their claimed nonjurisdictional contracts at the same reduced initial price pending ultimate determination of the jurisdictional issue. Thus, only the jurisdictional issue remains to be decided.

Amerada and Signal propose to furnish MDU with gas at the Tioga plant under two sets of contracts. One set, referred to as the North Dakota contracts, is intended to cover the sale of gas which is destined for intrastate consumption only. The second set, referred to as the interstate contracts, is intended to cover that portion of the gas sold to MDU which is destined for transportation over the state boundary into Montana. Amerada and Signal contend that sales to MDU under the North Dakota contracts are nonjurisdictional since the sales are not made in interstate commerce, and that the North Dakota contracts need not be filed with the Commission. In support of their position, the applicants rely principally upon the decision of the Commission in *Montana-Dakota Utilities Co.*, 16 FPC 401, affirmed, *State of North Dakota* v. *F.P.C.*, 247 F. 2d 173 (CA8), where it was held that sales by these same producers to MDU under a firm sales contract for resale in North Daktoa were intrastate sales, even though the gas was commingled in the pipeline with gas sold to MDU by the producers under a "dump" sales contract and intended for delivery outside of the state. Staff, on the other hand, contends that sales under the North Dakota contracts are in interstate commerce, relying principally upon the Commission's recent decision in *Lo-Vaca Gathering Co.*, 26 FPC 606 (Opinion No. 348), now on appeal in the Fifth Circuit.* The examiner concludes that there is a single flow of gas in interstate commerce in respect of all gas supplied by Amerada and Signal to MDU at Tioga, that sales under both the interstate and North Dakota contracts are jurisdictional, and that the latter must be filed as rate schedules with the Commission.

Under the North Dakota contracts, MDU is required to purchase at least two-thirds of its annual North Dakota requirements from Amerada and Signal—

[*FPC's order vacated September 24, 1963, 323 F. 2d 190, certiorari pending.]

53⅓ percent from Amerada and 13⅓ percent from Signal. And of the gas delivered to MDU at Tioga and used in North Dakota, 80 percent is to be attributed to Amerada and 20 percent to Signal. The contracts recite that all of the gas purchased thereunder "shall be transported, used and consumed entirely within the State of North Dakota." They further recite that all gas produced in the contract area in North Dakota which is delivered to MDU and is "used or consumed within the State of North Dakota without being transported beyond its boundaries shall be sold" under the North Dakota contracts, and that these contracts "shall not, at any time, cover the sale or delivery * * * of any gas which is transported beyond the boundaries of the State of North Dakota." Since all of the gas taken by MDU from Amerada and Signal is supplied at Tioga and flows through a continuous loop of interstate pipeline which extends through North Dakota into Montana, the amounts of gas considered to be taken under the North Dakota contracts can only be determined retrospectively after measuring the amounts actually taken off the line for use in North Dakota. At the time the gas is delivered into MDU's line at Tioga, it cannot be determined how much of the gas will be used in North Dakota and so be considered as sold under the North Dakota Dakota contracts, and how much will flow across the state boundaries into Montana and so be considered as sold under the interstate contracts.

The interstate contracts provide that MDU must take-or-pay for 13,687,500 Mcf per calendar year from Amerada and 3,421,875 Mcf from Signal, if offered, or daily quantities of 37,500 Mcf and 9,375 Mcf respectively, less the quantities paid for by MDU on an annual or daily basis under the North Dakota contracts. The purpose of these contract requirements is to have MDU purchase all of the producers' gas which is produced from oil wells and processed in the Tioga plant. MDU's contract with Amerada further provides that on any day when MDU is taking all of the residue gas being produced with oil, it may request Amerada to deliver up to 25,000 Mcf of gaswell gas from deep formations underlying the formations from which the casinghead gas is produced; however, Amerada is under no obligation to drill more than four gas wells, which were to be drilled by September 1, 1962. As in the case of the North Dakota contracts, the amounts to be considered as sold to MDU under the interstate contracts can only be determined retrospectively after the gas drawn off for use in North Dakota has been measured and the amounts to be paid for under the North Dakota contracts have been established.

By reference to the attached map [*infra*, p. 213] which shows most of MDU's system in North Dakota and eastern Montana, including those portions heretofore certificated in this proceeding, it will be seen that MDU's gas flows both east and west from Tioga. To the east it flows through what was previously an intrastate line to Minot, where it enters a newly certificated line connecting Minot with Bismark to the south. At Bismark the new line connects with an existing lateral line extending westward from Bismark to Cabin Creek in Montana, where MDU maintains a large storage field, and at which point connection is made with the rest of MDU's interstate system serving Montana and Wyoming, as well as South Dakota and other areas of North Dakota. To the west from Tioga, MDU's gas flows through an interstate line which curves southwestward through Williston into Montana. At Cabin Creek it connects with the new loop through Minot and Bismark, as well as with the rest of MDU's interstate system. It was along this Williston line that MDU previously delivered both firm gas to lateral customers in North Dakota as well as "dump" gas to interstate customers, and with respect to which the Commission in the earlier *Montana-Dakota* case, *supra*, found the sales by Amerada and Signal of firm gas to be in intrastate and not interstate commerce.

On a peak day in the winter of 1962–1963, MDU will take about 55,000 Mcf from Amerada and Signal at the Tioga plant. In addition, MDU will take into its system at Tioga some 15,000 Mcf from Texaco and Hunt-Herbert as authorized by the Commission's order of June 1, 1962, in this proceeding. Of the total of 70,000 Mcf, available at Tioga, 50,000 Mcf purchased from Amerada and Signal will flow eastward on the loop through Minot and Bismark. All of this gas will be consumed in North Dakota on a peak day, and MDU will even import gas from Cabin Creek along the southern branch of the loop to meet the requirements of customers in North Dakota. The remaining 20,000 Mcf available at Tioga, including 5,000 Mcf from Amerada and Signal and 15,000 Mcf from Texaco and Hunt-Herbert, will flow westward on the loop through Williston. Of this, 10,200 Mcf will be served off the line in North Dakota and at the Montana border, 5,570 Mcf will be served in Sidney, Montana, and 4,230 Mcf will be merged with gas from Montana sources for service in Glendive, Montana, and circulation through Cabin Creek to the rest of MDU's system.

On an average summer day, MDU will take about 45,000 Mcf from Amerada and Signal, while continuing to take about 15,000 Mcf from Texaco and Hunt-Herbert. About 32,000 Mcf of the Amerada and Signal gas will flow eastward towards Minot. The remainder of the Amerada and Signal gas, and the Texaco and Hunt-Herbert gas, will flow westward towards Williston. With a summer market in North Dakota of about 8,750 Mcf per day, approximately 36,250 Mcf of gas from Amerada and Signal will flow across the state lines, and will for the most part end up in MDU's Baker storage field in Montana where it will be held for ultimate redelivery to all parts of MDU's interstate system.

In the earlier *Montana-Dakota* case, the examiner, in language affirmed by the Commission and adopted by the Eighth Circuit, said:

> At the outset it should be noted that this Commission clearly has no jurisdiction over the sales made by Signal and Amerada under the 16-cent "firm gas" contracts. Under Section 1(b) of the Natural Gas Act this commission has jurisdiction only over the transportation of natural gas in interstate commerce, or the sale in interstate commerce of natural gas for resale. It has no authority to regulate *intrastate* sales. The gas sold under the instant 16-cent contracts is admittedly produced and consumed wholly within the State of North Dakota, both in the communities served from the Tioga-Minot line and in the communities served from the Tioga-Williston line. The conclusion that they are accordingly *intrastate* contracts is so obvious as to require no extended discussion. [Footnote omitted.] The fact that this gas travels over the Tioga-Williston line in one stream, along with the gas purchased under the 9-cent "dump gas" interstate contracts does not convert the 16-cent "firm gas" contracts into interstate contracts. [16 FPC 408–9; 247 F. 2d 176.]

The examiner in the instant case notes that, except for the volumes involved, the situation now presented is the same as that presented in the earlier case with respect to the service to North Dakota communities along the Tioga-Williston line. There is, however, a distinction in the present case which, even though not mentioned as such by the examiner, is clearly apparent from his discussion. This is the fact that here the Amerada and Signal gas is now commingled with gas from Texaco and Hunt-Herbert admittedly sold in interstate commerce, so that it can no longer be stated with certainty that all of the gas sold in North Dakota came from Amerada and Signal. Indeed, it is apparent that a portion of the Amerada and Signal gas is transported and sold to purchasers within Montana while some of the Texaco and Hunt-Herbert gas is used within North Dakota.

Whether or not the present case can be distinguished from the earlier case, the examiner is convinced that the sales by Amerada and Signal to MDU in the instant case are in interstate commerce and are subject to Commission jurisdiction. In his opinion, the governing reality is not the contractual intention of the parties to assign portions of an indivisible flow of gas to local service on the basis of statistical facts computed after the sale to the pipeline occurs. He finds it to be a well established principle that the controlling reality is the physical flow of the gas. "If gas, or any part of a given gas supply, ostensibly sold under and attributed to an intrastate gas contract, physically flows or is capable of flow across state lines, the gas is sold in interstate commerce." [Decision p. 218.]

The examiner notes that, with the possible exception of the earlier *Montana-Dakota* case, all recent decisions have found that the Federal jurisdiction attaches to all sales of energy whenever some part of the energy sold ultimately finds its way across state lines.[1] He cites many of the decisions cited by the Commission in the *Lo-Vaca* case, as well as the language of the Commission in that case, where it was observed that the holding in the *Montana-Dakota* case "runs counter to the whole stream of the decisions of this Commission as to what constitutes a jurisdictional sale in interstate commerce and to the decisions of the Supreme Court construing this and other legislation", and that to the extent that it may be inconsistent with *Lo-Vaca* it must be considered to have been "erroneously decided".

Concluding that there is a single flow of gas in interstate commerce in respect of all gas supplied by Amerada and Signal to MDU at Tioga, the examiner holds that all contracts with respect to such flow must be filed as rate schedules with the Commission, and that the price and other provisions of all such contracts are subject to price and other regulation by the Commission under the Natural Gas Act.

Exceptions to the examiner's decision were filed jointly by Amerada and Signal. These exceptions run to all the basic findings and conclusions of the examiner and to his reliance on *Lo-Vaca* and the cases cited. The applicants contend that the issue in this case was conclusively determined in the earlier *Montana-Dakota* case. They argue that there is no relevant difference between the facts of the two cases, that the parties are the same, and that the Commission is bound by the court's determination in that case under the rules of *res judicata* and *stare decisis*. Furthermore, they argue the cases cited by the examiner do not deal with the issue here, which is the Commission's authority to regulate a sale of energy which never leaves its state of origin. The applicants reiterate the fact that only gas sold in North Dakota as metered and measured at the points of consumption is covered by the North Dakota contracts. The fact that the amounts so sold cannot be determined at the time of delivery to MDU at Tioga is of no moment, they contend, in determining jurisdiction. Such "retroactive" measurement, they argue, is the only method by which intrastate volumes of gas which are transported in the same pipeline as interstate volumes may be measured.

In support of their contention that the mere commingling of the gas sold under the two sets of contracts in an interstate pipeline does not change the character of the intrastate sales to interstate sales, the applicants rely primarily on the earlier *Montana-Dakota* case decided in the Eighth Circuit; on certain language in *Peoples Natural Gas Co.* v. *P.S.C. of Pennsylvania*, 270 U.S.

[1] The examiner places special emphasis on *Deep South Oil Co.* v. *F.P.C.*, 247 F. 2d 882 (CA5), in which the jurisdictional question is discussed in majority and dissenting opinions, and on the companion case, *Shell Oil Co.* v. *F.P.C.* 247 F. 2d 900 (CA5), cert. den., 355 U.S. 930.

550; and on *Humble Oil & Refining Co.* v. *Texas & Pacific Ry.*, 155 Tex. 483, 289 S.W. 2d 547. In the *Peoples* case, decided in 1926, gas produced by Peoples in Pennsylvania and sold by it in Pennsylvania was commingled in the same pipeline with gas imported by Peoples from West Virginia. The court there held that the State Commission had jurisdiction to order Peoples to continue making one particular sale in Pennsylvania. In the course of its opinion, the Court stated:

> As respects the Pennsylvania gas we think it must be held to be in intrastate commerce only. Feeding it into the same pipe line with the West Virginia gas works no change in this regard. Of course after the commingling the two are undistinguishable. But the proportions of both in the mixture are known and that of either readily may be withdrawn without affecting the transportation or sale of the rest. So, for all practical purposes the two are separable, and neither affects the character of the business as to the other. [270 U.S. 554–5.]

We understand the *Peoples* case to hold no more than that Pennsylvania's regulation of a pipeline located entirely within that state did not burden interstate commerce as long as that regulation did not affect a volume of gas greater than that purchased by the pipeline within the state. It did not rest upon any fictitious attribution of Pennsylvania produced gas only to the purchaser involved.

The *Humble* case involved the transportation of oil produced in Texas and in New Mexico to a tank farm in Texas. Subsequently, the oil was freighted for ultimate consumption to various points all within Texas. In that case, the Texas Court adopted Humble's position that the freight rates applicable to the transportation from the tank farm to other Texas points were interstate or intrastate depending on the point of origin of the respective volumes produced in Texas and New Mexico. The determinative fact in *Humble* is point of origin. Commingling and ultimate consumption were not significant factors because all the oil was used within Texas. Here, however, where the contract purports to cover gas for the purchaser's resale in North Dakota only, the question of ultimate use is decisive, and it cannot successfully be contended that a subsequent commingling serves to render the question of ultimate use irrelevant. Furthermore, the *Peoples* and *Humble* cases do not deal with a sale to the transporter, but rather with a sale by the pipeline to a distribution company in the one case, and the transportation by the carrier in the other.

The applicable authorities were considered at length by the Commission in the *Lo-Vaca* case, and there appears to be no need to repeat the Commission's analysis of the cases here. The conclusions reached by the Commission in *Lo-Vaca* would seem to be equally valid on the facts of the present case. We find no merit in the purported distinction that the North Dakota contracts are worded to apply only to the quantities of gas removed from the commingled stream within the State of North Dakota, rather than to a particular quantity of gas injected into the system at the point of delivery and to be utilized wholly within the state. Essentially the same argument was presented and rejected in *Lo-Vaca*. Since the Amerada and Signal gas is injected into a stream including gas purchased from Texaco and Hunt-Herbert, there is no way of telling whether the gas drawn off of MDU's line in North Dakota is gas purchased from Amerada and Signal or gas purchased from Texaco and Hunt-Herbert. Although the applicants and MDU may wish to account for all gas delivered in North Dakota as though it were gas sold to MDU by the applicants under the North Dakota contracts, under *Lo-Vaca* this contractual arrangement cannot be used to deprive the Commission of jurisdiction over the sales where part of the gas in reality flows across the state lines.

In its *Lo-Vaca* opinion, the Commission noted that the earlier *Montana-Dakota* case was distinguishable stating that "The *North Dakota* case presents a far more limited situation with a single source of supply within the state than that presented here." In view of the additional source of supply now provided by Texaco and Hunt-Herbert, MDU's operations have changed significantly from those before us in the previous case. Thus, *Lo-Vaca* rather than the earlier *Montana-Dakota* decision should now be the controlling authority. Furthermore, we believe that Commission jurisdiction attaches regardless of the additional source of supply. In our opinion, the previous *Montana-Dakota* decision failed to take appropriate account of the fact that the gas as sold and delivered into MDU's pipeline by Amerada and Signal cannot be identified as gas for interstate use or gas for intrastate use, but constitutes a commingled and indistinguishable flow through an integrated interstate pipeline system in interstate commerce. In our judgment all of the gas sold and delivered to MDU by Amerada and Signal at Tioga is sold in interstate commerce, and the sales and the contracts under which they are made are subject to our jurisdiction.

In their exceptions, the applicants allege three factual errors in the examiner's decision. They first refer to his statement that gas well gas may be sold only under the interstate contracts. There is nothing, they argue, in the North Dakota contracts which limits sales thereunder to oil well gas; and even though only the interstate contracts impose an obligation to develop gas reserves, such reserves once developed may be sold under the North Dakota contracts. Staff treated the gas well gas sales as being permissible only under the interstate contracts, and the examiner evidently adopted staff's view. There is no real discussion of this question in the decision, and there is no substantial evidence of record to support a finding one way or the other. In any event it does not appear that this question has any direct bearing on the determination of the jurisdictional issue.

Objection is also made to the examiner's description of the method of measurement to be employed with respect to gas sold under the North Dakota contracts, specifically to his failure to refer to meters at the points of consumption in North Dakota. Although the examiner did in fact fail to refer to such meters in his description, his explanation of the method of accounting for gas sold under the North Dakota contracts is sufficiently clear. The exception would seem to be immaterial.

Finally, the applicants except to the examiner's observation that there is no record support for the assumption by all of the parties that all Texaco and Hunt-Herbert gas will flow westward from Tioga. The examiner apparently overlooked the testimony of MDU's engineer to this effect. Nevertheless, he assumed the fact as accepted by the parties for the purpose of his decision, and his error is immaterial insofar as the substance of his decision is concerned.

The Commission finds:

(1) Sales by Amerada and Signal to MDU under the North Dakota contracts are subject to the jurisdiction of this Commission as sales in interstate commerce of natural gas for resale.

(2) The recommended order of the presiding examiner requiring the filing of the North Dakota contracts as rate schedules should be adopted.

The Commission orders:

(A) Amerada Petroleum Corporation shall in accordance with Section 4 of the Natural Gas Act and Sections 154.91–154.102 of the Commission's Regulations Under the Natural Gas Act file its contract of December 21, 1960, with Montana-Dakota Utilities Co. as a Rate Schedule, and shall in respect of such Rate Sched-

ule comply with all the requirements of the Natural Gas Act and the Commission's Regulations thereunder.

(B) Signal Oil and Gas Company shall in accordance with Section 4 of the Natural Gas Act and Sections 154.91–154.102 of the Commission's Regulations Under the Natural Gas Act file its contract of January 16, 1961, with Montana-Dakota Utilities Co. as a Rate Schedule, and shall in respect of such Rate Schedule comply with all the requirements of the Natural Gas Act and the Commission's Regulations thereunder.

Commissioner Woodward *dissenting*, joined by Commissioner O'Connor. [Map of facilities relating to interstate-intrastate issue printed *infra*, p. 213.]

WOODWARD, Commissioner, joined by *O'Connor*, Commissioner, *dissenting:*

Though more recently breached than observed, there is still a statute which excludes the sales in question from Commission jurisdiction. Section 1(b) of the Natural Gas Act gives the Commission jurisdiction over "the sale in interstate commerce of natural gas for resale," with "interstate" being defined by Section 2(7); and excludes from coverage "any other * * * sale of natural gas," i.e., any intrastate sale. Section 2(7), to the extent pertinent, defines "interstate commerce" as "commerce between any point in a State and any point outside thereof * * *." These provisions conclusively establish that Amerada Petroleum Corporation (Amerada) and Signal Oil and Gas Company (Signal) sales to Montana-Dakota Utilities Company (MDU) are not in interstate commerce and so are not jurisdictional under Section 1(b). These sales do not involve "commerce between any point in a State and any point outside thereof," within the terms of Section 2(7), but only commerce between *two points* in the *same* state. Congress in 1(b) of the Act not only prescribed the intended reach of the Commission's power, but also specified the area into which this power was not to extend.[1] That the Act does not embrace intrastate commerce is clear from the Act itself and from judicial interpretation thereof.[2]

The majority's decision that sales by Amerada and Signal to MDU under the North Dakota contracts are subject to the jurisdiction of this Commission as sales in interstate commerce for resale is without adequate basis in law. The explicit terms of the statute exclude Amerada's and Signal's intrastate sales from Commission jurisdiction. Again the majority misapplies the statute and fails to give effect to numerous court decisions holding that such sales are clearly intrastate. I dissent for reasons hereafter stated.

The Commission's decision in *Montana-Dakota Utilities Co.*, 16 Federal Power Commission 401, affirmed in *State of North Dakota* v. *Federal Power Commission*, 247 F. 2d 173 (CA8), held that sales by these same producers to MDU under a firm sales contract for resale in North Dakota were intrastate sales, even though the gas was commingled in the pipeline with gas sold to MDU by the producers under a "dump" sales contract and *intended for delivery outside of the state.* [Emphasis supplied.] There the court stated, "We think, then, the gas sold pursuant to such 'firm gas' contracts for consumption in North Dakota is clearly distinguishable from the 'dump gas' sold in interstate commerce. There is no commingling of interstate with intrastate gas within the State of North Dakota in the sense of loss of identity because the intrastate gas going to the four North Dakota communities named is separated from the gas stream in the main line and metered before any portion of the gas stream has left the

[1] *Federal Power Commission* vs. *Panhandle Eastern Pipe Line Company*, 337 U.S. 498 at 502–503.

[2] *Colorado Interstate Gas Co.*, vs. *Federal Power Commission*, 142 F. 2d 943, 958, affirmed in *Colorado Interstate Gas Co.*, vs. *Federal Power Commission*, 324 U.S. 581, 585, 588.

State of North Dakota. Accordingly the quantities of intrastate gas purchased by Montana-Dakota under the 'firm gas' contracts are easily identifiable and determinable." Referring to the sales the court said, "They do not constitute interstate commerce in any sense of the word. The Federal Power Commission has properly refused to accept jurisdiction over what is purely intrastate commerce." The language of the Court of Appeals discloses beyond doubt its complete awareness of the fact that interstate gas was flowing through the pipeline yet its mere presence did not serve to transform a non-jurisdictional sale into a jurisdiction sale.

That case involved the identical issue presented here and was litigated by the identical parties as those before us now. The sole factual distinction in the instant case is the presence of additional interstate gas. In any event, this cannot be a controlling difference for the 8th Circuit made it abundantly clear that the presence and commingling of interstate gas did not alter the intrastate character of this sale.

Thus the jurisdictional question has been decided by this Commission and the 8th Circuit Court of Appeals. Surely we are not free to re-examine or reverse each prior decision with the advent of every change in the makeup of the Federal Power Commission. We are bound by our own decision and the mandate of the *North Dakota* decision under the doctrine of res judicata.

Completely apart from the fact that this exact issue has been resolved by the Commission and the courts with findings opposite to those reached by the majority here, consideration of the merits *de novo* reveals that this sale under the statute is intrastate.

The fact that other gas for some other sale may subsequently be transported outside the state so that the sale is "interstate" does not control the question of the character of the particular sales with which we are concerned in the instant proceeding. The crucial question is whether mere commingling in the same pipeline of gas sold for consumption within the state of production, and gas being transported for interstate sale, converts the entire stream into an interstate sale. Law and precendent support the view that the gas is not so converted.

In *Peoples Natural Gas Company* v. *Public Service Commission of Pennsylvania*, 270 U.S. 550, 554 (1926), the court considered a pipeline producer who purchased approximately two-thirds of its gas from a producing company in West Virginia and, in turn, commingled the gas with one-third which was produced in Pennsylvania. Holding that mere commingling of fungible goods does not confer jurisdiction over goods produced and sold in the same state, the court declared, "Feeding it into the same pipeline with the West Virginia gas works no change in this regard. Of course after the commingling the two are undistinguishable. But the proportion of both in the mixture are known and that of either readily may be withdrawn without affecting the transportation or sale of the rest. So, for all practical purposes the two are separable and neither affects the character of the business as to the other."

Further, in *Humble Oil and Refining Company* v. *The Texas Pacific Railway Company*, 155 Texas 483 (1956), the court considered whether crude oil produced within the state and sold within the state for consumption within the state lost its intrastate character when commingled with crude oil shipped interstate. The court held, "The fact that Humble was also shipping from New Mexico should not change the character of its shipments originating in Texas. Accordingly we hold that the oil produced in and shipped in from New Mexico to East Texas takes an interstate rate and the oil produced in West Texas and shipped to East Texas takes on an intrastate rate, and this irrespective of its being commingled with other oil en route."

In the *Shreveport Rate Cases, Houston, E. & W.T.R. Company* v. *U.S.* 234 U.S. 342, the Supreme Court approved the postulate that railroad traffic between two points in Texas was intrastate although the train and railroad lines which carried the intrastate traffic went to and served markets outside the state.

To perpetuate its error, the Commission relies on its decision in *Lo-Vaca Gathering Company*, et al., 26 Federal Power Commission 606 (Opinion 348), thereby disclosing the true artificiality of its position. If "The conclusion reached by the Commission in *Lo-Vaca* would seem to be equally valid on the facts of the present case, and if *Lo-Vaca* rather than the earlier *Montana-Dakota* decision should now be the controlling authority," [p. 206] by what principles of constitutional law and statutory construction does the majority equate their position with the mandate of the Supreme Court of the United States and other Federal and State courts that sales, such as those involved in the instant proceeding are intrastate and not subject to Commission jurisdiction? Clearly there is no basis in fact or in law for the majority's finding that the sales involved herein are subject to Commission jurisdiction. "The determinative question is not what the [Commission] thinks it should do, but what Congress has said it can do," *Civil Aeronautics Board* v. *Delta Air Lines*, 367 U.S. 316 (1961).

I have pointed out in detail that Commission and court decisions have firmly established that the physical commingling of gas which is not the subject of a jurisdictional sale with gas destined for consumption in interstate commerce does not, of itself, change the character of the former transaction. The final test is whether the two transactions are separable so that one may be distinguished from the other by whatever contractual and physical means possible. Legal precedents recognize that, as a purely physical matter, gas molecules initially attributable to each sale became unidentifiably intermixed.

The contracts of Amerada and Signal cover only gas which is produced in North Dakota, transported in North Dakota, resold in North Dakota and consumed in North Dakota and the amount of gas thus produced, sold, transported, resold and consumed will be accurately measured. Indeed staff in its brief admits "Purchases from Amerada and Signal are all purchases from the tailgate of one processing plant which has separate meters to measure intrastate and interstate volumes of gas." [Staff brief p. 82.]

The metering off in the producing state of the contract quantities of intrastate gas before any of the gas stream crosses a state line has been held to be a clearly distinguishable separation despite commingling with other gas destined for interstate transportation, *State of North Dakota, supra.* "That the commodity almost certainly or even inevitably, will be shipped out of the state does not make all of the activity interstate commerce even though it is done in the course of a part of that movement."[3] Further, "Practical continuity does not always make an act a part of interstate commerce," *Southern Pacific Company* vs. *Gallagher*, 306 U.S. 167 at p. 177.

The majority is troubled by the fact that the amount of gas sold under the North Dakota contracts cannot be measured as it passes the point of delivery to MDU, but must be determined retroactively, i.e., at the point of consumption in North Dakota. The point of measurement is no moment in determining the question of jurisdiction. What is important is the fact that accurate measurement of intrastate and interstate volumes is accomplished. The majority's quest for pure molecular identification is fallacious.

The majority would have to concede that sales made under the North Dakota contracts would be non-jurisdictional if the gas were transported in a separate

[3] See *Coe* v. *Town of Errol*, 116 U.S. 517, 525; *Superior Oil Co.* v. *State of Mississippi*, 280 U.S. 390, *Southern Pacific Co.* v. *Gallagher*, 306 U.S. 167.

pipeline. However, merely because the gas to be sold under the intrastate contracts is to be transported in the same pipeline as the gas to be sold under the interstate contracts, the majority finds that intrastate gas assumes an interstate character and is thus subject to Commission jurisdiction.

The statement by Commissioner O'Connor in the Lo-Vaca case *supra* is equally applicable here; "the decision of the majority would effectively preclude the use of interstate pipeline company facilities for intrastate transmission of natural gas within the producer states for the use of the consumers and industries in those states without the producers of such gas being subject to the jurisdiction of the Federal Power Commission. It seems to me this is an unnecessarily harsh imposition on the consumers in the producing states whose resources and statutes have been availed of to permit the construction and operation of these interstate lines."

The quick and dispositive answer to all majority arguments is that the Commission is powerless to regulate intrastate sales.

We must ever keep in mind that the basic concept of our society is the rule of law—law exercised in conformity with constitutional principles and by democratic processes. Thus the Constitution provides for the division of power between the state and Federal governments, and between the three branches—legislative, judicial, and executive—of the Federal government. And Congress, acting under the Commerce Clause and by the democratic process through the peoples' elected representatives, provides laws, of which the Natural Gas Act is an example, designed to reconcile diverse and conflicting interests in our nation and society in the interest of the whole people. It is essential to the attainment of the objectives of such legislation that the commands of Congress, and the court's interpretation thereof, be vigorously obeyed. It is equally essential to the preservation of our basic concepts, our constitutional system, and our democratic processes, and to the preservation of the public respect for law which is their indispensible foundation, that we do not permit either our desire for what we may deem high achievement, or our misgivings concerning the quality of others' achievements, to lead us to assert authority or exercise functions which a preponderance of the guiding considerations shows are not ours.

INITIAL DECISION
ON REMAINING ISSUE UPON APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY IN CONTESTED DOCKETS

(Issued September 5, 1962)

WESTON, *Presiding Examiner:* On August 28, 1962, the Commission issued its order disposing of the "initial price" issue in this proceeding; the order being based on acceptance by Amerada and Signal of the 16-cent price for which Staff had contended. The Commission, by order of June 1, 1962, having adopted the decision of May 16, 1962, on the first issues, there remains for decision only the issue as to whether certain amounts of the gas to be sold and delivered by Amerada and Signal to MDU will be "in interstate commerce" and therefore subject to the jurisdiction of the Commission.

THE JURISDICTIONAL ISSUE

Amerada and Signal propose to furnish MDU with gas under two sets of contracts. First, they will supply gas which they intend to be destined only for intrastate consumption in North Dakota. This supply will be pursuant to an Amerada-MDU contract of December 21, 1960, and a Signal-MDU contract of January 16, 1961—denominated by the parties and hereinafter called the "North

Dakota" contracts. Second, Amerada and Signal will supply gas which they intend to be destined for transportation across the border into Montana. This supply will be pursuant to contracts of January 10, 1961, and January 18, 1961, respectively, which have been filed as rate schedules with the Commission and which admittedly cover gas flowing in interstate commerce—denominated by the parties and hereinafter called the "interstate" contracts. The question is whether the gas sold under the North Dakota contracts is sold "in interstate commerce" with attendant regulatory consequences of the Natural Gas Act.

Objection to consideration of jurisdictional issue.—Amerada and Signal contend *in limine* that the jurisdictional issue is not properly before the Commission in this proceeding, because the North Dakota contracts have not been filed as rate schedules with the Commission, and because the Commission did not specify in the notice of hearing that the status of these contracts would be considered during the course of the proceeding.

The contention is overruled. The jurisdictional issue necessarily inheres in this proceeding from the outset. The North Dakota contracts, as well as the interstate contracts, were properly filed with MDU's application herein as a part of MDU's necessary showing of gas supply. The North Dakota contracts, like the interstate contracts, were entered into in specific contemplation of the pipeline construction for interstate gas involved in this proceeding, and the North Dakota contracts state that such construction is necessary "in order to take delivery of the gas" to be supplied under such contracts by Amerada and Signal. (Exh. H to applications; identical par. 2.01 of contracts.) The Commission must, therefore, at the least determine how much, if any, of the new construction costs which are a condition precedent to all of the contracts should be allocated to what Amerada and Signal claim is MDU's "intrastate" business, and thus excluded from MDU's jurisdictional accounts. To do this, the Commission must examine the legal basis for the claim that some of the contracts and gas are nonjurisdictional.

The fact that the jurisdictional issue was not spelled out in the notice of hearing is of no importance. The issue was litigated by extensive cross-examination without objection. During the course of the hearing, it was in substance accepted by stipulation of all counsel as an issue for decision herein (Tr. 525–532).[1] Amerada and Signal may not at this late date withdraw the stipulated issue from the matters to be decided herein.

Analysis of contracts and provision for measuring gas.—So far as the contracts and accounting go, a careful segregation is to be maintained between North Dakota gas and gas to be transported across the Montana state line.

According to the North Dakota contracts, MDU (Buyer) will purchase up to the total quantities of gas which it supplies each year in North Dakota from Amerada and Signal.[2] The contracts recite that "All gas purchased by Buyer under this agreement shall be transported, used and consumed entirely within the State of North Dakota." The contracts further recite that "* * * all gas produced in the Contract Area [*i.e.*, the Tioga fields in the Nesson Anticline, entirely within northwestern North Dakota] which is delivered" by Amerada and Signal to MDU and is used or consumed by MDU within North Dakota

[1] Staff Counsel there submitted for decision the interstate commerce and price issues; the submission being "on the record jointly by the Applicants in this proceeding and the staff of the Federal Power Commission," with multiple references to the joint and agreed-on nature of the submission. Amerada and Signal made no qualifications, limitations, or objections to this submission of the substantive issue.

[2] Except for gas supplied by MDU from a spur in the southwestern corner of the State, which consists of a small diameter lateral direct from the Baker Field in Montana. This exception makes the so-called "Market Area" as defined in the contracts somewhat less than the entire State. The exception is irrelevant to this proceeding, and will not be further referred to herein.

"* * * without being transported beyond its boundaries shall be sold" under the North Dakota contracts. The contracts are subject to cancellation by Amerada and Signal if the Federal Power Commission asserts jurisdiction over the gas sales and prices there established.

Since, as will be seen, all gas will be supplied from a single point—the tailgate of the Amerada-Signal Tioga plant—on a continuous interstate loop of pipeline, it is apparaent that between the parties the amounts of gas considered to be sold under the "North Dakota" contracts must be determined retroactively on the basis of careful measurement of gas consumed along the North Dakota sections of MDU's integrated system. This will be accomplished by metering.

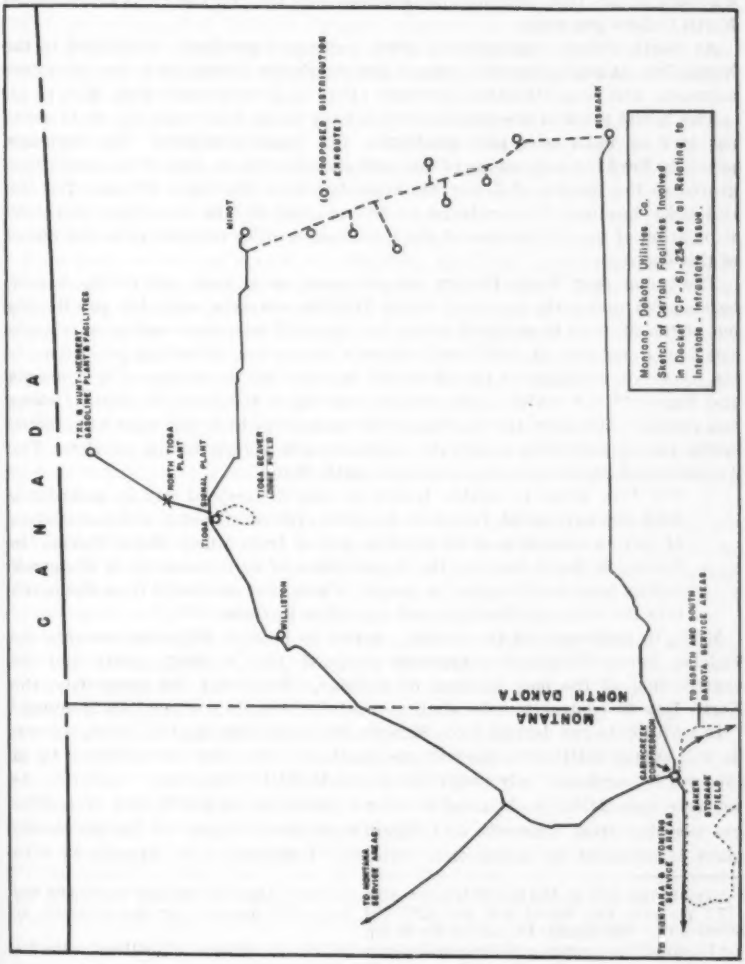
Two meters will measure the amount of gas delivered to MDU at the tailgate of the Tioga plant. One will measure the amount that flows west from Tioga towards Williston and the rest of MDU's interstate system. [See map accompanying this decision.] The other will measure gas flowing east from Tioga to Minot, thence south over the new facilities to Bismarck, and thence westward to Cabin Creek, Montana. The tailgate measurement will be the "* * * sole metering of the residue gas" purchased from Amerada and Signal, but "* * * will not be the final accounting method of the volume under the two contracts." [Tr. 19.] The accounting method will be based on further metering of the gas at points on the northern and southern segments of the loop near the western border of North Dakota. Depending on North Dakota requirements for the given time being—essentially, winter peak days contrasted with summer days—gas may actually flow either into or out of North Dakota over MDU's two Montana border crossings, as will be seen. Therefore, North Dakota consumption of gas attributed to purchases from Amerada and Signal will be determined mathematically, based on meter readings of gas flowing east and west from Tioga in relation to meter readings in the vicinity of each of the border crossings.

Except for quantities of gas and a few other presently immaterial details, Amerada and Signal's North Dakota contracts with MDU are in identical terms. The interstate contracts of each of the oil companies with MDU are likewise identical so far as is presently relevant. In the case of each company, both the North Dakota and the interstate contracts must be consulted, and therefore are parts of one transaction, and in substance one instrument as regards the vital matter of gas supply and gas take obligations.

Thus, the Amerada-MDU interstate contract provides that MDU must take-or-pay-for 13,687,500 Mcf per calendar year "* * * less the quantity of gas which Buyer shall pay for the with respect to such calendar year under the Amerada North Dakota Contract." This yearly quota derives from the stipulated daily volume: "* * * each day of each such calendar year Buyer shall be obligated to purchase and take delivery of a minimum quantity of Contract Gas equal to the quantity of all Contract Gas available for delivery to Buyer during such day which is derived from gas produced from Oil Wells, not to exceed in any day 37,500 Mcf less the quantity of gas which Buyer shall pay for with respect to such day under the Amerada North Dakota Contract."

The Signal-MDU interstate contract is in identical terms, except that the annual minimum quantity is 3,421,875 Mcf and the daily maximum obligation is 9,375 Mcf; again, less deliveries under the Signal North Dakota Contract.

Remitted to the respective North Dakota contracts, we find that MDU must buy at least 53⅓ percent of its annual North Dakota requirements from Amerada and at least 13⅓ percent thereof from Signal (with an immaterial exception in case of under-supply). In a provision which apparently deals with the split of gas assigned to North Dakota as between Amerada and Signal, and not


CANADA
TXL & HUNT-HERBERT GASOLINE PLANT & FACILITIES
NORTH TIOGA PLANT
TIOGA SIGNAL PLANT
TIOGA SEAVER LOOSE FIELD
WILLISTON
MINOT
(O - PROPOSED DISTRIBUTION EXHAUSTE)
BISMARK
NORTH DAKOTA
MONTANA
TO MONTANA SERVICE AREAS
CABINCREEK COMPRESSION
BAKER STORAGE FIELD
TO MONTANA & WYOMING SERVICE AREAS
TO NORTH AND SOUTH DAKOTA SERVICE AREAS
Montana - Dakota Utilities Co.
Sketch of Certain Facilities Involved
in Docket CP-61-234 et al Relating to
Interstate - Intrastate Issue.

to MDU's purchase obligations,[3] 80 percent of Tioga deliveries used in North Dakota are attributed to Amerada and 20 percent thereof to Signal.

Thus, amounts of gas purchased under the interstate and North Dakota contracts, respectively, must be ascertained retroactively, and depend entirely on MDU's deliveries within that State from time to time. Taken either on an annual or a daily basis. MDU's purchase obligations are allocated between amounts of gas in a common, indistinguishable flow on the basis of computed North Dakota gas usage.

As North Dakota requirements grow, estimated purchases attributed to the North Dakota contracts will increase and purchases attributed to the interstate contracts will proportionately decrease (Item B by reference; Exh. X–1, p. 1).

The initial price of the gas, as provided for in all four contracts, is 17 cents per Mcf at 14.73 psia, plus production tax reimbursements.[4] The contracts provided for fixed escalations of one cent each five years, as well as escalations geared to the Bureau of Labor Statistics Index of Wholesale Prices. The initial price has now been reduced to 16-cents per Mcf in accordance with the stipulation of the producers and the Commission order referred to at the outset of this decision.

The intent that North Dakota requirements, or at least two-thirds thereof, be supplied under the so-called North Dakota contracts, and that gas flowing out of the State to be supplied under the so-called interstate contracts, is made clear by a number of additional contract provisions, including provisions in the interstate contracts to the effect that it covers all gas delivered by Amerada and Signal "* * * which is transported outside of the State of North Dakota and resold." However, the realities of the situation which will exist when MDU starts taking deliveries under the contracts are known to the parties. The Amerada and Signal interstate contracts recite that—

> * * * in order to enable Buyer to take delivery of gas in accordance with this agreement, Buyer contemplates the construction and installation of (a) an extension of its pipeline system from Minot, North Dakota, to Bismarck, North Dakota, (b) a connection of such extension at Bismarck to that branch of its pipeline system which runs westward from Bismarck into the State of Montana, and (c) other facilities. * * *

MDU, in pursuance of the recital, agrees to proceed diligently towards the Federal Power Commission approval obtained June 1, 1962, herein and the construction of the new segment of pipeline. Somewhat disingenuously, the North Dakota contracts make similar provision, but do not mention Montana.[5]

In addition to gas derived from Signal's gas processing plant at Tioga, Amerada will supply MDU with gas-well gas produced from other formations. All of this gas is purchased only under the Amerada-MDU "interstate" contract. As we have seen, MDU is obligated to take a maximum of 46,875 Mcf of residue gas per day from Amerada and Signal's combined supply at the processing plant if produced in conjunction with oil. However, MDU expects to take

---

[3] Total sales will be 19,160,000 Mcf per year, of which Amerada will sell 14,788,396 Mcf (77.2 percent) and Signal will sell 4,371,604 Mcf (22.8 percent), or approximately an 80–20 split. See Exhibit 14, and see Tr. 92–94.

[4] In effect, the provision is for reimbursement of the 4¼ percent of wellhead value tax rate which existed on June 24, 1955, and for 50 percent reimbursement of new or increased taxes. The tax rate went up to 5 percent of wellhead value on July 1, 1957. The June 24, 1955, date apparently continues a reimbursement provision in a previous intrastate supply contract, as to which see *Montana-Dakota Utilities Co.*, 16 FPC 401, 404; affirmed, *State of North Dakota* v. *F.P.C.*, 247 F. 2d 173 (CA8), and discussion, *infra*.

[5] Buyer MDU there is said to contemplate a Bismarck connection "* * * which runs westward."

delivery of 19,160,000 Mcf per annum, or an average of 52,493 Mcf per day, from the two oil companies combined. (Exh. 14.) Presumably, the difference of 5,618 Mcf between the quantity of residue gas available from oil production and total deliveries will be supplied from Amerada's gas-well gas.

Realities of gas flow.—The Village of Cabin Creek, in eastern Montana, where a large compressor station and the Baker storage field are located, is described as the "heart" (Tr. 22) of MDU's interstate pipeline system. As shown on the map incorporated in this decision, several lines emanate from Cabin Creek for service of natural gas in Montana, Wyoming, North Dakota, and South Dakota. Of particular importance to this proceeding is the loop shown on the map serving North Dakota.

Starting at Cabin Creek, the line proceeds northwest to Williston and Tioga, North Dakota. Here it connects with a previously separately operated "intrastate" section of line running eastward from Tioga to Minot. At Minot, the new construction (106 miles of 12-inch pipe) authorized herein on June 1, 1962, runs southward to Bismarck, where it connects with what was previously a southern lateral for supply of gas from Cabin Creek to Bismarck.

On a peak day in the winter of 1962–1963, MDU will take about 55,000 Mcf of Amerada-Signal gas at the tailgate of the Tioga plant. There will also be available at Tioga some 15,000 Mcf from the Texaco and Hunt-Herbert sources authorized by the June 1, 1962, order herein. The parties to the record postulate on the basis of a flow diagram, but without record evidence as to the physical facts, that all 15,000 Mcf of Texaco and Hunt-Herbert gas will commence and continue its journey westward on the MDU line; Texaco and Hunt-Herbert accept without question the interstate nature of their contracts; for present purposes, we may assume that all Texaco and Hunt-Herbert deliveries always flow to the west, thus reducing the Amerada-Signal deliveries flowing in that direction.

Of the combined gas, 50,000 Mcf will flow *eastward* on the loop towards Minot and beyond; apparently all of this gas will be consumed in North Dakota on peak days by deliveries to Minot and other communities along the line, ending with deliveries made to Bismarck, Hebron, and the New England group of communities along the southern branch of the loop.[6] (Exh. 1.)

Of the combined gas, 20,000 Mcf will on peak days flow *westward* on the loop towards Williston; 10,200 Mcf will be served off the line in North Dakota and at the Montana border, and 9,800 Mcf will arrive at Sidney, Montana, where 5,570 Mcf will be served for local consumption. The remainder of the Tioga gas, 4,230 Mcf, will merge with 12,660 Mcf arriving on the lateral line (shown on the map herewith) from MDU's Bowdoin gas field in northwestern Montana, for service to Glendive, Montana, and further circulation through Cabin Creek to the rest of MDU's system. (Exh. 1.) Even under the theory that all Texaco and Hunt-Herbert gas flows westward, there is no indication that on peak days it is this gas which arrives at Sidney, Montana, and ultimately merges with MDU's general system gas, while the Amerada-Signal gas is used locally. On the contrary, out of the common stream of gas flowing westward from Tioga, of which 15,000 Mcf is assumed *arguendo* to be furnished by Texaco and Hunt-Herbert and 5,000 is therefore to be furnished by Amerada and Signal, the mathematical situation is as follows:

[6] On such days, Exhibit 1 shows importation of gas along this branch from Cabin Creek.

Delivery point	Combined Mcf	Texaco & Hunt-Herbert (Mcf)	Amerada-signal (Mcf)
North Dakota	10,200	7,650	2,550
Sidney Montana	5,570	4,177.5	1,392.5
Merged into system gas	4,230	3,172.5	1,057.5
Total	20,000	15,000	5,000

Thus, on a peak day, 2,450 Mcf of Amerada-Signal gas will enter Montana despite contract provisions, unless the mathematics of the situation are ignored.[7]

On average summer days, about 80 per cent of the gas supplied to MDU at Tioga will ultimately wind up in Cabin Creek, Montana, for injection into the Baker storage field and ultimately redelivery to all parts of the MDU system. It is calculated that of the 45,000 Mcf supply furnished by Amerada and Signal during non-peak periods, 32,000 Mcf will flow eastward on the loop towards Minot and 13,000 Mcf will flow westward towards Williston. With a North Dakota summer market of about 8,750 Mcf, a remainder of 36,250 Mcf will flow across one or the other of MDU's state border crossings and ultimately wind up, for the most part, in MDU's Baker storage field in Montana.[8] This gas is, of course, allocated to and accounted for under the Amerada-Signal "interstate" contracts.

Decisive Considerations on Jurisdictional Issue

Background.—The jurisdictional issue in the proceeding at bar is unusual, in that it reflects new aspects of a similar issue heretofore litigated, in respect of prior contracts between the parties and on facts as they then existed, in *North Dakota* v. *F.P.C.*, 247 F. 2d 173 (CA8), affirming *Montana-Dakota Utilities Co. et al.*, 16 FPC 401, 415, decided July 2, 1956.

At that time, the Commission certificated (1) a new line extending MDU's then existing system from Williston to Tioga, (2) four laterals from the extension to serve four North Dakota communities between Tioga and Williston, (3) an emergency connection 6-feet in length, joining the new line to Tioga with a then separate MDU intrastate line between Tioga and Minot,[9] and (4) sales of "dump gas" from Amerada and Signal to MDU at Tioga for 9-cents per Mcf.

Also at that time, Amerada and Signal each had two contracts with MDU. First, there were contracts for supply of "firm" gas intended for intrastate use only in the MDU market area between (but excluding) Williston, North Dakota, and (including) Minot, North Dakota. These 20-year contracts for firm gas carried an initial price of 16 cents per Mcf, which escalated to 17 cents per Mcf before the commencement of the proceeding at bar. They were replaced by the "'North Dakota" contracts now in issue and discussed on preceding sections of this decision. Second, there were the above-mentioned contracts for the supply of "dump" gas westward on the line for sale in Williston, small markets downstream therefrom, to markets in Montana, and, for the

[7] Of course, as a matter of accounting, this portion or more of the gas in the common stream can be and perhaps is assigned to gas-well gas supplied under Amerada's interstate contract.

[8] Other and apparently more exact estimates are that 24,720 Mcf of the gas flowing toward Minot and 11,320 Mcf of the gas flowing toward Williston on an average summer day will end up in the Baker storage field (Tr. 72–73).

[9] This is the same line that now forms the Tioga-Minot section of the continuous loop shown on the map herewith, p. 213, *supra*.

most part, for integration into MDU's system at Cabin Creek and the Baker storage field.

In practical effect, the great portion of the firm "intrastate" gas (369,290 Mcf in 1956) was to have moved over the Tioga-Minot line, which was physically separate and distinct from the MDU integrated system lines.[10] The rest of the firm "intrastate" gas (11,120 Mcf in 1956) would move westward intermixed with the "dump" gas, and would be metered on the four laterals mentioned above serving four communities en route to Williston.

The Examiner, in language affirmed by the Commission and adopted by the Eighth Circuit, said:

> At the outset it should be noted that this Commission clearly has no jurisdiction over the sales made by Signal and Amerada under the 16-cent "firm gas" contracts. Under Section 1(b) of the Natural Gas Act this Commission has jurisdiction only over the transportation of natural gas in interstate commerce, or the sale in interstate commerce of natural gas for resale. It has no authority to regulate *intrastate* sales. The gas sold under the instant 16-cent contracts is admittedly produced and consumed wholly within the State of North Dakota, both in the communities served from the Tioga-Minot line and in the communities served from the Tioga-Williston line. The conclusion that they are accordingly *intrastate* contracts is so obvious as to require no extended discussion.* The fact that this gas travels over the Tioga-Williston line in one stream, along with the gas purchased under the 9-cent "dump gas" interstate contracts does not convert the 16-cent "firm gas" contracts into interstate contracts. [See 16 FPC at 408–409; 247 F. 2d at 176.]

Insofar as this language covers the 11,120 Mcf of gas sold in the four communities en route to Williston, the situation, except for great disparity in volumes making the intrastate service in 1956 almost *de minimis*,[11] is the same as that now presented in the case at bar. However, two points must be noted in this connection:

(1) Gas sales in the four North Dakota communities along the line to Williston were nonjurisdictional in any event, because the distribution service to the ultimate consumers was performed by MDU. Since MDU "sells the gas directly to the ultimate consumers in these communities," the sales were not "for resale," and were "accordingly nonjurisdictional, entirely apart from any question of interstate commerce." [16 FPC at 413.]

(2) The off-line service in North Dakota under the firm contracts involved deliveries to named, definite, established customer communities rather than a general retroactive assignment of volumes under indefinite contract provisions covering an entire service area. The question now presented was not sharply defined by the facts of the prior case.

Analysis of governing principles.—On the one hand, Amerada, Signal, and MDU earnestly "intend" that the amounts of gas sold under the North Dakota

---

[10] Except for the "emergency" interconnection. For present purposes, we should specifically reserve the question of whether or not such an interconnection in practical effect and in law would now be held to integrate the Tioga-Minot section of line with the rest of the MDU system. In the *Jersey Central* case, *infra*., the fact that a few kilowatts of energy supplied within the State from A to B escaped from the State over an emergency interconnection between B and C was held sufficient to base full Commission jurisdiction over A.

* Footnote 11 omitted from original quotation.

[11] It is doubtful that the *de minimis* doctrine applies to the "in interstate commerce" issue of Commission jurisdiction. It was pressed on the Commission and courts in the *Jersey Central* case, *infra*, and, no doubt, in other similar cases where the jurisdictional volume has been utterly insignificant, but the doctrine has not been applied in any case involving jurisdiction over electric and gas energy or facilities. See, *e.g.*, *Connecticut L. & P. Co.* v. *F.P.C.* 324 U.S. 515, 535–536.

contracts be for use in North Dakota, and not for interstate sale. These parties have worked out a practical, business-like method to effect their intention. The motivation is unquestionably the avoidance of regulation of rates and service of "intrastate" gas by the Federal Power Commission; yet, this is not invidious or improper even in a case where, as here, gas consumed under the North Dakota contracts would escape all regulation of the contract price as fixed between the producers and MDU. For the State of North Dakota, if it so desires, could presumably subject an intrastate sale of gas to regulation by its own Public Service Commission. (If disability exists, it is not because of Federal limitations on State power.) Amerada, Signal, and MDU can well argue that the furnishing of North Dakota gas to consumers within North Dakota is not a matter of national public interest and not a matter of concern to the Commission if the Natural Gas Act is to be construed in accordance with the practical realities of business life—*i.e.*, commerce between enterprises for local service of local gas.

On the other hand, some of the gas furnished by Amerada and Signal at Tioga will undeniably and concededly flow over both branches of MDU's North Dakota loop, and will wind up at burner tips in other States. All of the gas furnished to MDU will flow in a common stream serving indiscriminately MDU customers in several States. MDU is a very sizeable integrated pipeline system which cannot rationally function in segments separated by the accidental (from the economic view) occurrence of State lines. Neither Amerada, Signal, nor MDU know where a given cubic foot of gas sold at Tioga will be resold on MDU's integrated system. The perspective is set in the light of existing and increasing inter-relatedness between all sections of a given interstate gas or electric energy system, such as occurs in this case as Minot is linked with Bismarck. The public authorities protecting the North Dakota consumer interests in price control may well argue that the commercial realities are sales of gas at Tioga for MDU system-wide use. In this view, the distinction between interstate and intrastate gas set up by the two sets of contracts is actually illusory and artificial.

The answer depends on the *nature of reality* as interpreted in this controversial area by the courts, and especially by the Supreme Court. Is the controlling reality to be that contemplated by the parties to a businesslike contract assigning portions of an indivisible flow of gas or electricity, in accordance with statistical facts, to local service within the given State? Or is the controlling reality that of the physical flow of energy untrammeled by State boundaries?

The issue is no longer open for extended discussion; the issue has been definitively and finally settled. The controlling reality is that of physical flow across State lines.

> * * * Federal jurisdiction was to follow the flow of electric energy, an engineering and scientific, rather than a legalistic or governmental test. * * *[12]

The governing reality, in other words, is that of the engineer or technician rather than that of the trader or businessman. If gas, or any part of a given gas supply, ostensibly sold under and attributed to an intrastate gas contract, physically flows or is capable of flow across State lines, the gas is sold in interstate commerce.

Arguments to the contrary have so often been presented to and rejected by the courts that the doctrine is now unshakeable. Each of the arguments and most of the authorities presented by Amerada and Signal were presented to the Commission as early as December 3, 1938, in the briefing of the case ultimately affirm-

[12] *Connecticut Light & Power Co.* v. *F.P.C.*, 324 U.S. 515, 529. The relevant provisions and sweep of the Federal Power Act and the Natural Gas Act are for present purposes identical.

ed in *Jersey Central Power & Light Co.* v. *F.P.C.*, 319 U.S. 61. It was there elaborately argued that Congress had not in words or in purpose committed the full sweep of possible jurisdiction on the Federal Power Commission over sales or transfers of energy "affecting" interstate commerce, and that those who consign, destine, and mean their energy to be for use within the State of origination to which the volumes are contractually assigned are not subject to the Commission because of subsequent accidental or casual flow of some portion thereof to another State. The Supreme Court used the engineering test to determine the actuality of flow, and said that there is no basis for a conclusion that the statutory definition of interstate commerce—

> * * * means less than it says and applies only to the energy at the instant it crosses the State line and so only to the facilities which cross the line and only to the company which owns the facilities which cross the line. The purpose of this act was primarily to regulate the rates and charges of the interstate energy. * * * [319 U.S. 61, 71.]

The arguments applicable to the contention that the intent of the parties with regard to the destination of gas flowing in a commingled stream, some destined intrastate and some destined interstate, are of importance in determining Federal Power Commission jurisdiction have recently been summarized and vigorously advanced by Circuit Judge Brown, dissenting, in *Deep South Oil Co.* v. *F.P.C.*, 247 F. 2d 882 (CA5), commencing at 889. Judge Brown there sets forth a logical and persuasive approach to the issue of Congressional intent on the issue of subjection to Commission regulation of wellhead sales to a processing plant, in language that is, for the most part, applicable to the facts in the case at bar.

The majority in that case, on its own analysis of the Congressional intent in the light of the purpose to protect consumers, found that if the seller were free from regulation such a result would " * * * permit it, if it were so inclined, to engage in the very exploitation which the Act was designed to prevent." [247 F. 2d at 887.] The majority found a continuous movement of the gas to an interstate destination and held that "* * * when the gas was sold by petitioner it had commenced its journey in interstate commerce." [247 F. 2d 888.] The holding in *Deep South* was held to govern the situation in a companion case, *Shell Oil Co.* v. *F.P.C.*, 247 F. 2d 900 (CA5), in which certiorari was denied, 335 U.S. 930. The reasoning of the majority perhaps does not meet all of Judge Brown's logic, but the result reached by the majority fully accords with currently accepted doctrine.

With the possible exception of *North Dakota* v. *F.P.C.*, *supra*, all recent decisions have found that Federal jurisdiction attaches to all sales of energy whenever some part of the energy sold ultimately finds its way across State lines. See, in addition to cases cited *supra*, *F.P.C.*, v. *East Ohio Gas Co.*, 338 U.S. 464; *Interstate Natural Gas Co.* v. *F.P.C.*, 331 U.S. 682; *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672; *Eureka Pipe Line Co.* v. *Hallanan*, 257 U.S. at 272; *California Electric Power Co.* v. *F.P.C.*, 199 F. 2d 206 (CA9), cert. denied, 345 U.S. 934; *Oklahoma Natural Gas Co.*, 23 FPC 291, 531; *Lo-Vaca Gathering Co.*, 26 FPC 606, Opinion No. 348.*

As the Commission observes in the *Lo-Vaca Gathering Co.* case, *supra*, the holding in *North Dakota* v. *F.P.C.* "* * * runs counter to the whole stream of the decisions of this Commission as to what constitutes a jurisdictional sale in interstate commerce and to the decisions of the Supreme Court construing this and other legislation." [p. 10.] That holding was held by the Commission to present a "serious problem of distinction," and the Commission ruled that to

*See Ed.'s note, *supra*, p. 201.

the extent it may be inconsistent with *Lo-Vaca*, "* * * it was erroneously decided." [*Id.*]

Conclusion.—There is a single flow of gas in interstate commerce in respect of all gas supplied by Amerada and Signal to MDU at Tioga. All contracts with respect to such flow must be filed as rate schedules with the Commission. Price and other provisions of all such contracts are subject to price and other regulations by the Commission under the Natural Gas Act.

In respect of the order to be issued pursuant to the foregoing, it is noted that in connection with the concession of the price issue, Amerada and Signal have provisionally and without prejudice filed their "North Dakota" contracts as supplements to their respective Rate Schedules 95 and 8, pending final determination, presumably judicial, of the jurisdictional issue. Accordingly, there are no considerations of timing, or other practical factors, to be resolved herein.

ORDER

Wherefore, it is ordered, subject to review by the Commission, that:

(A) Amerada Petroleum Corporation shall in accordance with Section 4 of the Natural Gas Act and Sections 154.91–154.102 of the Commission's Regulations Under the Natural Gas Act file its contract of December 21, 1960, with Montana-Dakota Utilities Co. as a Rate Schedule, and shall in respect of such Rate Schedule comply with all the requirements of the Natural Gas Act and the Commission's Regulations thereunder.

(B) Signal Oil and Gas Company shall in accordance with Section 4 of the Natural Gas Act and Sections 154.91–154.102 of the Commission's Regulations Under the Natural Gas Act file its contract of January 16, 1961, with Montana-Dakota Utilities Co. as a Rate Schedule, and shall in respect of such Rate Schedule comply with all the requirements of the Natural Gas Act and the Commission's Regulations thereunder.

ROBERT M. WESTON,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

HUNT OIL COMPANY, DOCKET NO. G–9065, ET AL.[1]

ORDER CONDITIONALLY APPROVING RATE SETTLEMENT PROPOSALS, TERMINATING PROCEEDINGS AND PRESCRIBING REFUNDS

(Issued July 16, 1963)

We have before us for consideration a Motion for Approval of Settlement Proposal and Termination of Proceedings and an Offer of Settlement filed on April 11, 1963, by Hunt Oil Company (Hunt) encompassing the rates for thirty-two of Hunt's currently effective gas rate schedules.[2]

In summary, the settlement proposal as submitted by Hunt provides:

(1) Settlement rates, including tax reimbursement, equal to or less than the Commission's applicable area ceilings, with two exceptions hereinafter discussed;

(2) Hunt waives the right to file for contractually authorized increased rates

[1] The additional dockets involved herein are set forth in the Appendix hereto.

[2] The motion for approval encompasses thirty-one of Hunt's rate schedules, and the Offer, which was filed simultaneously covers one schedule, and was made jointly with H. L. Hunt. Hereinafter, they will be discussed as one proposal.

until October 1, 1965, except for its rate schedule No. 50, for which it waives such rights until April 1, 1968. Hunt reserves the right to file for any increased rates, if contractually authorized, up to the applicable area-rate levels determined through area hearings or by amendment of the Commission's Statement of General Policy No. 61–1, or any contractually authorized increase in tax reimbursement;

(3) Amendment of Hunt's rate schedule Nos. 11, 26, 28, 32, 35 and 52 to eliminate any favored nation or price redetermination clauses contained therein. In addition, Hunt will amend its rate schedule No. 32 to eliminate the fixed price escalation provision contained therein, and will revise the schedule of periodic price escalations contained in its rate schedule No. 52;

(4) Extension of the make-up period under the take-or pay provision in Hunt's rate schedule No. 50 from the present period to four years;

(5) Refunds, with interest at the applicable rates, under each rate schedule where the collection was made subject to refund, of the difference between the revenues actually collected and those which would have been collected at the settlement rate, in each instance, commencing with April 1, 1962, to the date of issuance of this order;

(6) Within thirty days of the issuance of this order Hunt will withdraw its petitions to review certain orders of this Commission in Cause Nos. 20320 and 20392 in the United States Court of Appeals for the Fifth Circuit, and in Cause No. 17579 in the Court of Appeals for the District of Columbia;

(7) Exclusion from the Settlement Proposal of all Permian Basin sales, a sale for which Hunt's rate is dependent upon the purchaser's rate which is now under suspension,[3] and one sale which is presently in litigation.[4]

In support of its proposal, Hunt states that the settlement rates, refunds, moratorium periods and other provisions thereof, some of which are not specifically noted herein, with the added benefit of withdrawal of litigation, are in the public interest in that the rates are reasonable and will provide price stability for a long period of time for natural gas moving in interstate commerce.

With respect to refunds, the various parties to the settlement conferences utilized cost-of-service studies. Their studies revealed that during the first-half of 1962, increased sales, and higher initial rates started to equalize Hunt's revenue-cost relationship. In view of that, and all the terms of the settlement proposal, it is appropriate that refunds should be computed for sales made on and after April 1, 1962, to the date of issuance of this order, with interest to be paid on the refunds to the date the refunds are made to the purchasers. The refunds will be approximately $600,000, exclusive of interest. Hunt's future revenues will be decreased approximately nine percent as a result of the settlement.

The two exceptions to the applicable area ceilings are proposed by Hunt with respect to a sale in South Louisiana in the Duck Lake Field, St. Martin and St. Mary Parishes, to United Gas Pipe Line Company (United), and a sale in Mississippi in the Gwinville Field, Jefferson Davis and Simpson Counties, to Southern Natural Gas Company (Southern). The sale to United is made under Hunt's rate schedule No. 5. On April 22, 1963, the Pennsylvania Public Utility Commission (PUC) filed its objection to Hunt's proposed settlement rate for this sale. However, on April 24, United, which participated in the settlement conferences, advised the Commission that it concurred in the settlement rates for sales by Hunt to it. Additionally, we note that the circumstances surrounding this sale are identical with those set forth in our order in *The Ohio Oil Company, et al.*, Docket No. RI60–92, *et al.*, 27 FPC 1373, 1374, and cited in our

[3] Rate schedule No. 51.
[4] Rate schedule No. 55.

order in *Cities Service Company*, Docket No. G–8921, et al., 28 FPC 1108 (December 26, 1962). In those proceedings we approved the same settlement rate as Hunt proposes herein. Therefore, we consider the reduction of the presently effective rate of 22.95¢ per Mcf to the settlement rate of 18.0¢ per Mcf to be proper, and approve the settlement rate.

The sale to Southern is made under Hunt's rate schedule No. 37. Subsequent to Hunt's filing its proposal, on April 19, 1963, Alabama Gas Corporation, and on April 22, Southern each filed a protest and objection to the proposed rate of 17¢ per Mcf for this sale. Each contended that the circumstances surrounding this sale were similar if not identical to those surrounding the sale to Southern at Gwinville by Tidewater Oil Company. They point out that in our order approving the settlement in *Tidewater Oil Company, et al.*, Docket No. G–13310, *et al.*, 27 FPC 1267, 1275, we approved a rate of 14¢ per Mcf for Tidewater's sale to Southern at Gwinville. We find no basis for approval of a rate for this sale in excess of the applicable area ceiling of 14¢ per Mcf and accordingly we shall condition our approval of Hunt's proposal by requiring it to reduce the rate under its Rate Schedule No. 37 to 14¢ per Mcf.

Additionally, on April 22, 1963, PUC filed an objection to the settlement of a sale to Transcontinental Gas Pipe Line Corporation (Transco) in Southern Louisiana. Hunt's proposed settlement of this rate, under its rate schedule No. 50, is identical in terms with settlements we have approved involving sales to Transco by other producers, *Texaco Inc., et al.*, Docket No. G–13169, *et al.*, 28 FPC 247. However, in view of PUC's objection and the fact that this matter is involved in a certificate proceeding, we shall exclude this sale from the settlement, and it shall remain in the consolidated proceedings in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*

The settlement proposal includes two rates for which issuance of related permanent certificates is pending (rate schedule Nos. 52 and 53, Docket Nos. CI60–11 and CI60–457, respectively). Section 7 of the Act requires a hearing on such certificate applications. We propose, therefore, to set these certificate matters for abridged hearing, indicating that the proposed initial price is the settlement price.

The foregoing has discussed all of the major comments filed by PUC, Alabama Gas, Southern and Philadelphia Electric Company subsequent to Hunt's filing its settlement proposal. We believe the settlement proposal, as herein modified, and in other particulars not specifically noted or set forth herein, meets the criteria previously set forth in other of our recent settlement orders and accordingly we find it to be in the public interest and should be approved as hereinafter provided.

There is one other problem here. United Gas Pipe Line Company is under a requirement to flow-through to its jurisdictional customers the proportionate share of the amount it will receive by way of refunds from Hunt. But those customers include a number of other pipelines who may take the position that they are not presently under a similar obligation. Thus, if United makes refunds to them, they may in the absence of action by us now, be in a position to hold these sums for their own use or distribution to their stockholders, even if they are, in the absence of such refunds, earning a reasonable rate of return on their invested capital. The Commission is disturbed by this gap in the refund line and intends here, and in other cases where it may be appropriate, to take steps to insure that a determination is made of the parties entitled to receive the refunds before refunds are made to pipelines which claim they are not obligated to pass these refunds on to their jurisdictional customers. See *F.P.C.* v. *Interstate Natural Gas Co.*, 336 U.S. 577; *Northern Natural Gas Co.* v. *F.P.C.*, 215 F. 2d 892 (CA8), *cf. Mississippi River Fuel Corp.* v. *F.P.C.*,

281 F. 2d 919, certiorari denied 365 U.S. 827. As the first step in implementing such a procedure here, we shall order United to retain the refunds (without further interest obligation by it) and to submit a report setting forth how refunds would be made by it to its jurisdictional customers, assuming (without presently deciding) they are entitled to receive such sums. On the basis of this report, we shall then decide whether further Commission proceedings are required with respect to those customers of United which are themselves natural gas companies subject to the Commission's jurisdiction and do not agree to pass such refunds to their customers. These proceedings would determine whether under such circumstances these natural gas companies or their customers are entitled to the funds. The Commission does not intend itself to determine the refund obligations of distribution company customers, which are subject to the regulatory authority of the states rather than this agency. We will consider, however, at an appropriate time, suggestions by the states or other appropriate entities, as to the feasibility of our withholding payment of refunds to distribution companies until the authorized state agencies can determine the parties entitled to receive such sums.

Refunds in varying amounts will also be made hereunder to Texas Eastern Transmission Corporation, Southern Natural Gas Company and Northern Natural Gas Company. For the reasons set out hereinabove we shall also require that these companies submit a report indicating their proposed disposition of such refunds and that they shall hold such refund amounts in a special fund (without further interest obligation to them) pending Commission action on such proposed dispositions.

Our action herein should not be construed as constituting approval of any future rate increase, if any, that may be filed under the subject rate schedules, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate proceedings, involving Hunt's rates and rate schedules.

The Commission finds:

The proposed settlement of the subject proceedings on the basis described herein, as more fully set forth in the settlement proposal filed on April 11, 1963, as herein modified, is in the public interest and it is appropriate in carrying out the provisions of the Natural Gas Act that it be conditionally approved and conditionally made effective subject to the modifications hereinafter ordered, and good cause exists for approving the settlement rates, for terminating certain proceedings and providing for refunds.

The Commission orders:

(A) The Settlement of these proceedings on the basis of the Settlement Agreement, filed April 11, 1963, as herein modified, is approved and made effective subject to the following terms and conditions.

(B) The applicable settlement rates set out in the appendix hereto are approved and such rates shall be effective as of the date of issuance of this order.

(C) The pending certificate proceedings indicated in the appendix hereto shall not be terminated on the basis of the approval of the Settlement Proposal, but shall be determined after hearing in accordance with Section 7 of the Natural Gas Act.

(D) Within 90 days from the date of this order, Hunt shall make such filings under its rate schedules as are required to make effective the terms of the Settlement Proposal, as modified herein.

(E) Within 90 days from the date of this order, Hunt shall (1) refund, with interest as specified in each docket computed to the date of actual re-

fund, the difference between the rates collected subject to refund, on and after April 1, 1962 and the related settlement rates to the date of this order; and (2) report to the Commission, in writing, the amount of refunds made to each of its purchasers, showing separately the amount of principal and interest so paid, and the bases used for such determination, together with releases from its purchasers showing receipt of the refunds in conformity with the Settlement Proposal as modified and approved herein.

(F) Within 90 days of the date of issuance of this order Hunt shall withdraw each of its petitions to review orders of this Commission in Cause Nos. 20320 and 20392 in the United States Court of Appeals for the Fifth Circuit, and Cause No. 17579 in the Court of Appeals for the District of Columbia Circuit.

(G) Docket Nos. G–13157, G–13191, G–14082, G–16422, G–16479, G–18464, G–18555, G–18668, G–20009, G–20531, G–20532 and RI60–202 (related to sales made by Hunt in the Permian Basin) are hereby severed from the consolidated proceedings in Docket No. G–9065, *et al.*

(H) Within 15 days from date of receipt by it of the refunds herein provided, United Gas Pipe Line Company shall submit a report to the Commission, and serve a copy thereof upon each of its jurisdictional customers, setting forth a plan for distribution of such refunds to its customers. The report shall show separately the amount of principal and interest, together with a computation showing the manner in which such distribution was determined. United shall retain the refunds received pursuant to this order, subject to further order of the Commision, provided, however, that United shall not be required to pay interest on such funds.

(I) Within 15 days from the date of receipt by each of the following of the refunds herein provided, Texas Eastern Transmission Corporation, Southern Natural Gas Company, and Northern Natural Gas Company shall each submit a report to the Commission and serve a copy on their respective jurisdictional customers, setting forth the amount of refund received and their proposed disposition of such amount. Pending Commission action and further order respecting such proposed dispositions, the aforementioned companies shall hold such refund amounts in a special fund (without further interest obligation to them).

(J) Hunt shall, over the signature of a responsible officer, file with the Commission, within 30 days from the date of the issuance of this order, an original and one copy of its acceptance or rejection of the terms and conditions of this order applicable to it.

(K) Any other party to the proceeding or settlement negotiations having objections to the terms of this order shall within 30 days from the date of issuance of this order set forth such objections in writing to the Commission of (original and one copy), and by serving copies itself on the other parties.

(L) If as a result of other objections filed pursuant to Paragraph K hereof, the Commission by subsequent order changes Hunt's duties and obligations hereunder, Hunt's acceptance of this settlement order shall not be binding upon it without its express agreement.

(M) Upon full compliance by Hunt with all the terms and provisions of this order applicable to it, the Section 4(e) proceedings listed in the appendix hereto and the Section 5(a) proceeding in Docket No. G–10414 shall terminate.

(N) This order is without prejudice to any findings or orders which have been or may be made hereafter by the Commission, and is without prejudice to claims or contentions which may be made by Hunt, the Commission Staff, or any affected party hereto, in any proceedings now pending, or hereafter instituted by or against Hunt or any other companies, person or parties affected by this order.

Commissioners Morgan and Woodward *not participating.*

APPENDIX

HUNT OIL COMPANY

DOCKET NO. G-9065, ET AL.

(1) Area rate schedule number	(2) Field	(3) Purchaser	Docket number (4) Certificate	Docket number (5) Section 4(e) rate increase	(6) Last firm rate [1]	(7) Rate in effect [1]	(8) Proposed settlement rate [1]
	NORTH LOUISIANA						
2	E. Haynesville	Arkansas-Louisiana Gas Company	G-4366		13.478 (Increased)	13.478	13.478
3	do	do	G-4366		13.478 (Increased)	13.478	13.478
14	Waskom	do	G-4366		12.8922 (Increased)	12.8922	12.8922
16	Cotton Valley	United Gas Pipe Line Company	G-4366		13.05076 (Increased)	13.05076	13.05076
25	Ivan	Arkansas-Louisiana Gas Company	G-8450		13.0030 (Increased)	13.0030	13.0030
28	Greenwood-Waskom	Texas Eastern Transmission Corp	G-9431	G-11360, G-13530, G-15657, G-16644, G-19756, RI61-205, RI62-142, RI63-105.	15.1854 (Increased)	16.0212	15.75
29	Longstreet	Arkansas-Louisiana Gas Company	G-10009		12.8713 (Increased)	12.8713	12.8713
30	Red Rock	Louisiana-Nevada Transit Company	G-10253		13.0000 (Increased)	13.0000	13.0000
43	Ada	United Gas Pipe Line Co	G-16737		18.2500 (Initial)	18.2500	18.2500
44	Colquitt	Arkansas-Louisiana Gas Company	G-16944		13.0030 (Increased)	13.0030	13.0030
45	Cotton Valley	United Gas Pipe Line Co	G-17817		13.55076 (Increased)	13.55076	13.55076
46	Red Rock, North Shongaloo	Texas Gas Transmission Corp	G-18028		13.7500 (Initial)	13.7500	13.7500
47	Red Rock, North Shongaloo	do	G-18029		18.2500 (Initial)	18.2500	18.2500
53	Hico-Knowles	do	CI60-457 [2]		18.2500 (Initial)	18.2500	18.2500
56	Minden	do	CI62-104		18.2500 (Initial)	18.2500	18.2500
	SOUTH LOUISIANA						
5	Duck Lake	United Gas Pipe Line Co	G-4366	G-9065, G-9568, G-11124, G-13468, RI63-128. [3]	14.2500 (Increased)	22.95	18.0
41	Castor Creek	do	G-15909		20.3750 (Initial)	20.3750	20.3750
42	S. Mermentau	do	G-16145		20.2500 (Initial)	20.2500	20.2500
50 [4]	Thibodeaux	Transcontinental Gas Pipe Line Corp	G-18596		23.5500 (Initial)	23.55	20.625

APPENDIX—Continued

(1) Area rate schedule number	(2) Field	(3) Purchaser	Docket number (4) Certificate	Docket number (5) Section 4(e) rate increase	(6) Last firm rate [1]	(7) Rate in effect [1]	(8) Proposed settlement rate [1]
	TEXAS RAIL OAD COMMISSION DISTRICT NO. 6						
1	S. E. Carthage	Texas Gas Transmission Corp	G-4366		11.6288 (Increased)	11.6288	11.6288
11	Bethany	Tennessee Gas Transmission Co	G-4366	G-19869	12.6200 (June 7)	14.4248	14.4248
20	do	United Gas Pipe Line Co	G-4366		10.8876 (Increased)	10.8876	10.8876
21	do	do	G 4366		10.8876 (Increased)	10.8876	10.8876
26	do	Tennessee Gas Transmission Co	G-8648	G-19869	12.6200 (Initial)	14.4248	14.4248
32	Waskom	Texas Eastern Transmission Corp	G-11740	G-13504, G-16639, G-19755, RI61-204, RI62-143, RI63-109.	13.3000 (Initial)	15.4	15.0
38	Woodlawn	do	G-14539	G-16639, RI63-99	14.5252 (Increased)	14.7284	14.5252
39	N. E. Hallsville	do	G-15124	G-16937, RI63-110	14.5252 (Increased)	14.7284	14.5252
	TEXAS RAILROAD DISTRICT 3						
35	South Nome	do	G-13682	G-16639, G-19755, RI61-204, RI62-143, RI63-99.	14.4000 (Initial)	15.4	14.6
	MISSISSIPPI						
37	Gwinville	Southern Natural Gas Company	G-4366	G-14408, RI63-229 [6]	7.3647 (June 7)	20.000	[4] 14.0
	OKLAHOMA PANHANDLE						
49	E. Camerick	Northern Natural Gas Company	G-18494	RI60-463	15.5000 (Initial)	16.5000	15.50
54	Shattuck area	Transwestern Pipeline Co	G-16445		17.000 (Initial)	17.000	17.000
	TEXAS RAILROAD DISTRICT 2						
52	S. W. Speaks	Texas Eastern [3]	CI60-11	G-18092	11.2694 (Initial)	13.8733	13.8733

[1] Unless otherwise indicated, all rates are expressed in cents per Mcf at a pressure base of 14.65 psia, except in Louisiana and Mississippi, where the pressure base is 15.025 psia, unless otherwise indicated. All rates include applicable tax reimbursement.

[2] Sales being made under temporary authority.

[3] Applies to an increased rate of 25.5¢ per Mcf which has not been placed into effect.

[4] This sale has been excluded from the settlement.

[5] Hunt proposed a 17.0¢ per Mcf settlement rate which has been reduced to 14.0¢ per Mcf.

[6] Applies to an increased rate of 21.0¢ per Mcf which has not been placed into effect and also to a rate suspension under Rate Schedule No. 51, which is not included in this settlement.

OPINION NO. 397

MEDINA GATHERING CORPORATION, DOCKET NO. CP62-194; BENEDUM-TREES OIL COMPANY, OPERATOR, ET AL., CI62-694; BENEDUM-TREES OIL COMPANY, ET AL., CI62-695; PAUL BENEDUM, CI62-696; GREAT LAKES NATURAL GAS COMPANY, INC., CI62-730; THE GRANTLEY COMPANY, CI62-731; PAUL L. BRITTON, JR., OPERATOR, ET AL., CI62-732; ATLAS EXPLORATION COMPANY, OPERATOR, CI62-760; WORLDWIDE PETROLEUM CORPORATION, CI62-761; RUSSELL MCCONNELL, CI62-762; FLANIGAN BROS., OPERATOR AND AGENT, ET AL., CI62-999

OPINION AND ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 16, 1963)*

Syllabus

1. Producer certificates conditioned on initial price of 27 cents. P. 229.
2. Since evidence shows 27 cents is dominant prevailing price for wellhead sales of gas in Pennsylvania, it is not necessary that Commission pass on appropriateness of broadening area of comparison to include West Virginia. P. 229.
3. Commission *restates Skelly* holding that Producer's reliance on Policy Statement price level is not sufficient in itself to justify an initial price at that level in face of record evidence that preponderance of comparable sales have been certificated at lower initial price. P. 230.
4. While mindful of importance of administering initial price regulation in even-handed fashion, Commission cannot avoid findings compelled by this record by reference to result in single proceeding where no such record was before it. Pp. 230–231.
5. Considering escalation provisions and other claimed premium features, Commission *observes* that consistent application of "in line" comparision requires consideration of any additional feature of proposed sale which is of objectively measureable value. Pp. 231–232.
6. Permitting producers to maintain existing contract escalations will more than amply provide for whatever additional market value six-months peaking feature gives contracts over and above prevailing forms of contract in the area. P. 232.
7. Since Medina [gathering company] will engage in a jurisdictional sale and transportation it is a "Natural Gas Company" within the meaning of Section 2(6) of the Act—no other classification of overall nature of company's activities is relevant to determination of extent of Commission jurisdiction. P. 233.
8. Commission jurisdiction over Medina's facilities does not depend on economic function of company as a whole but on nature of specific facilities, considered item by item. P. 233.
9. Feasibility of Medina's project cannot be judged by same standards as that applied to major pipeline expansion—rather that applied to producer's proposed sale. P. 234.
10. In order to spare consumer risks of inadequate production, Commission imposes rate condition with respect to Medina's charges to pipeline. P. 234.
11. Commission *issues* certificates of public convenience and necessity, under Section 7, of the Natural Gas Act. Pp. 235–236.

*Initial decision appears on p. 236.

* Hunt proposed a 17.5¢ per Mcf escalation rate which has not been placed into effect and also to a rate suspension under Rate Schedule No. 51, which is not included in this settlement.

Bradford Ross, Sherman Poland and *Lewis Carroll* for Medina Gathering Corporation and Producers

Allan R. Squires, Herbert E. Squires and *Federick D. Cornelius* for Pennsylvania Public Utilities Commission

Charles E. McGee and *James D. McKinney, Jr.* for Pennsylvania Gas Company and United Natural Gas Company

Edwin F. Russell and *Harry G. Hill, Jr.* for the Brooklyn Union Gas Company

Bernard Hulkower for Long Island Lighting Company

G. Kirby Herrington, Norman A. Flaningam, Thomas F. Brosnan, Jacob Goldberg and *Richard B. Gordon* for New York State Natural Gas Corporation

George C. Williams, Norman A. Flaningam, Thomas F. Brosnan, Jacob Goldberg and *Paul Binkley* for the East Ohio Gas Company and Lake Shore Pipe Line Company

William W. Bedwell and *Thomas B. Taylor, Jr.* for Tennessee Gas Transmission Company

David S. Lichtenstein and *John J. Mullally* for the Staff of the Federal Power Commission

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

O'CONNOR, *Commissioner:*

In late 1961 and early 1962, Medina Gathering Company and a number of independent producers filed certificate applications with the Commission in order to implement a plan to sell gas to Tennessee Gas Transmission Company from newly developed fields in Erie and Crawford counties in northwestern Pennsylvania and the adjoining Ashtabula County in Ohio. The producer applicants have to date completed about eighteen successful wells in the area, tapping a rather thin layer of sandstone known as the Medina sands, some 3,500 feet below the surface. Because of a relatively new development in the technology, known as hydraulic fracturing, the applicants believe that it is once again economically feasible to extract gas from the region in which the American petroleum industry originated over a century ago.

The main line of Tennessee's system traverses northwest Pennsylvania quite near the eastern extremities of the areas of anticipated production. Medina Gathering Company proposes to purchase the gas at the wellheads and deliver it to Tennessee at its main line at a point near the Erie-Crawford county line. Medina estimates that it will be necessary to construct about 28 miles of 10 or 12 inch pipe, at an estimated cost of $960,000 and as much as 78 miles of smaller lateral and well lines extending to the well heads, at an estimated cost of $2.5 million.

The proposals of Medina and the producers were subjected to intensive scrutiny at a lengthy hearing during the fall of 1962. Operating companies of the Natural Fuel Gas System and the Consolidated Natural Gas System, both of which are currently purchasing gas in the area, were active as intervenors. On May 3, 1963, the Presiding Examiner issued his initial decision recommending that all of the applications (except one producer application which was not prosecuted and apparently has been abandoned) be granted, subject to certain conditions. Of all the parties, only the Commission staff has filed exceptions to the Examiner's decision; the producers, Medina, and Tennessee have submitted replies to the staff exceptions.

THE ISSUE OF PRODUCERS' PRICES

The first of the staff exceptions relates to the initial-price condition imposed by the Examiner.

The producers' contracts with Medina were executed in the late summer and fall of 1961. They are of 20 years duration although the producers reserve the right to cease production from any well which they deem incapable of producing gas in paying quantities under normal methods of operation. The contracts provide for an initial price of 30¢ per Mcf (at 15.025 psia),[1] 31¢ on and after November 1, 1964, and two further 1¢ escalations at five year intervals.

The question of whether or not the price terms of these contracts are "in line" with those of the area which is relevant for comparison was one of the principal issues presented to the Examiner for decision. The staff sponsored an exhibit showing the initial rate for all jurisdictional sales currently being made in Pennsylvania and Ohio under contracts dated prior to September 1961. The number of certificated sales in Ohio (only one of which was subsequent to 1954) is so small as to be insignificant for these purposes. As to Pennsylvania, the Examiner found "the staff evidence is overwhelming to the effect that 27¢ is the dominant prevailing price for deliveries in Pennsylvania, in interstate commerce, that is, half the number of contracts and 84% of the volume." Considering next only the Pennsylvania contracts executed in the period from 1959 to 1961, the Examiner found that 27¢ was still the dominant price, "covering 60% of the sales and seven-eighths of the volume." All but one of the remaining sales were at 28.1¢. The only other evidence of comparative prices submitted by any of the parties related to certain nonjurisdictional intrastate sales being made by intervenor East Ohio Gas Company in Ohio and intervenor Pennsylvania Gas Company in Pennsylvania.

Despite his evaluation of the staff evidence, the Examiner decided that the appropriate "in line" price to which the intial rates should be reduced as a condition to the issuance of certificates, is 27.45¢. This is the price set forth in the Commission's Statement of General Policy No. 61–1, 18 C.F.R. 2.56, as the ceiling on the initial prices of new sales in West Virginia. As we read the Examiner's decision, he believed that certain actions by the Commission have indicated a judgment that the 27.45¢ West Virginia area price should be applied to the entire Appalachian region. The Examiner pointed to the recent certification without initial price condition of a 27.50¢ sale in Fayette County, Pennsylvania, the county immediately adjacent to West Virginia. *Texaco, Inc.*, Docket No. G–4614, *et al.*, order issued April 3, 1963 (sale by William E. Snee, *et al.*, Docket No. CI61–1743). In addition, the Examiner referred to the Notice of Proposed Rulemaking in Docket No. R–218, issued June 11, 1962, 27 Fed. Reg. 5714, wherein we proposed to establish, for purposes of applying Statement of General Policy No. 61–1, a single Appalachian area which would include West Virginia, Ohio, the eastern portion of Kentucky, the Western portions of Maryland, Pennsylvania, and New York, and Buchannan County, Virginia. Finally, the Examiner relied on certain language in *Allegheny Land & Mineral Co.*, 25 FPC 886, suggesting that the Commission there regarded the entire Appalachian area as an indivisible entity.

The staff has filed an exception to the Examiner's decision on the initial-price issue contending that the record in evidence of this case will not support an initial price in excess of 27¢ per Mcf. We have concluded that the staff's exception should be sustained and that issuance of certificates should be conditioned on the producers' charging an initial price not in excess of 27¢. In our view it is not necessary for a proper resolution of this issue that we pass upon the appropriateness or inappropriateness of broadening the area of comparison for these sales to include West Virginia. For though we may assume for present purposes

[1] All of the prices to be referred to in this opinion are computed on the pressure base of 15.025 psia.

that it was not improper to include West Virginia, the Examiner's fundamental error lay in terminating his inquiry as soon as he had made reference to the ceiling price for West Virginia listed in the Statement of General Policy.[2] This fails to take account of our decision in *Skelly Oil Co.*, 28 FPC 401, and later cases, where we held that a producer's reliance on the Policy Statement price level is not sufficient in itself to justify an initial price at that level in the face of record evidence that the great preponderance of comparable sales in the area have been certificated at a lower initial price.

As we recognized in *Skelly* the mandate to this Commission under *Catco* and the later courts of appeals decisions is clear: to impose a suitable condition limiting a producer's initial price to the level of prior certificated sales which are comparable and which are not "under a cloud". In this case, according to the Examiner's explicit findings, the record does contain evidence (substantially un-refuted) of a price line for comparable sales below the 27.45¢ Policy Statement price for West Virginia, namely the evidence of a preponderance of Pennsylvania sales at 27¢.

To be sure, we did in *Skelly* afford those producers who entered into contracts subsequent to the promulgation of the Policy Statement an opportunity to demonstrate the effect which should be given to the Policy Statement price, especially since numerous temporary authorizations had been issued at that price. However, still assuming for purposes of *this* discussion that sales in West Virginia would be relevant to these Pennsylvania sales, we note that the producers here expressly disclaimed any intention to rely upon the Policy Statement price for West Virginia. In an answer to staff's exceptions filed on behalf of Medina Gathering Company by the counsel who have represented the producer applicants as well, it is stated:

> Both staff counsel and the Examiner fail to perceive correctly the area which will be affected by Medina. That area is Northeast Ohio, Northwest Pennsylvania and the adjacent New York area.

Since the producers are content to stand upon the record of Pennsylvania and Ohio sales (the record reveals no evidence, nor are we aware, of any certificated New York sales) and since we are satisfied that our obligations under *Catco* do not require in this instance that we *sua sponte* order reopening of the record for evidence of West Virginia sales[3] it remains only to assess the evidence of Pennsylvania prices. The Examiner appeared to be of the view that the overwhelming evidence of 27¢ as the predominant price in Pennsylvania could be taken as no more than proof of the line for "the central Pennsylvania counties," in view of the fact that the Commission on April 3, 1963, certificated without condition a sale in Fayette County, Pennsylvania (adjacent to West Virginia) at an initial price of 27.5¢. Contrary to the Examiner's impression, this action did not amount to the establishment of a "south Pennsylvania price" at 27.5¢. Our certification of the Fayette County sale, which involves an estimated daily volume of about 1250 Mcf, was the result of an uncontested proceeding, wherein we did not have the benefit of the extensive evidence of Pennsylvania prices that were introduced into the record of this fully litigated case. It is doubtful whether we could have reached that result if such evidence had been before us. While we are fully mindful of the

[2] We should note also that our proposed rule establishing a single Appalachian area for purposes of administering Statement of General Policy No. 61–1, to which the Examiner referred, has no direct bearing on the price question. It is not to be implied from the proposed rule that the current West Virginia price would necessarily be established as the price for the Appalachian area.

[3] None of the intervenors, including the Pennsylvania Public Utilities Commission, Long Island Lighting Company, and Brooklyn Union Gas Company, has suggested the necessity of referring to West Virginia prices.

importance of administering the initial price regulation of producers in an even-handed fashion, we cannot avoid the findings that this record compels by reference to the result in a single proceeding in which no such record was before us.

Thus we find the staff exception to be well taken, and indeed we have given serious consideration to the question of whether it is necessary to go still further in order to bring these proposed prices into line. As we have noted, these twenty-year contracts provide for three fixed escalations of 1¢ each, the first of which is as early as November 1964. This is in decided contrast to the prevailing practice in the area, as revealed by the evidence, which is to have contracts for the life of the lease without future escalation provisions of any sort, either fixed or indefinite. We have had frequent occasion to give recognition to the evident proposition that the comparison of contract prices cannot be confined to initial prices alone. Buyer and seller quite obviously evaluate their bargain in terms of the price provided for over the contract life; future escalation provisions have a present value and unusually generous provisions for future escalations could cause general price rises in the market just as much as an excessive initial price See, *e.g.*, *Gulf Oil Corp.*, 23 FPC 664. In view of the substantial premium that the fixed escalation provisions appear on their face to give to the producers here, it is arguable that some adjustment is required to keep these contracts in line with the prevailing contracts providing for an initial 27¢ price, either through a condition further reducing the initial price or possibly a condition requiring modification or elimination of the escalations. See *Peoples Gulf Coast Natural Gas Pipeline Co.*, 24 FPC 106.

We note, however, that at the hearing the parties' attention was not focused on the fixed step escalations. Probably as a consequnce, the record is not as informative as it might be on such matters as the actual experienced duration of the contracts which run for the life of the lease and the practices of the pipeline purchasers in agreeing to price renegotiations, although not contractually required to do so. Because the existing contracts in the area are so different from the usual forms of contract with which we have become familiar in the more active producing areas of the country, we would be hesitant to evaluate the precise significance of the escalations on the present record. A remand for the taking of additional evidence would, in the circumstances, be unduly burdensome on the applicants.

Moreover, we need also to consider certain claims by the producers that their contracts give Medina the benefit of certain premium features. We agree entirely with the Examiner that the alleged option of Medina to acquire storage rights in the wells upon cessation of production does not justify a bonus above the "in line" price since the prevailing practice in the area is to include an option to acquire storage rights as part of the contract package. See *e.g.*, *Texaco Seaboard, Inc.*, 29 FPC 593, Opinion No. 383; *Standard Oil Co. of California*, 27 FPC 1153, *aff'd sub nom. California Co., Western Division* v. *F.P.C.*, 315 F. 2d 652 (CA10, 1963). The producers' second claim is that their contracts give Medina the right to take all of the gas during the six winter months (as Tennessee has the corresponding right to make all its purchases from Medina during the six winter months) and that this constitutes a peaking service of substantial additional value. The Examiner evidently was of the view that the claim of an additional peaking value raised a somewhat more difficult question. While a large number of the contracts for certificated sales permit some reduction in summer takes (such as the summer cutback to 33⅓% which appears to be characteristic of Manufacturers Light and Heat Company's contracts), so far as the record re-

veals, none permits the complete elimination of summer takes.[4] The Examiner was of the view that it was unnecessary to resolve this and other questions surrounding the alleged premium feature since the claim could more appropriately be raised in defense of the justness and reasonableness of any increased rate that the producers might file. We believe, however, that a consistent application of the "in line" comparison requires that we give consideration at the stage of certification to any additional feature of the proposed sale which is of objectively measurable value. In this case we think it is sufficient to say that permitting the producers to maintain the existing contract escalations will, in our judgment, more than amply provide for whatever additional market value the six-months peaking feature gives these contracts over and above the prevailing forms of contract in the area.

THE ISSUE OF MEDINA'S STATUS

The staff's exceptions question one other aspect of the Examiner's decision. One of the highly controverted issues in this case was whether Medina's proposed program of constructing some $2.5 million of facilities to transmit the gas from the various well heads to Tennessee's pipeline is a feasible one in the light of the present evidence of the likely reserves. The Examiner resolved the issue of feasibility in favor of the applicants, expressing the view that Medina was not obliged to make the same kind of showing of feasibility that would be required of a long-line transmission company. At least in part the Examiner appeared to reach this conclusion because of a belief that certain conditions that he imposed at the suggestion of the staff and with the acquiescence of Medina guaranteed that Medina and not the consumers would bear the risks of insufficient gas production. The staff has no disagreement with this. But to some extent the Examiner's acceptance of a lesser showing of feasibility here seems to have derived from his view that Medina's proposed operations basically would be "gathering" within the meaning of Section 1(b) of the Natural Gas Act and thus exempt from the Commission's certificating jurisdiction. The following passage from the Examiner's decision reveals his reasoning:

> It is not necessary to rest upon the conclusion—although it seems entirely supportable—that the Medina program from beginning to end is functionally and economically a gathering program which the law exempts from the jurisdiction and therefore the responsibility of the Federal Power Commission, upon which basis no finding of feasibility should or even could be required for a certificate to permit Medina's sales and also to permit whatever incidental transportation takes place at the end of its technical gathering. In other words, the actual activity whose feasibility is inherently uncertain is the very activity which the statute exempts. Rather, in the staff's view and in its obviously sensible, proposed solution, the jurisdiction point does not become critical or controlling. Since the sale by Medina (as distinguished from its gathering) is clearly and fully jurisdictional (the very point of *Phillips*), the staff's solution is to limit Medina's sale price to its own proposal, that is 7¢ plus the cost of the gas.

The staff, while not objecting to the result reached by the Examiner, takes exception to the discussion quoted above and several others of similar purport. The staff argues that Medina will be primarily engaged in the transmission of natural gas in interstate commerce and that therefore the question of feasibility cannot be avoided on the ground that Medina's activities are basically of an exempt nature. In a reply to staff's exceptions, Medina states that the questioned portions of the Examiner's decision should merely be regarded as dicta which

[4] The six-months privilege is a feature of some of East Ohio Gas Company's intrastate purchases in Ohio at an initial price of 27¢.

would not be binding in future cases. Medina acknowledges that it will be a "natural gas company", within the meaning of Section 2(6) of the Natural Gas Act and that most of its facilities will be jurisdictional facilities. It suggests that the Commission simply issue a certificate covering all of those facilities to be constructed which will be jurisdictional under the applicable law, without now pausing to draw hypothetically the fine line between the facilities for "gathering", which will be exempt from our jurisdiction, and all the remaining facilities, which will be subject to it.

While we believe that these candid statements by Medina are most helpful, it may avoid some confusion in the future if we indicate briefly wherein we think the Examiner erred. In suggesting that "the Medina program from beginning to end is functionally and economically a gathering program," the Examiner enters upon a kind of classification which has no purpose or utility in determining the extent of this Commission's jurisdiction. Under Section 7(c) of the Natural Gas Act, this Commission (1) certificates those transportation or sales of natural gas which are subject to its jurisdiction and (2) certificates the construction, extension, and operation of those facilities which are subject to its jurisdiction. Since Medina will engage in both a jurisdictional sale and jurisdictional transportation, it is a "natural gas company," within the meaning of Section 2(6) of the Act. No other classification of the overall nature of a company's activities is relevant in determining the extent of this Commission's jurisdiction.[5]

When we turn to the question of the Commission's jurisdiction over Medina's facilities, the answers depend not on the economic function of the company as a whole but rather on the nature of the specific facilities, considered item by item. In general, all the facilities to be used for the sale to Tennessee must be certificated, except those which are used solely for "gathering", within the meaning of Section 1(b) of the Act. As Medina suggests, the determination of the point at which gathering ends is not without its difficulties. The Commission's decisions in *Barnes Transportation Co.*, 18 FPC 369, and *Texas Gas Corp.*, 18 FPC 397, indicated some guidelines for making that determination.[6] We are aware that some persons have questioned the practicality of the *Barnes* formulation, and we should not wish to foreclose any party in an appropriate case from suggesting a guideline which in its judgments is clearer and easier of application.

But plainly it would not be appropriate to venture upon such an inquiry in this case. The record reveals very little detail of the facilities to be constructed by Medina for the understandable reason that the precise number and location of the well lines, lateral lines, etc., will largely depend on the results of the producers' drilling program. In substance the authorization which Medina requests here is similar to the "budget-type" certificates which we frequently issue to pipelines pursuant to § 2.58 of the Rules of Practice of Procedure, authorizing the construction of unspecified facilities, within a stated dollar limit, for the purpose of connecting the pipeline's system with additional sources of supply. Since Medina has manifested a clear understanding that all of its facilities will be subject to our jurisdiction except those which are solely for "gathering", it will

[5] We should note that, pursuant to the power conferred by Section 16 of the Natural Gas Act, the Commission has established two principal classifications of "natural gas companies"—generally referred to as "pipelines" and "independent producers"—which are subject to some varying requirements with respect to the form of certificate application, rate schedule and increased rate filings, annual reports, etc. In this case, Medina acknowledges that it will be obliged to follow the "pipeline" form of regulation.

[6] There would appear to be some doubt whether the Examiner correctly applied the *Barnes* test in the discussion which appears at footnote 19 of his opinion. Because of the view we have taken of the case, however, we have not found it necessary to consider the question fully.

suffice to issue the certificate in the usual form, authorizing the sale "together with the construction and operation of all facilities subject to the jurisdiction of the Commission necessary therefor". The periodic reports filed by Medina pursuant to Section 157.20(c) of the Natural Gas Regulations should state in detail the description, location, cost, etc. of *all* the facilities actually constructed. If there is then any controversy over which of the facilities are subject to our jurisdiction, it can be resolved at that time.

While we cannot pass over the question of feasibility in this case as being beyond our jurisdiction, we do appreciate that the feasibility of Medina's project cannot be judged by the same standards that we would apply, for example, to the proposed expansion of a major long-time transmission system. In effect, Medina is proposing to share with the producers (any one of whom would probably be unable either to interest Tennessee in picking up his gas or to transport it to Tennessee's line himself) the risk that the Medina sands will not be as productive as they now hope. As long as it is guaranteed that Medina will not, in turn, shift these risks to the consumer by filing increased rates which are based upon a claimed inadequate rate of return, we think it is appropriate that our scrutiny of the economic feasibility of this project be closer to the kind of examination we would give a producer's proposed sale and related construction of jurisdictional facilities.

Medina's contract with Tennessee provides for an initial price of 33¢ per Mcf plus a payment of 4¢ per Mcf which is alleged to be consideration for the transfer by Medina of storage rights in the wells when depleted. The contract also provides for three 1¢ periodic escalations which exactly correspond to the escalations provided for in the producers' contracts with Medina. Medina submitted a study showing that if it is able to sell the full contract quantity to Tennessee, it will earn a return on its investment of more than 8% in the third year of operations. This calculation is based upon a 7¢ spread between the price paid to the producers and the rate charged Tennessee, the spread which Medina would receive under the initial-rate provisions of the contracts as they now stand. We agree with the Examiner that, in order to spare the consumer the risks of inadequate production, it is necessary to impose a condition that Medina shall at no time charge a rate higher than the sum of 7¢ plus whatever rate may then be lawfully in effect for any one of the producer's sales to Medina. By application of this condition, Medina will be required to file an initial rate of 34¢ per Mcf. Despite our staff's suggestion, we do not believe that it will be necessary to require Medina to amend the contract with Tennessee in order to incorporate the seven-cent limitation. The Examiner's decision, which we are adopting in this respect, provided quite clearly that the seven-cent limitation is to be a continuing condition applicable for the entire duration of the sale unless modified by the Commission. Since Medina has not filed any exceptions to the Examiner's decision, it is apparent that it is content to accept a certificate subject to this limitation. In order properly to implement the condition we are imposing, it is necessary to modify the direction contained in Ordering Paragraph (D) of the Examiner's Decision that Medina should file its contract with Tennessee as a special rate schedule. Because the contract with Tennessee designates part of the actual compensation to be received by Medina as a per Mcf payment for transfer of storage rights, we think that Medina should file a tariff in accordance with §§ 154.31–41 of our Natural Gas Regulations, showing as the rate the full compensation to be received by Medina per Mcf of gas sold, in accordance with the contract and the conditions herein imposed.

The Commission further finds:

(1) The following applicants:

Benedum-Trees Oil Company, Operator, *et al.*,

Benedum-Trees Oil Company, *et al.*,
Paul Benedum,
Great Lakes Natural Gas Company, Inc.,
The Grantley Company,
Paul L. Britton, Jr., Operator, *et al.*,
Worldwide Petroleum Corporation,
Russell McConnell,
Flanigan Brothers, Operator and Agent, *et al.*,

are each, or upon initiation of the proposed sale to Medina will be, engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and are or will be "natural gas companies" within the purview of the Natural Gas Act.

(2) Upon initiation of its proposed service and sale, the Medina Gathering Corporation will be a "natural gas company" subject to the jurisdiction of the Commission and a pipeline company for purposes of the Commission's regulations.

(3) The sales of natural gas proposed by all of the producer applicants above-named and the sale by the Medina Gathering Corporation, together with the construction and operation of all facilities subject to the jurisdiction of the Commission and necessary therefor, are subject to the requirements of Section 7(c) of the Natural Gas Act. The sales are required by the public convenience and necessity, and certificates therefor should issue to each of them, subject to the conditions herein stated, such conditions being required by the public convenience and necessity.

(4) The several applicants named are able and willing to do the acts and to perform the services proposed and to conform to the Natural Gas Act and to the requirements and regulations of the Commission thereunder.

(5) The public convenience and necessity requires that the initial prices charged by the applicants named in paragraph (1) above for the sale proposed in their certificate applications in this proceeding be not greater than 27 cents per Mcf at 15.025 psia.

The Commission orders:

(A) Certificates of public convenience and necessity are hereby issued to the applicants named in paragraph (1) above for the sale of natural gas in interstate commerce for resale as proposed in the respective applications, together with the construction and operation of any facilities subject to the jurisdiction of the Commission, necessary therefor upon the terms and conditions of this order.

(B) The certificates issued to the producer applicants are hereby conditioned to prohibit any total initial price, including all reimbursements and charges, greater than 27 cents per Mcf at 15.025 psia, from the date of the issuance of this order until such prices may be lawfully changed in the manner provided by the Natural Gas Act.

(C) The certificates issued herein are conditioned upon their acceptance in writing by the respective producer applicants within 30 days of the issuance of this order.

(D) The certificates issued herein are not transferable and shall be effective only so long as each of said applicants continues the acts and operations herein authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations, and orders of the Commission.

(E) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 of the Commission's Regulations under said Act requiring the filing of rate schedules

for the service herein authorized and is without prejudice to any findings or orders which may have been or hereafter may be made by the Commission in any proceeding now pending or hereinafter instituted by or against the applicants. Further, the action taken in these proceedings shall not foreclose nor prejudice any further proceeding or objection relating to the operation of any price or related provisions in the gas contracts here involved.

(F) A certificate of public convenience and necessity is hereby issued to Medina Gathering Corporation for the sale of natural gas to Tennessee Gas Transmission Company, together with the construction and operation of all facilities subject to the jurisdiction of the Commission and necessary therefor, all as described more fully in the application and amendments thereto.

(G) The general terms and conditions set forth in Section 157.20 of the Commission's Regulations under the Natural Gas Act shall attach to the certificate issued to Medina.

(H) The certificate issued to Medina is further conditioned to require that its rate for sale to Tennessee Gas Transmission shall not at any time exceed the sum of seven cents per Mcf (at 15.025 psia) plus any rate lawfully in effect for the sale of gas to Medina by any one of the producer applicants.

(I) Medina shall, within 90 days after the first two years of operations, file detailed data setting forth its costs upon the basis of actual experience.

(J) The certificate is further conditioned upon Medina's revising its plan of financing so that the long-term debt ratio will not exceed 75 percent of the total capitalization at the end of the second year of operation.

(K) Medina shall file a tariff in accordance with Sections 154.31–41 of the Commission's Regulations under the Natural Gas Act, which shall show as the rate in effect the full compensation to be received by Medina per Mcf of gas sold, as provided for by the contract and the conditions herein imposed.

(L) The application of Atlas Exploration Company, Operator, in Docket No. CI62–760 is dismissed.

(M) The examiner's decision, to the extent not inconsistent herewith, is hereby adopted as part of this opinion and order.

(N) All exceptions not granted herein are hereby denied.

INITIAL DECISION

UPON THE PRODUCERS' AND GATHERER'S APPLICATIONS FOR A CERTIFICATE UNDER THE NATURAL GAS ACT

(Issued May 3, 1963)

TABLE OF CONTENTS

		Page
I.	Nature of the case	236
II.	Procedural history	237
III.	Motion to dismiss for lack of producer witnesses	238
IV.	The project described	243
V.	Gas reserves	248
VI.	The producers' price—30¢	259
VII.	Feasibility of the gatherer's project	267
VIII.	Findings and conclusions	271

ELLIS, *Presiding Examiner:*

I. Nature of the Case

Twelve hundred yards below the surface of the earth in the neighborhood of Erie, Pennsylvania, there is claimed to be found a thin layer of sandstone, spread over an area of many miles and containing natural gas in an uncertain

quantity, significant in itself but rather small in relation to many cases from other parts of the country. Certain local interests, also some producers from the southwest, have undertaken a progam to drill through the earth's crust to this putative productive area, capture the gas there hoped to be found, and market it (through an intermediary) to the Tennessee Gas Transmission Company, whose main line to the New England states crosses nearby. This is the initial decision on their certificate application to market the gas to the gathering company and on the latter's application to sell it to Tennessee.

The program has been quite stoutly contested and opposed by certain present companies who produce, purchase and distribute gas in the immediate area. Not entirely without equivocation, the FPC staff has recommended that if a certificate is to be issued for this program it shall only be under certain stringent conditions as to price, both for the producers' sale and for the gathering rate. In general, the issues raised question the reality of the gas reserves claimed, the feasibility of the entire program, the ability of the various promoters to accomplish it, the availability of the capital to get it started, the "public convenience and necessity" of the project even if it should work, and, most of all, the 30¢ price to be paid to the producers.

There was besought every urgency available to conclude the proceeding because, the market being interstate, the project cannot begin without the Federal permit, no temporary certificate has been issued, and each day it continues costs the producers $333 for delay rentals to their lessors.[1] The application was filed in February a year ago, but was revised a number of times in the next few months and many more times during the course of the hearings as various deficiencies or indeterminables developed.

II. Procedural History

August-November 1961: The several producers contracted to produce, sell and deliver their gas to what is now the Medina Gathering Corporation.

December 1961-February 1962: Applications were filed by ten producers requesting a certificate under Section 7 of the Natural Gas Act to authorize their sales to what is now the Medina Gathering Corporation.

February 1962: What is now the Medina Gathering Corporation contracted to gather and deliver the gas to a point on the line of the Tennessee Gas Transmission Company. Two weeks later Medina filed with the Federal Power Commission its application for a certificate of public convenience and necessity, requesting "such authorization as is necessary for it to gather, sell and deliver natural gas to Tennessee for resale in interstate commerce," and suggesting that its operations come within the FPC regulations which govern filings by producers and gatherers (Section 154.91). At the same time, the application purported to attach all the information which would be required of a pipeline natural gas company.

March 1962: Medina's application was amended to supply additional information requested by the staff, including cost data, reserve estimates, etc.

April 1962: Medina's application was further amended to set forth a revised plan of financing.

May 1962: Medina's application was further amended to supply additional matters requested by the staff. On May 18, the Commission's notice of application issued, calling for a hearing under what is known as the "shortened procedure," which is provided for non-contested cases.

June 1962: The hearing scheduled for June 26 was postponed to a date to be later fixed, and a number of intervention petitions were filed.

---

[1] 12T1263. But half of this is on acreage not regarded as proved up and not included in the reserves estimate.

July 1962: Additional petitions for leave to intervene were filed.

August 1962: Notice issued of the producers' applications, which were set for hearing on October 2.

September 1962: Medina's application was consolidated for purposes of hearing with the producers' applications, which was designated to begin October 2. On September 18, the several applicants filed a motion for a prehearing conference and, by the Examiner's order of the following day, the prehearing conference was called for September 26. At this conference the applicants' case, including exhibits and testimony, was made available to all parties and the case of the potential interveners was outlined and in some respects limited. By concession, the hearing was scheduled to open on October 4, cross-examination to take place on October 4, 5, 11 and 12, the staff's exhibits to be served on October 4 and the interveners' case in opposition to be served on October 12 and to be ready to be cross-examined on October 15.[2]

October 1962: The Commission's order of October 5, 1962, announced the intervention of the Pennsylvania Public Utility Commission and granted the petitions to intervene which had been filed by the following:

East Ohio Gas Company
Lake Shore Pipe Line Company
New York State Natural Gas Corporation
Tennessee Gas Transmission Company
Brooklyn Union Gas Company
Long Island Lighting Company
Pennsylvania Gas Company
United Natural Gas Company

October-December 1962: The hearing continued on twenty-two separate days, with only such recesses and postponements as were required by the parties, including the applicants, in order to permit them to prepare cross-examination and present further testimony and their rebuttal case.

January-February 1963: Briefs were filed by the several applicants and their supporting intervener. Four weeks later, briefs were filed by the F.P.C. staff and by the interveners opposing the application, also a motion to dismiss by the Pennsylvania Gas Company and the United Natural Gas Company. Two weeks later, there were filed reply briefs by the applicants and by their supporting intervener (Tennessee).

III. Motion to Dismiss for Lack of Producer Witnesses

Calling upon one law firm to represent both of them, the interveners, Pennsylvania Gas Company and United Natural Gas Company, have filed a motion to dismiss the applications of all the independent producers who called upon one of them (Mr. Paul Britton) to represent all of them. It is said that his appearance as a witness for and on behalf of all the producers[3] does not furnish the forum competent and adequate testimony to support the respective applications, that the applicants have failed to sustain their statutory burden of proof (14 FPC 134, 145), and that the procedure selected deprives the interveners of their right to cross-examine the eight producer applicants. Their brief adds the suggestion, or perhaps something more than a suggestion, that the Examiner can lawfully

[2] Prehearing transcript, page 147.

[3] There is one exception. The Atlas Exploration Company, Operator (Docket CI62–720), so the forum was advised by the attorney designated in their application, has decided not to prosecute its application and it was not represented at the hearing (1T43 and Prehearing transcript, pages 4–5). Accordingly, the motion to dismiss as to that applicant is granted. 23 FPC 364, 377. The order here subjoined so provides.

consider only Mr. Britton's own case. "To do otherwise would be clear reversible error." [p. 56] The Commission has directed that the motion to dismiss be referred to the examiner for disposition in the initial decision in this matter.

The nine producer applicants, all of whom plan to operate in this immediate geographic area, have signed separate contracts for the sale of gas to the Medina Gathering Corporation and have filed separate applications here for the certificates permitting the proposed sales. All the applications and contracts appear to be in like form, with like conditions, stipulations and agreements. All contracts call for the identical price (30¢ per Mcf initially, with an option on the part of the buyer to take the gas during the six winter months only, that is, November through April), and all were executed during 1961, on various dates between August 16 and November 21. All but one estimate the same monthly volume; that of Great Lakes Natural is one-third lower. The delivery point in each case is the same, that is, at the wellhead.

The witness appearing for the eight other applicants and for his own firm was Mr. Paul Britton, whose partnership, as operator, has filed its own application under CI62–732. He testified that he has been authorized by each of the other eight producer applicants to testify on their behalf (1T80, 100).[4] It was related that Britton had been in touch with other producers in the group to discuss their common problem of a gas sales outlet in the area. They organized a meeting of many of the major leaseholders and producers in the three-county area to begin negotiations with the proposed gatherer and explore the feasibility of the undertaking. At the first meeting, Britton was appointed representative of the northern producers. Most of the present applicants were represented; others joined later. At later meetings of the group, a proposed gas sales contract was worked out and the sale of storage rights discussed. At a final meeting in July 1961, representatives of all the parties who have filed in the proceedings met and received an explanation of the terms of the contracts and of the buyer's program, including the filing of its application with the Federal Power Commission (1T90–96). Their joint negotiations with respect to the price were explained at length, including the felt need to reduce the price from 32¢ to 30¢.

The case of the producers other than Mr. Britton is moved for dismissal, without consideration upon the merits, purely for failure of the producers themselves to appear at the hearing.[5] Even if it be found that testimony on behalf of the several applicants is specifically required,[6] it seems to be clear that the nine producers have a very distinct community of interest, they are acting in concert, and their designated attorney confirms the specific averment by Mr. Britton that he was and is authorized to speak for them and to present whatever testimony and answer whatever questions may be required. In that view, the motion to dismiss loses force because each several applicant did have a witness here to

---

[4] This was confirmed by the attorney for the applicants referred to by name in each application (15T1874; Preh. T. 14).

[5] By way of comparison, note there seems to be no objection to Mr. Britton's representation of the three co-owners with whom he is making his own sale, since he files for all of them as required by the Commission's regulations, paragraph 154.91. Likewise, in CI62–695 the applicant is listed as the Benedum-Trees Oil Company and the application is signed and sworn to by its president, a Mr. Floto. Yet it is shown that company itself has only a one-sixth ownership, that two other companies also have a one-sixth ownership each, while the Arkansas Louisiana Gas Company has a 50% ownership. Apparently it would have been thought quite all right (indeed required) for Mr. Floto to appear and represent his three co-owners (none of whom signed anything here), but it is thought *not* all right for Mr. Floto and associates to ask Mr. Britton to represent them.

[6] The interveners quote the following dictum from the case of *El Paso*, 23 FPC 369, 377: "As a general matter, in a contested case of this character, a producer must present the witnesses to support its own certificate application."

speak for him and support his certificate application, and that witness was Mr. Britton.

But this is not all. The written application, sworn to and verified by a responsible official of each applicant company, was in each case admitted in evidence as an item by reference with, however, the understanding that its acceptance as probative evidence is subject to the basic requirement of cross-examination (1T38–48). It is in this context that the interveners cite section 7(c) of the Administrative Procedure Act which insures to every party "such cross-examination as may be required for a full and true disclosure of the facts." But there must be read in this connection the sentence following in section 7(c): "In * * * determining * * * applications for initial licenses any agency may, where the interest of any party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form." Also the following subsection, 7(d), to the effect that the transcript and all papers and requests filed in the proceeding shall constitute the exclusive record for decision. Thus the question is whether, in the language of the statute, the interest of the interveners has in any way been "prejudiced" by the action of the forum in admitting as evidence the formal applications and the gas purchase contract with each, which is about all that appears of any consequence in and with the formal applications. In the first place, nobody denies that the papers filed are true copies of the contracts; neither is there challenged *any* specific averment in the four-page applications.[7] In the second place, there was offered to the intervener the opportunity to propose for consideration a subpoena for any witness really wanted, but none was requested (15T1873).

In the third place, the Commission has held that the intervener who complains of the lack of opportunity for cross-examination must show what line of testimony was thereby frustrated.[8] Only two items of possible inquiry are mentioned in the motion to dismiss, namely, the nature of the producers' drilling program and the source of the considerable financing obviously necessary to engage in it. But such questions relate purely to production, and the production of natural gas is quite outside the Commission's jurisdiction and responsibility under the Natural Gas Act and is of no greater recognizable concern to the interveners. The Commission, while undertaking to regulate, as the law says, the actual *sales* by independent producers, has, not once but a number of times, assured the courts that it has no program, purpose, or jurisdiction to regulate the activity of production.[9] That same assurance was given to the Congress when the exempting phrase "production or gathering" first appeared in the legislative history of the Natural Gas Act. See memo of April 2, 1936, from FPC Solicitor, now Judge

---

[7] Of course they do announce in the applications "that natural gas from the following sources will be involved," followed by a reference to the gas purchase agreement where the leases are merely listed. If it be the point that cross-examination should cover the quantity of gas in reserve, it will be recalled that the producers in each case adopted as their own the reserve evidence submitted by the Medina Gathering Corporation (1T99), as to which the cross-examination was full, in fact at great length.

[8] *Natural Gas Pipeline Company of America*, Opinion No. 367–A, 28 F.P.C. 737, November 15, 1962. Note that in the case cited by the interveners, *El Paso Natural Gas Company*, 23 F.P.C. 369, 377, the evidence adduced by certain other parties was held sufficient to warrant a certificate to the absent producers, their sales already being under way under a temporary authority. Presumably, however, in that case the temporary authorities which had issued contained the usual provision disclaiming any prejudging of the action to be taken on the final certificate.

[9] See the briefs filed for and by the Federal Power Commission in the following:
Saturn Oil & Gas Co. v. *F.P.C.* (CA 10, 1957) 250 F. 2d 61 (pp. 14–19)
Continental Oil Co. v. *F.P.C.* (CA 5, 1959) 266 F. 2d 208 (p. 20)
Cities Service Gas Co. v. *State Comm.* (1958) 355 U.S. 391
Continental Oil Co. v. *F.P.C.* (denial of cert.) 361 U.S. 827 (p. 9)
F.P.C. v. *Panhandle Eastern P. L. Co.* (1949) 337 U.S. 498 (pp. 12–33)

DeVane, printed in House Hearings on H.R. 11662 of the 74th Congress, at page 17. The Supreme Court has said a number of times that the exemption means what it says, and removes from the Commission's certificate responsibility the physical activity of production,[10] which is quite meaningless indeed if it does not cover such questions as the drilling program and the financing of the process. In fact, it will be recalled that, in one of the court cases sustaining Commission jurisdiction over the sales by the producers, it was the well-expressed apprehension of Judge Brown of the 5th Circuit, in dissent, that control over the sales would soon be expanded to include control over production.[11]

If, here the producers are to be questioned on the nature of their drilling program or how they are to finance it, it can be relevant only in the apparent view that the Commission's certification of the sale comprehends an approval of, or would be denied upon the disapproval of, the program of drilling and financing the wells. Bearing in mind that here the producers have not asked for a certificate to authorize their production or their drilling, but have asked only for approval of their proposed sale (which, as explained below at p. 248, appears to amount to a program of selling only whatever quantity their wells produce), it seems clear that the two subjects tentatively suggested for cross-examination of the absent producers are not necessary and relevant, their resolution to the satisfaction of the Commission and to the interveners is not essential to the findings required for a certificate of convenience and necessity under Section 7 of the Natural Gas Act, and the only interest to be served by hearing the eight or nine coveted witnesses would be the further delay of the proceeding.

But three examples are enough to demonstrate that this is indeed the Commission's actual (even if unexpressed) policy in the certification of producers' sales in interstate commerce made at the wellhead. That is, while the price and all other terms of the sale are very distinctly the Commission's responsibility and the subject of inquiry, the means and methods of production are not, at least in a case such as here, where the contract has no definite quantity, the pipeline buyer has disclaimed any present reliance, and there is no pipeline construction or marketing program to be certificated in dependence upon the new supply (3T474; 13T1570). The three exemplars that the Commission's policy is as stated are as follows:

(1) The guiding decision in these cases is known as *Catco*, 360 U.S. 378, where the production program was to deliver four or five times as much gas as here is suggested, but in the opinions and findings in that case (17 FPC 563, 732 and 880) not one word appears as to the ability of the applicants to finance the obviously considerable cost of the off-shore drilling to produce the great quantity of gas proposed. There, as here, the area dedicated was in the neighborhood of 100,000 acres and the number of wells drilled at the time of the hearing was very small, 22 in the case of *Catco* and 18 in the case of Medina. There it was mentioned that further development by drilling will occur in subsequent years, but (even though the producers' ability to perform the service proposed was placed in issue by one of the interveners, 17 FPC at p. 566) there was no suggestion that it was or is the Commission's responsibility to determine how the drilling would be financed. Indeed, under the present rules that cost of production is not in issue in a producer certificate case,[12] it

[10] *Phillips:* 347 U.S. 672, 678; *Colorado Interstate:* 324 U.S. 581, 598; *Hope:* 320 U.S. 591, 612.

[11] *Continental Oil Co.* v. *F.P.C.* (1959) 266 F. 2d 208, at p. 221.

[12] From Opinion No. 383, *Texaco Seaboard Inc.*, March 27, 1963, 29 F.P.C. 593, 595; "We held [in *Skelly*, Op. No. 362] that cost of service and financial requirements evidence normally is not relevant in producer certificate cases * * *" *Cf. California Oil Co.* v. *F.P.C.*, 315 F. 2d 652 (CA10, March 28, 1963).

is not perceived that the question of ability to finance the drilling could ever be determined when evidence of the cost has been excluded. Thus the Commission's opinion in the *Catco* case does not reflect upon, or even suggest awareness of, the cost of the offshore drilling or how the money is to be raised, and the Supreme Court's full and careful review of the Commission's program and policy in the certification of sales by independent producers of natural gas makes no suggestion that any such inquiry is necessary or even pertinent.

(2) Quite different from the rules applicable to pipeline applicants, the Commission's regulations for applications by independent producers for the FPC's permission to sell their gas make it quite evident that the applicant is not expected to demonstrate what wells he has or expects to have, or how he expects to finance them. This is in distinct contrast to paragraph 157.14 of the regulations, which governs the application by a *pipeline* to establish or extend its system and requires the pipeline company to show in detail its proposed financing, how its securities are to be sold, to whom and for what price. But, turning to section 157.23, which regulates filings by independent producers for certificates of convenience and necessity covering their proposed sale of natural gas, it is notable that not one word appears about financing or about a well drilling program. As to the sources of the gas to be produced, the applicant is to give "the approximate location of the fields and the points of delivery" (section 157.24), and furnish a map showing the production properties only in sufficient detail to give their general geographical location (section 157.25). Instead of drilling and financing, the Commission's concern is obviously with the single subject which the law directs the Commission to regulate with respect to producers, that is, their sales and the facilities necessary therefor. Thus the only real detail the regulations seem to require is a showing of the point of delivery and a conformed copy of each contract for sale. It is in the light of that very limited information which the Commission expects of any producer applicant that the Supreme Court could say in *Catco*, "The witnesses tendered developed little more information than was included in the printed contracts." (360 U.S. 378, 392.) It is evident that the showing of facts upon which the Commission is to make its finding that the producer is "able and willing" to make the sale proposed, as required by Section 7 of the Natural Gas Act, and to issue the certificate or license for the sale, does not require a recitation as to the number of wells drilled or to be drilled or the means of their financing. The necessary finding that the applicant is "able and willing" to sell gas does not presuppose an inquiry into whether he can first produce it, because production is specifically exempted from the purview of the Federal law, Section 1(b), N.G.A.

(3) To exemplify actual current operations under these regulations, there may be referred to as typical a recent uncontested case in which the Commission has just "certificated" a total of 132 separate sales by independent producers to numerous pipeline buyers in many states. In Docket G–4324 and many others, the Commission's order of February 27, 1963, has issued its license or certificate for the sales in the many dockets there consolidated. Out of the total, 56 cover contracts for delivery of gas in West Virginia.[12] There have been examined the official files pertaining to nine of the West Virginia 25¢-sales, which involve two different buyers, and official notice is taken of the contents of these public files. In none of the files does there appear a single word on the subject of the number

[12] As to price: 45 are at a base price of 25¢ (at 15.325), 11 are in West Virginia but at other prices (only one above 25¢ and that is at the rate of 27.5¢ for a delivery in Lewis County, West Virginia), and 76 cover sales in other states at various prices "at or below established ceiling prices." It is adverted to below that each of the contracts examined has a special condition calling for the summer schedule to be at the buyer's option.

of wells drilled or to be drilled or of the financing, if any, required for the production. Not a scintilla of evidence was offered or required to show the amount of the gas underlying the acreage reported as dedicated, or what drilling has taken place, or what drilling is expected to be required or is scheduled, or what expense is to be faced to accomplish the production, or how the financing, if needed, is to be effected. Under the heading of "gas supply—own production" there is shown in each case only the number of acres controlled and their location.[14] It is true of course that, like many others, this omnibus certificate was uncontested except for its examination by the FPC staff and no interveners appeared at the hearing, the applications being received in evidence upon motion of the Commission's staff counsel. But it would be undiscerning, indeed irresponsible, to suggest that the basic evidentiary facts which the *Commission* must have to make *its* statutory findings and conclusions are any the less or any the greater due merely to the happenstance that an intervener appears for one reason or another to make a contest.[15]

Limited of course to the special facts here present, namely (a) where the pipeline buyer does not depend upon the offered supply for any expansion of the pipeline system or of its markets and (b) where the several producers appear not legally bound to sell more gas than they find themselves able to produce, it is the view, accordingly, that the certification of the producer's sale is not required to depend upon a showing of his drilling program or of financing the proposed production. Since these subjects are not relevant and necessary to be covered in the proofs, it follows (reverting to the language of Section 7(c) of the Administrative Procedure Act) that the interest of the interveners is not prejudiced by the lack (if any such there was) of opportunity to cross-examine the producers on those matters[16] or by the submission of the evidence in the form of the written applications. The motion to dismiss for lack of opportunity to cross-examine is accordingly denied.

IV. The Project Described

The Producing Area: Although the "Medina Sand" to be tapped by the producers in this case is quite extensive, running many miles wide in a geological stratum from Kentucky to New York State and Ontario, the "area of interest," as it came to be described, is limited to three counties near Erie, Pennsylvania, that is, Erie and Crawford Counties in the northwest corner of Pennsylvania, and the adjoining Ashtabula County in Ohio. The 124,000 acres dedicated to the producers is located in those three counties, within a triangle running from Erie to Meadville, Pennsylvania, to Ashtabula, Ohio, and back to Erie. The main line of the Tennessee Gas Transmission Company running northeastwardly to New England crosses the state near Meadville. Hence the genesis of the Medina project involves connecting with the Tennessee line at a point 20 miles northeast of Meadville, building a 10-inch or 12-inch line straight west

[14] The docket numbers of which official notice is taken are as follows: CI63–540, CI63–541, CI63–542, CI63–543, CI63–552, CI63–553, CI63–562, CI63–568 and CI63–571.

[15] See the strong dissent by Commissioner Connole in *Seaboard Oil Co.* (1958), 19 FPC 416, 429 (the substance of which now appears to be the law in view of the later decisions in *Catco* (1959), 360 U.S. 378, and in FPC Opinion No. 383 of March 27, 1963, in *Texaco Seaboard*, 29 FPC 593, 596):

> The Commission, however, has more than the right to investigate a *prima facie* record to determine whether in its judgment the case on which Applicant relies satisfies the statutory standard, regardless whether anyone has questioned it or attempted to rebut it. In addition, we have the duty to do so. (Paraphrasing and quoting further from *Isbrandtsen Co.* v. *U.S.* (3-j. D.C., 1951, J. Frank) 96 F. Supp. 883, 892, affirmed 4–4, 342 U.S. 950, and quoted with approval by the Ninth Circuit in *Anglo-Can. Shipping Co.* v. *U.S.* (1959) 264 F. 2d 405, 411.)

[16] *N.L.R.B.* v. *Greensboro Co.*, 180 F. 2d 840 (CA4, 1950).

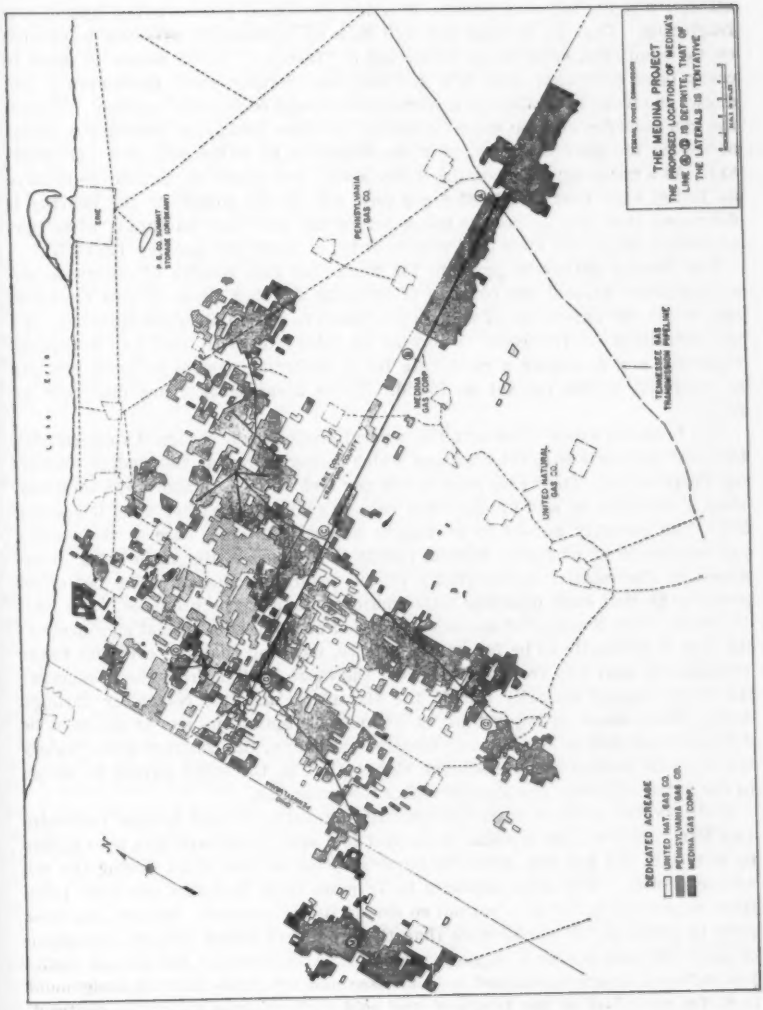
from that point for 28 miles, and adding laterals, perhaps five or six, of varying sizes, distances and directions, which will diverge into well lines to reach the individual wells of the producers as they develop and where they may develop.

The program calls for the producers to drill several hundred wells, sell whatever they produce to the Medina Gathering Corporation, and for Medina, after gathering and carrying the gas to the Tennessee pipeline, to sell it to the Tennessee Gas Transmission Company at 37¢ per Mcf, or 7¢ over the price Medina has agreed to pay the producers. As the map herewith demonstrates, the interveners have similar lines now in use in the general area (but not directly to the producers' potential well sites); one of them is operated by United Natural only a few miles to the south and the other by the Pennsylvania Gas Company only a few miles to the north.

Those companies are in the business of producing, purchasing, gathering, transporting, distributing and retailing gas in the communities in the area of interest. They are affiliates of the National Fuels System, and the controversy in this case arises from this new program of outside interests to build the new line directly between the two present lines and enter the market for the purchase of locally produced gas. The older companies have engaged in this business for upwards of 75 years and hold considerable acreage under lease which (at some expense for delay rental[17] they have held for periods up to 20 years (18T2258). Their purchase policies have been extremely conservative, that is, first of all to require the seller to complete his drilling and "prove up" his gas before they agree to buy it and then only when there are shown to be available a respectable quantity at an adequate pressure and rate of flow and, frequently, a producer who is able to gather the gas and bring it toward their connecting line (16T1895–2037). With small exceptions, the producers here applicant have not been able to meet those conditions, have been unable to find any other market for their gas and have been unable to negotiate for sale of their gas now or later on to the two companies, or even to discuss it (1T84; 12T1261, 1375; 13T1446–84). Until now, there has been a distinct lack of competition among buyers, United purchasing in Crawford County, its affiliate, Pennsylvania, in Erie, and another affiliate in Ashtabula (14T1617; 17T2178). With their standards high and requirements strict, the two companies may appear to be taking up the cream of the market—for example, in the Bushnell and Indian Springs parts of the Medina sand which are believed to be rather productive.

The present producer applicants control perhaps less attractive acreage, a little away from the present lines but in the immediate area and interspersed with the leaseholds of the two intervener companies (18T2235). After waiting often for several years for a market, the producers have now been approached by the Medina organization, have agreed to sell to them at 30¢ and have filed their applications here for certificates approving their proposed sale. When the Medina promoters first entered the area two years ago, they were shown 38 "shut-in" wells which lacked a market (1T210). The producers who joined the Medina program, signed contracts and applied for certificates control 124,000 acres, on which they have 18 productive but shut-in wells ready to operate. They claim substantial gas in reserve in the acreage dedicated to them in order to meet Medina's commitment to Tennessee, as set out in Part V below. But Medina also expects a great deal of development from the latent market as soon as their certificate issues and their connecting lines take form and reality,

[17] Delay rentals now cost up to $1 per acre per year for as long as the lease is held up until the time drilling begins; the older leases are at a much lower rate. In the new competition for gas acreage, there is said to be this imbalance: the established utility can charge its delay rental expense to its customers, as a part of its cost of service, while a new gathering company, having no market as yet, must finance its own.


THE MEDINA PROJECT
THE PROPOSED LOCATION OF MEDINA'S LINE ⑥-⑨ IS DEFINITE; THAT OF THE LATERALS IS TENTATIVE
DEDICATED ACREAGE
UNITED NAT. GAS CO.
PENNSYLVANIA GAS CO.
MEDINA GAS COMP.
PENNSYLVANIA GAS CO.
MEDINA GAS COMP.
UNITED NATURAL GAS CO.
TENNESSEE GAS TRANSMISSION PIPELINE
ERIE

that is, potential acreage not yet committed to anyone. Evidently it is all "dry gas"; oil production is not a factor (19T2470).

There is an explanation for this new-found interest in an old producing area. Properties which have for years been regarded as uneconomical because their rate of production is too low (due to lack of "permeability") have now become attractive to the industry because of a new geological process called hydrostatic fracturing. That is, through the well bore an hydrostatic pressure is exerted on the sand face, causing the formation to "fracture," which seems to mean to crack open somewhat, and this provides considerably more permeability and allows the wells to produce in a more effective and economical manner. Though the gas reserves are the same as before, the new technique provides a better access for the gas from far back in the formation up to the well bore (17T2074–81). As a dramatic example, the Roberts well was shown on Exhibit 38 to have an initial open flow of 300 Mcf per day, but in the course of the hearing it developed that this figure was taken before the well was fractured; after that operation, the initial open flow was recorded at 2,304 Mcf per day (22T2851).

The Medina gathering program for marketing this reserve of otherwise unapproachable natural gas consists of bringing together three diverse elements, that is (a) the agreement of enough producers to sell an adequate quantity, (b) the agreement of Tennessee to buy at an adequate price, and (c) designing, financing, and acquiring a certificate for a gathering system to bring the gas so produced to the market so found. These arrangements are described as follows:

The Producer's Sale Contract: The several producers have signed substantially identical contracts with the company which is now known as the Medina Gathering Corporation. Their sale price is 30¢ per Mcf until November 1964, at which time it escalates 1¢, and another cent each five years thereafter until it reaches 33¢. The quantity agreed to be bought and sold in each case is the seller's pro-rata share of whatever Medina resells to Tennessee, the ratio being determined by the relative deliverability of the several producers. The net effect seems to be that each producer sells whatever quantity he produces. See Part V, below. Two features of the sale are relied on as having special significance: the sale is primarily to be for winter service, meaning that the eventual buyer (Tennessee) may buy from Medina (and therefore Medina from the producers) the entire annual quantity during the six winter months, November through April, which seems to imply that, at Tennessee's option, no gas at all need be delivered and sold in the summer months. Secondly, the contract quite plainly transfers to Medina the gas storage rights, that is, the seller agrees to assign to the buyer whatever gas storage rights the seller has.

Medina's Sale to Tennessee: The quantity agreed to be sold is most indefinite (see Part V below), but it seems to amount to a sale of whatever gas is available up to 60,000 Mcf per day, with the buyer's option to take it all during the six winter months. The price amounts to 7¢ more than Medina's purchase price from its producers, but it is not put so simply in the contract. Instead, the base price is stated as 33¢ (or 3¢ more than the producer's price) with an escalation of 1¢ in 1964 and in each fifth year thereafter. Also, however, the storage rights just referred to are reassigned to Tennessee and the price for this assignment is 4¢ for each Mcf of gas produced and sold to Tennessee under the contract. Note there is no necessary relation between the 4¢ price and any particular lease—the 4¢ is for the assignment of the storage potential under all of Medina's leases and the 4¢ is paid on all gas sold to Tennessee by Medina.

Thus the total price for the gas, whether delivered to Tennessee entirely in the winter or not, but including whatever storage rights Medina has, works out to be 37¢ per Mcf plus the escalations noted, or 7¢ more than Medina pays

to its producers. The Commission, by regulation, has established area ceiling price levels governing or at least guiding the price question in certificate cases, but none has been provided for sales in Pennsylvania. The nearest area so regulated as to initial price is West Virginia, where the General price Policy Statement No. 61–1 (Regulations, Section 2.56) calls for a price of 26.8¢ when figured at 14.65 psia, following which there appears "(28.0 cents at 15.325 psia)." There is said to be currently pending a proceeding to revise the general policy statement so as to include western Pennsylvania and New York, West Virginia, and Ohio within one price area for the purposes of that statement (Docket R–218). In any comparison of these various rates, it is important to check the pressure base at which the rate is stated. Tennessee's 37¢ payment to Medina is to be computed on gas at a pressure base of 15.025 psia. The producers' sale to Medina is figured the same way, and this puts their rate about 2.5¢ over the ceiling rate for West Virginia.[18]

Medina Facilities: Medina's tentative program for a pipeline facility to gather the producers' gas and deliver it to Tennessee is illustrated but *not* defined by the map herewith. The only line that is pretty definite is the 28-mile east-west line connecting at its east end with the main line of the Tennessee company, and even this gathering-transmission line may be shifted a little if conditions so dictate at the time this certificate becomes final (10T1030). It is important to note that the rest of Medina's system has not yet been finally designed and will not be until about the time construction begins (2T263; 4T546; 10T1019; 11T1232; 15T1838). The forum was furnished with three or four different versions of suggested gathering lines and one of the more recent versions has been outlined on the map. But this is highly tentative and it is quite important that it be so, since the lines must go where the producers decide to drill *and* where they find gas (10T1032–1056). A recent, tentative version of the gathering system calls for 78 miles of pipe in various sizes from two inches to eight inches, which will join the main gathering-transmission line at points C and D shown on the map. The acreage shown surrounding the eastern or discharge end of the main gathering-transmission line is not to be served through this line (11T1190), hence the "gathering" may be said to end at point C, which is the first point at which all of Medina's gas is gathered centrally for transmission and delivery to Tennessee.[19] The total cost of construction is estimated at $3,469,300, but it is obvious this is a most tentative figure (2T356; 10T990). The main line is to cost less than a million dollars (11T1185) and that will be the subject of the first construction to take place during the opening year of the project, with the rest of it to follow gradually. Some compression stations are to be provided, but note they are not permanent installations. Rather, being mounted on "skids," they will be subject to be moved from place to place (10T1081). Medina's method of financing is discussed below under Part VII, where also is contained some reference to the obvious jurisdiction question as

[18] The contract's 30¢ equates to 29.25¢ at 14.65 psia and 30.6¢ at 15.325 psia.

[19] From Examiner Purdue's decision of April 1, 1963, in Tennessee Gas Transmission Company, CP61–106, at p. 16: "At the central point in the field where all the gas going to Tennessee and United Gas has been assembled in a pipeline as a commingled mass, gathering has been accomplished." See also: *Huber*, 14 FPC 340, 348, affirmed, CA 3, 236 F. 2d 550—gathering ends by the time the gas reaches the point of final commingling; *Barnes Transportation Co.*, 18 FPC 369, 372—the "central point" where gathering ends is "the point of final commingling." As in the case of Medina's line A–C, Barnes' jurisdictional transportation is from *that* central point to its delivery to the interstate pipeline; while upstream from that point is non-jurisdictional gathering (see page 372, par. 2).

Smith-Wimberley Report, G–580, p. 83.

Manual of Oil & Gas Terms (Williams-Meyers), p. 109.

it relates to the Medina *Gathering* Corporation. The same question as it relates to the producers' sales is covered in Part III.

Medina's Buyer—Tennessee Gas Transmission Company: Grasping at every straw, the interveners seem to assert that the certificates should be denied because Tennessee has not taken up the time of the hearing to demonstrate at length and with particularity that it needs this reputed supply. It was not thought enough that the Tennessee witness pointed out that under its current program it is depleting its gas reserves at nearly one trillion cubic feet per year and this program has been increasing at an average of fifty billion cubic feet each year (1T127). Any utility having a program, in fact the statutory duty, to supply a trillion units of anything every year should hardly be called upon for further proof of its need to replenish their supply to the extent of just one percent of their annual sale, as in this case, especially where the increased supply is only one-fifth of the annual increase in Tennessee's delivery program. Tennessee requires no certificate for its transaction since it is buying, not selling. and it is satisfied that it may proceed to establish the minuscule facility, in the shape of a pipeline connection to receive the gas, under its annual budget-type authorization which is currently in force (13T1555); CP63–85, order issued January 30, 1963, 29 FPC 184.

V. Gas Reserves

If there is a requirement that a gathering company seeking a certificate from the Federal Power Commission to validate its proposed sale to a pipeline must demonstrate the existence, underlying its committed acreage, of the full number of Mcf of natural gas which are mentioned in its contract, there might be some manifest difficulty in providing such a certification here. It is true that the program seems to call for 10,800,000 Mcf annually, all of which may, at the pipeline buyer's option, be taken during the winter months from November 1 through April 30, which figures out to just under 60,000 Mcf per day, the rate of deliverability which Medina appears obligated to maintain. But the reality is that the gathering company agrees to deliver to Tennessee only such quantity as Tennessee elects to purchase "up to the total quantity per day that the wells on the leases are capable of producing."[20] The contract goes on to say that if the gathering company should fail to have available for delivery the quantity set out, then the consequence is that the Tennessee company may reduce its agreed contract quantity to 75% of what the gathering company did make available (this is from page 6). According to their statement of position, Tennessee regards the contract as requiring the delivery of 60,000 a day, but if that figure cannot be met, the contract reduces the minimum take-or-pay-for obligation on the part of the Tennessee company to "approximately a 70% requirement"[21] and no other penalty against Medina for non-performance appears (13T1530), nor provision for liquidated damages, should it develop, as the interveners ap-

[20] The data herein comes from the contract with Tennessee which was filed with the Medina application. For clarity, the detail is here omitted to be discussed to the effect that the figures given are annual figures after the first year; for the first year, the quantities are one-half those stated. As to the nine producers' sale to Medina Gathering Corporation, their sale is whatever Medina sells to Tennessee, divided among them in the proportion of the deliverability maintained by each (15T1784). Note, also, as an example, the following addendum appearing in the Benedum-Trees contract with Medina (CI62–694):

> 11. Regardless of any provisions to the Agreement to the contrary * * * it is the basic intent and purpose of said Agreement and it shall at all times be so construed, that it shall be the obligation of you to buy and of the undersigned to sell at the prices therein applicable from time to time, for all of the gas recovered from the leases described in Exhibit "A" attached to the Agreement and made a part thereof.

[21] 22T2875. Evidently this results from the later language in the contract as to the gathering company's representation of the number of wells that will be drilled.

prehend, that the gas in reserve will not supply the quantities tentatively outlined in the "contract".

Thus, while the figures in the contract lead to the suggestion that the reserves to be demonstrated should total 216,000 MMcf (that is, 10,800,000 Mcf per year for the 20-year term) and the various protests are eloquent, indeed hyperbolic, to the effect that no such quantity has been shown to exist, one obvious answer is that the alleged uncertainty of the supply is quite recapitulated in the uncertainty in the promise set forth in the contract. In other words, the quantity actually needed to fulfill the net actual legal undertakings of the contract is quite as variable and unknown as are the reserves thus far demonstrated to be available to fulfill it. All that is clear is that whatever is produced, Medina agrees to sell. The program, or at least the hope, is for 60,000 per day, but there is no guarantee of it, nor any reason necessarily to deny a certificate for lack of it. With that reservation, we turn to examine the highly divergent geological reports furnished to the forum by the applicant, the interveners, and the FPC staff, respectively. Based in part on the helpful summary in the brief of the Pennsylvania Public Utility Commission, they are as follows:

Conflicting Claims as to Gas Reserves

	Acreage	*MMcf*
I. *Medina's* geologist Linn (Ex. 16, 8T843):		
Proven—within 5 miles of a well	38,389	115,167
Semi-proven—between 5 and 10 miles from well	23,162	69,486
Total	61,551	184,653
II. *Intervener's* geologist Meury (Ex. 24, based in part on above):		
Proven	38,400	38,400
Semi-proven	23,567	23,567
Total	61,967	61,967
III. *Staff's* geologist Lessig (Ex. 38, 21T2645):		
Proven:		
Developed	2,880	14,991
Undeveloped	23,166	60,674
Total proven	26,046	75,665
Possible	23,247	64,510
Total proven and possible	49,293	140,175

The Applicants' Case for Reserves: The geology witness for the gatherer and for the producers, Mr. Linn of Pittsburgh, is obviously experienced and capable. For some time he was chief geologist with one of the oil companies and, most importantly, has been actively engaged in this work in this immediate area for several years and even on the days of the hearing of this case he continued actively to be drilling in the area, both for his account and for others.[22] However, as a result of numerous questions raised and corrections made in his report at the hearing, it became necessary to revise the case considerably and the second showing was on a somewhat different basis than the first.[23]

[22] Linn has himself drilled 30 wells in the three-county area, 28 of them successful, and perhaps more than anyone else (7T731, 8T824).

[23] The intervener's brief complains of the leniency of the Presiding Examiner in permitting so many changes, saying it made the case an evidentiary farce. However, if leniency, as a help in the search for actualities, requires justification, the precedents supply it. See for example page 8 of the initial decision in *Pioneer Gathering System*, G–16550, as adopted by the Commission on February 1, 1960, where a proposed gathering system was entirely revised at the hearing in the light of new developments and, as here, the applicants were permitted to conform their application to the proof. 23 FPC 260, 268. See also *Atlantic Seaboard* v. *F.P.C.* (CA 4) 201 F. 2d 568.

The applicants' first presentation, that is the one contained in the report submitted with the Medina application and first testified to at the hearing, claimed a total of 203,000[24] MMcf, most of it regarded as proven but over a third of it listed as "semi-proven." Also, 90,000 MMcf was thought to be available from other acreage in the area but still remaining uncommitted. These figures (203,000 plus 90,000) are to be read in relation to the 216,000 MMcf that the contract with Tennessee more or less tentatively calls for. But all of the figures were shown to be based on many uncertainties and estimations. For example, the net acreage claimed (after discounting the total by 25% to take account of the drilling success ratio of 75%) was multiplied by the figure 3 MMcf per acre as the amount of gas believed to be in reserve under each proven and semi-proven acre. That figure (a variation in which would manifestly greatly affect the result) was shown to be based on a complicated-appearing formula[25] which seems to amount to a finding of the cubic foot volume, of the producing sand underlying each acre multiplied by three factors, namely .09 x .65 x 88, to allow, respectively, for (a) the average porosity of the gas sand, that is the amount of the porous space in the sand rocks in which the gas may be expected to be found, (b) 35% connate water, that is, the proportion of the porous space that is found to be occupied by water instead of gas, and (c) the extremely high reservoir pressure, the somewhat high reservoir temperature and a compressibility factor (so as to state the gas volume at standard temperature and pressure). Since all of these factors are multiplied together to produce the answer of 3 MMcf per acre it is obvious that a substantial error in any one is enough to cast doubt upon the whole. The three multiplying factors seem not to have aroused a great deal of opposition since they were based on the tests made from the 18 holes that have been drilled in the immediate area and some others from the same reservoir, but a great deal of question was raised about the average of 15 feet in the vertical thickness of the sand which, being multiplied by the square footage of an acre and the three factors just explained, produces the result of 3 MMcf.

It was agreed by all that the entire "Medina Sand" is a highly lenticular formation throughout its length from Kentucky to western New York and Ontario (15T1810–29), which is taken to mean that instead of a single continuous producing pool, the productive sands are to be found in a series of quite varying, lens-shaped areas whose true sand thickness and gas productivity will never be *known* until every possible plot has been tested by actual drilling (15T1812).

But far more serious at the opening of the case was the question raised as to the amount of the acreage to be multiplied by the reserve figure of 3 MMcf per acre. It was said that the proven acreage is that lying above a certain geological line and between producing or proven wells, that is, within 3 to 4 miles of such wells (3T429), but it was shown by the exhibits that the proven acreage was found instead by outlining on the map the four most productive areas (some as large as 14 by 5 miles), discounting the total acreage in each area for the 75% success ratio, then multiplying the net total by the percentage of the total acreage in the area which is dedicated to the Medina Gathering Corporation. As to the semi-proven acreage, at one point it was said to be that lying in the proper geological stratum and within 5 to 10 miles from existing wells (3T471) but a few pages later the acreage over 5 miles from one of the wells was defined as wildcat acreage (3T489). A little later on the witness seemed to say that any eligible[26] acreage within 5 miles of a well is to be regarded as proven acreage

[24] All figures herein are rounded off for clarity.
[25] See Exhibit E to Exhibit H to the original application.
[26] That is, under which the thickness of the Medina sand is within tolerable limits.

(6T621, also 6T631), and from 5 to 10 miles is semi-proven (8T827). In short, as it was put by the witness in answer to the question as to how the proven areas were derived:

> That area lying a bit north of the 350 foot isopach line as shown on Exhibit 17 here and it is also determined by the net sand isopach map of Exhibit F to the original Exhibit H and also determined from—determined by distance from other wells that are either providing gas from the Medina sand or shut-in Medina gas wells capable of producing gas. This distance is defined as five linear miles. (6T642–3)

It was with such sources that the witness determined the number of acres which (subject to the 25% discount)[27] could be certified as overlying 3 MMcf of gas each, thus resulting in the new total of 181,925 MMcf of gas said to underlie the acreage committed to Medina (3T455). There were also several revisions or corrections to the figures hitherto given for the gas available but in acreage not yet committed.

Thus, in addition to the uncertainty as to the vertical thickness of the sand at any given point and a possible question as to the 6% figure for the net effective porous space in the sand rock whose thickness was estimated (that is, 9% porosity reduced by 35% for water saturation), both of which directly affect the claimed figure of 3 MMcf per acre, there is to be added the manifest uncertainty as to how many miles of acreage surrounding each well are to be regarded and certified as proved, or at least as potentially productive, and therefore to be used as the multiplier in the basic formula of the Linn exhibit (that is, acreage x 3 MMcf per acre). To this there is now to be added the further uncertainty that a part of the acreage hoped to be productive and to be relied upon to the extent of 3 MMcf per acre, is also not yet committed to be leased to Medina at all and as to such supposedly productive acreage, there is nothing but the broad estimate that from 25 to 40% of this acreage will eventually "sign up" and become part of the Medina enterprise (page 7 of Exhibit H to the application). The new net result of all of these estimations, averages, percentages and multiplications is the figure 267,189 MMcf of reserves, including the proved, the semi-proved, the committed and the uncommitted (3T455–470).

Thereafter a new exhibit (16) was brought in to take account of the corrections and revisions required, also to bring in certain new developments subsequent to the preparation of Exhibit H eight months before, which slightly change the basis for the acreage computation. After certain changes of the newest exhibit during the course of the cross-examination upon it (7T660), it develops that about half of the total committed acreage (124,109 acres) is to be regarded as either proven or semi-proven (that is, 38,389 and 23,162 respectively, after taking off the 25% discount), or a total of 61,551 productive acres which, multiplied by Mr. Linn's confident figure of 3 MMcf per acre, results in a total claimed committed reserves of 184,653 MMcf. This time the acreage figures were derived, not by a broad percentage applied to an entire area, but by an individual listing under each producer of the number of acres committed to each in each township in the three counties comprising the area in interest *which* acreage complied with Mr. Linn's test as to either proved or semi-proved, the first being the acreage within five miles of an existing well but also overlying the proper geological stratum (which is termed not "south of the 350 foot isopach line") while the second is from five to ten miles from a proven well but also within the isopach line measured "parallel to the depositional strike of the Medina formation." (Ex. 16, p. 7.) These tabulations were brought in as

[27] For the semi-proven acres in the original presentation this correction did not occur until it was called to attention during the course of the hearing, at which time the 84,000 MMcf claimed for the semi-proven acreage was reduced to 63,000 (3T454).

Exhibits 18, 19 and 20, and after certain corrections that took place during the cross-examination (7T660), they were presented to establish the total committed acreage that is to be regarded as either proved or semi-proved and therefore to be credited, so to speak, with 3 MMcf for each acre (8T843). For the explanation of the various misunderstandings, uncertainties and controversies that gave rise to the new exhibit, see the transcript from 5T570 to 5T599.

There is much criticism that the second presentation entirely revised the basis of and demonstrates the weakness of the first one. But the difference seems to be more mathematical than geological, one more of method of presentation than of substance. In the first presentation, we were given the acreage of the four areas, each from 5 to 14 miles long, regarded as productive, discounted by 25% to allow for the 75% success drilling ratio, and multiplied by the percentage of the total acreage in each of the areas which is dedicated to Medina. The net total acreage was multiplied by 3 MMcf to get the reserve figure. In the second presentation, the individual leaseholds which had produced the Medina percentage figure mentioned above were instead totalled up in the separate categories, then the total was discounted for the success ratio factor, and the proven and semi-proven acreage was multiplied by 3 MMcf. The result is that the corrected answer from the first method was 181,925 MMcf and the corrected revised answer from the second method was 184,653—different mostly because, during the intervening eight months, there was a great deal of adding and subtracting of acreage as leases were lost or new leases were signed to enter into the program.

The entire presentation is roundly criticized by the opposition, not only on its merits and demerits, but also for its vacillations and assumptions. Mostly it is flatly denied that the success of a well at point X is any basis for assuming and computing that 3 MMcf (or any other number) will be found under an acre three or five or ten miles away—they point to some dry holes already drilled within five miles of existing wells. To this the rejoinder would be that Linn discounted 25% for dry holes (8T848). But it is true all sides comment on the manifest lenticularity of the "Medina sand"—the pools are lens-shaped, thus greatly varying in pay depth from one point to another.

The further criticism of the 75% drilling success ratio itself seems to draw a thin line indeed—there was, it is true, some data leading to a 65% figure, but some other figures are as much on the other side. The doubts on this score were especially unacceptable to the applicants' geologist, Mr. Linn, whose own drilling success average in this very area is now 28 out of 30, likewise to the producers' witness, Mr. Britton, whose own drilling to date has proved out at the championship ratio of 13 out of 13 (8T824; 12T1356, 1395). On the whole the objection to the 75% figure is not convincing (*cf.* 8T785–90, 818). Anyway the interveners' geologist seemed to accept 69% in the Pennsylvania counties, which is satisfactorily close (19T2439).

There was more of a mixup as to the bottom hole pressure of the wells, which is a prime ingredient of one of the multiplying factors above. The original exhibit tells us that the "average reservoir pressure" is 1314.73#. The reduction of this pressure to the standard measurement pressure base of 14.73# would seem to increase the effective volume roughly 89 times. But the worksheets underlying the exhibit were said to show that the average reservoir pressure was 1146, not 1314.73, which would give a multiplying figure of 78 instead of 89. Later on, it was explained that the witness used the median instead of the average, but there was even basis for doubting this explanation—with the exhibit there were furnished 38 individual well reports and on none of them does the rock pressure or the shut-in core pressure come up as high as 1314.73#.

The only explanation given was that the witness used a bottom hole pressure for each well and it still produced an average figure of 198 Mcf per acre-foot (15T1819–22, 1878). The trouble is that multiplying this new-found figure of 198 Mcf per acre-foot times the sand thickness of 15 feet in the witness' Exhibit E "Material Balance" gives a result of 2.97 MMcf per acre instead of the 3.36 MMcf per acre which the exhibit spells out with such a great appearance of exactitude and reliability.

But the objections of the various interveners, including the Pennsylvania Public Utility Commission, to the issue of a certificate upon the ground that adequate reserves have not been proved, go mainly to the areal extent to which to apply the figures—in other words, having measured more or less exactly the gas in the well core itself (88 x 6% x the sand volume), just how far out, in feet or acres or miles is it reasonable to assume *both* (a) that the amount of gas per cubic foot of sand will be the same, and (b) that the vertical thickness of the sand will be the same. "The Pennsylvania Commission believes that applicant's views of 'proven' and 'semi-proven' acreage are unrealistic and the dedicated reserves related thereto deserve little or no consideration." (Brief, p. 4.)

There appears no serious objection to the figure of approximately 3 MMcf for the single acre in which each of the 18 wells has by now been drilled and a depth of 15 feet actually found. There appears slightly more of a problem in applying this figure throughout the area of 160 acres surrounding each well that has actually been drilled and found successful, but that is the more or less normal total which will be drained or will feed into a well in this highly lenticular area (19T2460). In fact, there is nothing affirmatively to *disprove* the applicants' hopeful assumption that three-quarters of the wells to be drilled within five or ten miles of existing wells and within the sand plane will turn out to be similarly successful and productive. On the other hand, nothing really tangible *supports* the basic assumption to that effect which seems to underlie Exhibit 16.

Secondary references are perhaps more reliable than geological inferences—thus the applicants and their geologist Linn live and work in the area and have been drilling for years, they have already risked about a half a million dollars or more on the drilling of the 18 wells in being and they stand ready to invest at their own risk some millions of dollars more. What is more, the interveners who are most vehement and full of invective about the reserve showing have themselves for years engaged in production and purchase of gas in this immediate area; their present reserves are interspersed, and are often adjacent with, Medina's (10T951, Ex. 21), and they continue to operate some wells, and to buy gas in the vicinity after the producers have undertaken the risk of drilling for it and proving its availability. Also, both the producers and Tennessee (the pipeline buyer) say they have used their own sources, besides Medina's geologist Linn, or have otherwise satisfied themselves that the reserves are there and available (12T1387; Tenn. Brief, p. 10)—and after all, it is the producers who plan to risk their capital for drilling and it is Tennessee that has promised to pay for the gas.

The Interveners' Case: It is possibly true that the proceeding was lengthened by the intervention of an entirely separate geological reserve study on behalf of the Pennsylvania Gas Company and United Natural Gas Company, the National Fuels group affiliates who are already occupying the area, but while their study may be subject to question upon its method, it does have the special virtue of comprehensibility and its witness, the helpful virtue of articularity—qualities which were not shared by all the other witnesses. The net result of the two studies is to agree that successful wells in the Medina sand will produce about

1 MMcf per acre, not 3 MMcf as relied on by the applicants, but there is no agreement at all as to how many acres to apply the 1 MMcf ratio to.

The first proof of the 1 MMcf figure is to be found in an exhibit on the adjacent pool called Bushnell, where the actual production by months since the pool opened three years ago is charted showing a gradual rise during 1959, 1960 and for a short time in 1961, and then a gradual decline more or less steady from the middle of 1961 to the middle of 1962. Projecting the declining production through nine years to come, it is said to demonstrate that this pool will produce a cumulative total of 14,000 MMcf, and since that is about the same as the number of acres supposed to be in the pool, it shows the average acre can be expected to yield 1 MMcf, not 3.

Next the interveners' witness, geologist Meury, presented a study to show, as to the productive Indian Springs pool, located "in the heart of the area of interest" and very near the west end of Medina's proposed main line, that the reserves in the entire pool average 1 MMcf per acre. This is proved by what is known as the pressure decline method which says, in short, that since the pool, during its four and one-half years of production, has lost about half its original rock pressure, there is presumed to remain in reserve about the same quantity of gas which has been produced from the pool in that time. Dividing the acreage by the sum of those two, there results a total reserve figure of 1 MMcf per acre. Another witness for the Pennsylvania Gas Company presented a similar study for five wells of that company which have been drilled in the Medina sand in this same immediate area; the first well was completed late in 1961. Their average time of production until August 30, 1962, was just under eight months and during that period the average pressure declined about one-third. Figuring, therefore, that the remaining reserves are approximately double the amount of production until the end of August, and allocating 160 acres to each well, it was computed that their total original reserves amounted to .7 Mcf per acre.

These presentations find little favor with the geologists and other experts otherwise engaged in the proceeding. For example, the Pennsylvania Public Utility Commission says that the estimates based on this production-pressure decline method, while ordinarily more reliable, are here of doubtful utility because the wells had been produced for such short periods and had been "shut-in" for pressure measurements for too brief a period to achieve stabilized pressures. The reaction of the Commission's staff, equally unfavorable, is set out below.

The principal point of all the objections to these two methods is one of time, that it is unscientific and improper to plot the much-vaunted "actual", "true", etc. data derived from the very short period the wells in this new area have been operating and then to extrapolate the indicated decline for years to come. That is, that no one can predict the variables and indeterminates, and (to borrow the language of the financial pages) no one can be sure that the indicators of a decline today may not become the harbingers of a rise tomorrow, or, indeed, vice versa. To counter this unanimous objection, the interveners have analyzed some of them to show that, even giving full effect to them, they do not markedly change the net result. For example, Exhibit 22 shows the monthly production in the adjacent Bushnell pool rose in two years to a peak of 300 MMcf but fell to one-half that figure in the last year and a half, from which a curve is projected to show that by the end of the present decade the production from the field will be below 50 MMcf per month.

These proofs are not offered by the interveners to show there are no gas reserves in the area but rather to show that the gas reserves to be found will be wholly insufficient to support the project and could more efficiently be utilized by the pipelines already operating in the area (Brief, p. 38). Further light on their real significance is offered by what is really the program of the intervener

companies from whom comes this dolorous showing—United (through its affiliate, Sylvania Corporation) is now operating seven wells in the Medina sand in the two counties concerned in Pennsylvania and all were completed in 1961 and 1962, one about the time this hearing was announced. Pennsylvania Gas Company completed one in 1959 and five more in 1961 and 1962. Thus the interveners find themselves in the rather difficult position of sustaining the proposition that the Medina gas reserves may be useful to them but will be found uneconomical to anybody else. Alternatively, they present the paradox that the reserves should be saved for themselves, already in the area, but they suggest no program or even plan to buy any of the gas; in fact, they have declined to buy the gas or even to discuss it or to suggest any program for extending their well lines to take it out. Anyway, it is not for sale to the interveners; it has been sold to Medina and Tennessee.

Deliverability: There is a similar but less profound difference as to the deliverability to be expected from the wells to be drilled. The applicant's geologist Linn, after some backing and filling, settles for an average of 2.00 MMcf per day of open flow per well, from which Exhibit 16 calculates a deliverability curve, and from this curve there is calculated an exhibit to show the number of wells needed to be drilled (Exhibit I to Exhibit H with the original application), which turns out to be 75 wells needed per year in the first, second, third and fifth years, 38 in the sixth, eight and ninth, and 19 or so a year in the tenth, eleventh and twelfth years, to make a total of 477. When there is added one-third to this number (to account for the 75% success ratio), the total wells needed would be 636, which at $32,000 apiece (8T768) indicates a drilling program in the neighborhood of $20,000,000, spread out over a period of 12 years or so.[38] The interveners suggest acceptance of their open flow figure of 1.49 MMcf per well per day (instead of 2.00) as developed on Exhibit 25 from an average taken of 57 flowing wells in the Medina sand in the two Pennsylvania counties, all but eight of which were completed in 1960, 1961 or 1962. Even accepting the 1.49 figure as reasonable (in fact, agreed—20T2489), that is said to result in a need for a total of 640 successful wells or 853 wells drilled (19T2459), which means a drilling program of $25,000,000 (Brief, p. 59) instead of $20,000,000. But all of these figures are designed to show the program really needed to deliver 60,000 Mcf per day to Tennessee, and seem to be based upon the assumption, indeed the false premise, that unless the program is proved up to the hilt to be ready to produce 60,000 Mcf per day for twenty years it should be denied an F.P.C. certificate, which does not seem to follow at all. Anyway, as demonstrated in Part III above, insofar as the deliverability question is presented merely to assail the feasibility of the producers' project, no such feasibility finding is required for a producer's sales certificate, none is here made or even implied, and the objection is to that extent irrelevant. Its relationship to Medina's feasibility is reviewed below in Part VII.

Summary: As stated, all other parties, including the staff, object with varying vehemence to the volumetric method of the applicants' geologist Linn. That is, there is little disagreement about the 3 MMcf claimed to be available in the acre in which each of the 18 wells has been drilled (15 feet of vertical thickness times 200 Mcf per acre); there is somewhat greater disagreement with projecting that figure to 160 acres for each of those 18 wells. But there is unanimous disagreement with the "broad brush" approach of the applicant which seems to presuppose that (subject to a 25% discount to allow for some dry holes) *most* any acre within 10 miles of a proven well and "north" of the proper isopach line may be employed to locate a new and successful well which will produce 3 MMcf

[38] For comparison, the reserves already developed and supposed to be proved by the drilling of only 18 wells (Ex. 38) would be worth (at their 30¢ price) $4.5 million.

from each of the 160 acres surrounding it. The interveners say this is wildcatting; the staff say that the success ratio is only an exploratory budgetary control tool, not closely related to reserves, and this approach pays entirely too little attention to the trends of the net effective sand thickness. Particularly the staff objects to the assumption that an average of 15 feet of net sand thickness may be counted on over the acres dedicated to Medina (Brief, pages 36 and 51). The Pennsylvania Commission seems equally appalled. In short, Mr. Linn and Medina set for themselves the impossible task of measuring the volume of anything in terms of acres and cubic feet when there is nothing tangible from which to derive its length, its width, or its heighth.

The staff brief indicates an even greater pessimism as to the results of the interveners' study. While conceding that the production-pressure decline method has its utility in a proper place, it was concluded here to be entirely unreliable for ten separate reasons,[29] the most important being the very brief average life of the pools from which the data was taken, also the lack of stabilized well pressures, uniform well spacing and line pressures, the ill-defined field boundaries, and several other deficiencies and lack of controls (Staff brief, p. 52). The interveners' brief makes much of the point that their data, so far as it goes, comes from actual well experience. But actual data loses its aura when it is too early in the cycle—it takes many pinpoints to augurate a trend.[30] And most significantly, the same companies that bring these dire reports continue themselves to operate in the Medina pool, including some drilling in 1962 (Exs. 28 and 34).

The Staff Report: At the apparent completion of the applicants' case, but with the record left with numerous doubts, and the proofs not at all satisfying, and in view of the entire disparity in the methods and results of the several studies, the hearing was recessed while the staff undertook a new and independent field investigation of its own,[31] visiting the area of interest and examining in the offices of both sides the original records, so far as there were any, of the drilling in the Medina sand. The study was conducted by two professional geologists of the Commissions' staff, one of whom testified fully at the hearing and presented an exhibit summarizing the results, all of which withstood cross-examination for two days. The staff report is well summarized in their brief, from which the following is taken at page 54:

> *Staff Estimates of Gas Supply:*
>
> 1. *Introduction*
>
> Throughout the record of this proceeding there developed a tendency on the part of both Applicant and Intervener to change their respective estimates, and, to alter and develop different versions of the opposition's estimates until a climate of confusion and state of fluidity became apparent. Certainly one had the feeling that as this situation of fluidity developed, where would the business of changing figures, data, etc., end? This was, in itself, a compelling reason for the staff to enter an independent reserve estimate into the record.

---

[29] Quoting at this point from the AIME, Society of Petroleum Engineers "Oil and Gas Property Evaluation and Reserve Estimates, 1960."

[30] The staff brief at page 44 makes a telling comparison between the "actual" experiences as reported by two companies—one of the interveners, Pennsylvania Gas Company, has completed 20 wells in the Medina sand in the two Pennsylvania counties and their Exhibit 28 reports an average original open flow of 874 Mcf per day. But the staff examined the records of the 18 Medina producers' wells and computed an initial open flow on the average of 1,740 Mcf per day (Ex. 38, 22T2851).

[31] Two weeks and two days were allowed, the staff testimony to be served after one week so that cross-examination could begin at once upon reconvening on December 6 (20T2567, 2607).

2. *Method of Staff Analysis:* Volumetric formula, [*] data derived from electric log data.

3. *Source:* Dedicated Wells of Applicant.

4. *Approach:*

(a) *Proven-Developed:* Those reserves that have actually been uncovered by the drill and have been assigned a reasonable drainage pattern of 160 acres to each well.

(b) *Proven-Undeveloped:* Those reserves developed from a net effective sand isopach map overlying the dedicated acreage. All acreage assigned reserves lay within one mile of a dedicated well. Contour interval of isopach map was 10 feet and any acreage assigned reserves had to have at least 10 feet of net effective sand to be considered. From this reserve estimate, the Proven-Developed estimate was subtracted to give the Proven-Undeveloped reserve estimate. These reserves are not to be confused with "semi-proven" reserves, as "semi-proven" could be defined as "half proven", the meaning of which is not entirely clear or understandable.

(c) *Possible:* Those reserves which may be developed through future drilling. This estimate is based on a conservative analysis using extended well control, including wells other than the dedicated wells, and the net sand isopach overlay. Reserves attributable to this section should not be confused with the term "probable" reserves. This estimate excludes acreage apart from well defined control. It also excludes acreage of other operators in the immediate area who may dedicate reserves to Medina at some future date.

5. *Estimates:*

Reserves	*M'cf*
(a) Proven-Developed	14,991
(b) Proven-Undeveloped	60,674
(c) Possible	64,510
Acreage	*Acres*
(a) Proven-Developed	2,880
(b) Proven-Undeveloped	23,166
(c) Possible	23,247
Total Dedicated Acreage	124,109

The staff found its calculated numbers for porosity, water saturation, bottom pressure, and formation temperature of the Medina to be comparable with those numbers used not only by the Applicants, but by the East Ohio Gas Company and United Natural Gas, Interveners, as well. The basic difference seemed to lay in counting net feet of sand.

6. *Deliverability:* The establishment of a 160 acre drainage pattern to Medina's wells to develop a reserve estimate is a drainage factor which the staff feels is reasonable to expect a Medina well to develop. It is common knowledge that some wells are drilled on tracts as small as 80 acres, in the area of interest.

It is not to be construed from this 160 acre drainage factor that only a limited number of wells can be drilled on Applicants' dedicated acreage simply by using the means of arithmetic division. Other factors too will determine the number of wells finally drilled, on the current dedicated acreage, some of these are:

(1) Size of individual leased drilling tracts.

(2) Configuration of individual tracts.

* Volume, recoverable gas = Available reservoir space times percent pore space times percent gas saturation times formation temperature and pressure times molecular factors.

(3) Pooling or unitization of tracts, if applicable.
(4) Terrain, topographic features.
(5) The individual producers or operator's annual economic position.
(6) Need for deliverability—more wells simply means more deliverability.
(7) Terms of lease agreements or gas purchase contracts.

Inasmuch as the dedicated wells to Medina are shut-in and no production data available from them, a valid deliverability study on these wells is not possible at this time. Also, the open-flow information on these wells is not information taken under controlled and standardized conditions, [33] but by various operators, at various times, under varying circumstances. Therefore, any deliverability study based on such open-flow data is speculative and artificial.

The Staff exhibit No. 40 is merely a computation for illustrative purposes only. However, if the estimated Proven reserves of Medina are realized through development, then the project could have a deliverability life of seven to eight years. In the event the estimated "possible reserves" are completely realized, the project could have a deliverability life of 12–13 years.

7. *Conclusion:* In the final analysis, to settle this "family quarrel" over reserves, the Staff resolved to take the numbers with which it could feel reasonably secure, place them in the volumetric formula, turn the crank, record the answer, and let the chips fall where they may.

* * * * * * *

The difficulty of resolving conflicting interpretations of data by the witnesses compounded with the lack of controlled, standardized well tests and no basic reservoir information, [34] was a formidable problem for the staff.

Medina seems to accept the staff conclusions, perhaps begrudgingly, since they do not result in a recommendation against the issue of a certificate. Linn's point is that, within five or ten miles of a proven well, he credited only the acreage which is located geologically within the true isopach "fairway". But in order to avoid the many traps with which this fairway abounds, the staff seems to refine this a great deal by certifying within one mile of a well only the acreage which is believed to demonstrate an actual pay sand thickness of ten feet or more. The interveners are quick to point out that the staff conclusion on proven reserves is much closer to their witness' report than to Mr. Linn's conclusion for the applicants. Nevertheless, they say, reliance on the staff's volumetric method holds considerable danger, the reserve figures as reported in the staff exhibit bringing from the interveners' reactions in verbiage such as "fantastic", "absurd", "amazing", and "astronomical". However, their two specifics are much less than conclusive, the one referring to a single well the figures from which could indeed be out of line, and the other referring to the lack of final production figures on wells that have not yet been produced. On the other hand, their negative reaction is not without some foundation, since the staff exhibit attributes to the 18 Medina wells an average total reserve of 833 MMcf each (counting 160 acres to be produced for each well), while the interveners' Exhibit 27 claims only 113 MMcf for the average of the five most recent Medina sand wells of the Pennsylvania Gas Company, and their Exhibit 23 claims only 140 MMcf for each of the 19 wells in the Indian Springs pool, which lies in the heart of the Medina area. But these two studies, it will be recalled, are the results of a methodology which all others in the case unanimously discredit as premature and unreliable.

[33] Tr. 2852.
[34] 'Unique for a gas producing area,' (Tr. 2852, 2853).

Conclusion: To epitomize, the net result is to demonstrate that significant but not substantial gas reserves have been proved to be available from the small number of wells (18) that the Medina producers have completed to date, that a supply for a number of years (the staff say seven or eight) is probably available from other acreage within a mile of those wells, and that an equal amount is possibly or perhaps available farther out. The only definitive and conclusive finding that can be made is to concur fully in the staff geologist's conclusion (21T2805) that, "I think it quite early in the life of these wells to make any determination of this ultimate production."

VI. Producers' Price—30¢

Despite the feuds and factions about the gas reserves, the impression is that the major issue is the producers' price. The details were set forth under Part IV above; briefly, their contracts call for an initial price of 30¢ per Mcf (subject to later escalation), the nearest FPC area ceiling rate (the one for West Virginia) equals 27.45¢, and the FPC staff's evidence of the "in-line" rates for sales in interstate commerce in certain other nearby areas leads toward a conclusion that 27¢ is the prevailing price. The principal contention of the interveners—that is, the East Ohio Gas Company, Lake Shore Pipe Line Company, New York State Natural Gas Corporation (all of the Consolidated system), the Long Island Lighting Company and the Pennsylvania Public Utility Commission, as well as the National Fuels interveners referred to above—is that *if* a certificate must issue, then a condition is required limiting the producers' price to one or the other of those two lower rates, that is 27.0¢ as recommended by the FPC staff or 27.45¢, the nearest FPC area ceiling. The staff would recommend a denial of the certificate without such a condition.

The applicants' rejoinder is double barreled. First, pointing out that the search for the "in line" price [35] is for the price of similar sales, and if the search be so limited, the 30¢ price will not be out of line. Second, reversing its field, the applicants rely on two special and supposedly unique features of their service which are thought to entitle them to the claimed margin of 3¢ over the reported prevailing price of 27¢. These specialties are (1) the storage option, that is, the dedication to the buyers (through the gathering company) of the privilege to use the wells, when they shall be depleted, for the purpose of gas storage, and (2) the "winter peaking," that is, the provision which permits Tennessee to take its entire annual volume during the six winter months of each year, November through April, which option, if exercised, results in a 50% load factor service. To these two latter claims the surrejoinder is also double barreled: first, it is said that the two rights have no infallibility—they may not be realized in actual fact, and second, it is said that the predominant classes of sales now going on in the area, whose prices comprise the prevailing or "in line" price, themselves transfer to their buyers substantially the same privileges, hence their cost or their value is already recognized in the price fixed.

The data to be used in evaluating the prices comes from many sources and is hard to compare because there are four different pressure bases in use or to be considered, and the prices must be reduced to a common denominator for a valid comparison. For convenience, the figures cited from the various sources have been tabulated as follows, and since the Medina sale is stated at 15.025# basis, references given in the following paragraphs to other data have been adjusted to that same pressure base in order to facilitate weighing their differences:

[35] Subjection to, or at least correlation with, which is essential, under *Catco*, to the finding of public convenience and necessity.

Producer rates (in cents per Mcf) for reference with the Medina contracts for sales in Ohio and Pennsylvania

	Pressure base—P.s.i.a.				Reference
	15.325	15.025	14.73	14.65	
	Cents	*Cents*	*Cents*	*Cents*	
Medina producers' contracts	30.6	30.0	----	29.25	1
FPC area ceiling for West Virginia	28.0	27.45	26.9	26.8	2
FPC staff's "in line" evidence	----	27.0	----	----	3
Penn. Gas intrastate purchases	----	30.6	30	----	4
United Nat. intrastate purchases	----	28.05	27.5	----	5
N.Y. Nat. *interstate* purchases	27.5	26.90	----	----	6
Felmont "jurisdictional" sale to U. Nat.	----	28.05	27.5	----	7
Producer Britton's sale to Lake Shore	----	27.0	----	----	8
East Ohio's purchases in N.E. Ohio	----	27.0	----	----	9
45 sales in West Va. recently certificated	25	24.5	----	----	10
Snee sale in Pennsylvania (4-3-63 order)	----	27.5	----	----	11

NOTE: The underlined rate in each line is from the sources cited below; the other rates are calculated from it.

References

(1) Rate schedules on file, items C-8.
(2) FPC Regulations, section 2.56 (in 18 C.F.R., Ch. 1).
(3) 1T135. This is only from interstate sales in Pennsylvania and Ohio. Ex. 11; 9T914; 16T1996.
(4) See page 261, ftn. 38.
(5) 17T2115-8. With 33% summer-take clause, but actually taken all year around.
(6) Ex. 12. Most all are purchased at wellhead (14T1668), from the "Oriskany" sand, not Medina. This is year-around purchasing (14T1718). Ex. 12 lists 65 such sales to N.Y. Natural covered by rate schedules on file with FPC, some dated in 1960 and 1961.
(7) Ex. 11, (C-1); G-18627, July 14, 1960. Summer take @ 33%. Item AC.
(8) 14T1652. Without storage conversion clause.
(9) 10T979. Some purchases before 1960 are at 24¢.
(10) G-4324, Feb. 27, 1963. See p. 242 above. Summer schedule is at the buyer's option.
(11) Certificate issued April 3, 1963, CI61-1743, for a 1961 sale.

Is their 30¢ "in line?": Noting that staff's Exhibit 11 shows that half the certificated sales in interstate commerce on record in Pennsylvania are at the 27¢ rate, and that this rate covers 84% of the volume of such sales, Medina first objects that this evidence should be disregarded because it reflects the monopoly price of the two dominating buyers in the area, the Consolidated and the National Fuels systems, whose policies, it is evident, leave little room for bargaining as to price by individual sellers. It is quite true that, contrary to the voluble writings of the non-believers in *Phillips*, one of the clearly indicated purposes of Congress in calling for control of wellhead sales under the Natural Gas Act[36] was to insure fair prices for producers, i.e., to correct prices that are too low as well as those which may become too high; also that *pipeline* monopoly, as it affected producers, was a part of the problem considered by Congress. See *Hope Natural*, 320 U.S. 591, 610. But that is a long way from saying that a certificate proceeding of an independent producer is necessarily the medium for the exercise of this jurisdiction. Rather, from recent court decisions (including two since this hearing ended), it is evident that the Commission's function at the certificate stage should, so far as price is concerned, be severely limited, the inquiry being solely to find the comparable prevailing price, and the effort being to hold to it.[37] Such allegations casting doubt upon the legitimacy of the price admitted to be prevailing in fact belong in a com-

[36] See the statements of Chairman Wheeler and Senator Connally in the Senate debate on the bill which became the Natural Gas Act of 1938, 81 Congressional Record, 9314-6.

[37] *Atlantic Ref. Co.* v. *F.P.C.* (CADC, Mar. 21, 1963, at p. 8) 316 F. 2d 667; *Calif. Oil Co.* v. *F.P.C.* (CA10, Mar. 28, 1963, at pp. 659-660) 315 F. 2d 652; *P.S.C. of New York* v. *F.P.C.* (CADC, 1960), 287 F 2d 146; *Texaco Inc.* v. *F.P.C.* (CA5), 290 F. 2d 149, 157; *United Gas Improvement Co.* v. *F.P.C.* (CA5, 1961), 290 F. 2d 133; *idem* (CA10, 1961), 287 F. 2d 159; *idem* (CA9, 1960), 283 F. 2d 817.

posite area proceeding, or perhaps in a "just and reasonable" rate case under other sections of the Natural Gas Act.

With that point aside, the applicants are hard put to it to find any actual sales to point to at 30¢. The producers (Brief, p. 16) cite only the Pennsylvania Gas purchases at 30¢ set out on line 4 of the table above,[28] and they are relied upon notwithstanding (a) they are intrastate and have not been certificated here, (b) their total volume is small—the annual total would come to only five days of Medina's putative program, and (c) the gas is reported to be 22% richer in BTU content than Medina's. Their reply brief says, "The Commission has certificated 12 purchases by National Fuel at prices over 30¢ per Mcf," citing the staff exhibit of 208 listings, but without page reference. After some search, it develops that these 12 include eight dated in 1954 (before prices were considered at the certificate stage), one was in 1949, one in 1947, one is a sale made after extensive gathering, and the twelfth (the only relevant one of the group) was a 1958 sale of a total of 1,080 Mcf per month, which at 32.64¢ means a revenue of $11.80 per day, hardly a material item of reference. Medina's brief (p. 29) seems to refer to the same 12 discreditable sales; otherwise nothing is shown of any sale in interstate commerce in Pennsylvania at 30¢ or higher. If, notwithstanding several court opinions cited above, the sales intrastate are relied upon, the only ones actually shown to be at 30¢ or more and of any significance are those to Pennsylvania Gas Company which are not comparable. Manifestly, it has not been shown that 30¢ is the prevalent, governing, definitive rate for the sale of gas in interstate commerce in the Pennsylvania-Appalachian region.

What is the prevailing price in the area?: By way of preface, no one knows where the "area" begins and ends. If the boundary is the geological stratum, we were told that the Medina sand runs from Kentucky to Ontario, crossing the very western end of Pennsylvania. A hundred times in the course of the proceeding the "area of interest" was referred to and defined as the northwestern two counties in Pennsylvania and the adjoining county in Ohio, where this particular layer of the Medina sand is found productive. But the staff, searching the record for all certificated sales, found only one in that three-county area, the Belmont sale at 28.05¢, cited on line 7 of the table above. Staff's Exhibit 11 reports the data for all the 169 finally certificated, jurisdictional sales anywhere within the borders of the state of Pennsylvania, but gas knows no state boundaries and it was agreed there is "nothing scientific" about the adoption of the Commonwealth as the relevant area (17T2211). The Commission has adopted area ceiling rates for most of the producing areas in the country, including the adjoining state of West Virginia, but not for Pennsylvania sales. There is pending a proceeding proposing to extend the West Virginia ceiling price to the entire "Appalachian area," to include western Pennsylvania, New York and Ohio (Docket R–218). Hence the present search for the prevailing price in the area is equally an inquiry into *what* area is relevant and controlling. Most sales listed in the staff's exhibit are located one to five counties east of the

[28] This 30¢ is the mean between Pennsylvania Gas' winter price of 35¢ and the 25¢ price at which they may take in the summer, at their option (16T1907). Also, this price normally calls for gas delivered to their pipeline, unless the well is of such size as to justify laying a gathering line (16T2037). However, the company's annual report to FPC (Item T here; also their testimony, 16T1983), refer to their 28 local purchases received at the "Well Mouth, Appalachian Area, Pa." at an average cost for 1961 of 30.1¢ and a total cost of $92,000. It is not stated to what extent their price of 30¢ (35¢ in winter only) is the result of the unusually high BTU content reported—1224 cu. ft., or 22% higher than Medina's agreed 1000 BTU gas (Item B, page 11). This purchase represents less than 1% of their total gas purchase cost; the rest is all at about 40¢ or more.

"area of interest"; some, it is noted, are in Green County on the border of West Virginia, which makes some West Virginia areas closer to the "area of interest" than are some of the counties relied upon in the staff exhibit.

The staff evidence (Ex. 11) is overwhelming to the effect that 27¢ is the dominant prevailing price for deliveries in Pennsylvania in interstate commerce, that is, half the number of contracts and 84% of the volume. The only Ohio sale listed since 1954, the year of the *Phillips* case, is the Felmont sale @ 28.05¢ shown on line 7 of the above table.[39]

Staff relies heavily on the great number and volume of 27¢ sales in Pennsylvania, but only six (out of the 101) were made in 1960 or 1961 and during this period there were four others at higher prices. Much less weight must attach to the 95 sales in prior years, most of them 1954 and before, since the Medina contracts were all made in the latter part of 1961.[40] The following table illustrates that, confining attention to the three most recent years shown, it is still apparent that 27¢ is the rate in the central Pennsylvania counties, covering 60% of the sales and seven-eighths of the volume.

Number of sales and monthly gas volumes, Pennsylvania

Price	1959	1960	1961	Total
28.1¢ Mcf	(2) 101,780	(2) 107,840	(1) 14,705	(5) 224,325
27.5¢ Mcf			(1) 38,294	(1) 38,294
27¢ Mcf	(5) 150,238	(4) 1,424,771	(2) 76,074	(11) 1,651,083
	(7)	(6)	(4)	(17)
Total Mcf	252,018	1,532,611	129,073	1,914,602

Source: Ex. 11, Sched. D, in CP62-194. Omits one very small sale in 1959.

Obviously, if the central Pennsylvania counties are the sole guide, the in-line rate for *that* area, as found and testified by the staff witness, is 27¢ per Mcf at 15.025.

But there is other evidence to be considered which suggests that the rate may in fact be a half cent greater. Only the other day, that is on April 3, 1963, the Commission acted to issue its final certificate to the one remaining sale listed in the staff's Exhibit 11 which had not already been certificated. This is the Snee sale in Fayette County to the Manufacturers Light & Heat Company at the rate of 27.5¢, or ½¢ higher than the staff's "in line" conclusion drawn from the same exhibit, but it is only one-twentieth of a cent above the announced ceiling price for the adjacent West Virginia territory. This contemporary action of the Commission in certificating a Pennsylvania contract executed in 1961 (six months before the Medina contracts) must be taken as the most recent and controlling expression of the approved price prevalent in the Pennsylvania area, and to that extent supersedes the recommendation of six months ago at ½¢ lower.[41]

Applicants rely heavily on the Commission's order of May 2, 1961, on the sale by the Allegheny Land and Mineral Company to Hope Natural, 25 FPC 886, where the full ceiling price of 28¢ was allowed for certain sales in West Virginia which, because of special circumstances, were treated as initial sales (as here) and therefore just come within the area ceiling price for sales in that state.

[39] Felmont was certificated by order of July 14, 1960, G–18627, a year after *Catco*, but no price is mentioned in the order, which may have been in view of the temporary authorization which had issued in that case in June 1959.

[40] See *Skelly*, FPC Op. No. 362, 28 FPC 401 (1962).

[41] That this case was uncontested—except as the public is a contestant in every case—is quite irrelevant. See p. 243, above, at n. 15.

The Commission noted that "Allegheny's producing fields [like Medina's] are strategically located near the heart of industrial America with its huge densely populated areas." It was the Commission's conclusion that 28¢ [27.45¢ at Medina's pressure base, or nearly one-half cent over the present 27¢-recommendation] "is neither out of line for the locality where Allegheny's subject wells are located *nor for the Appalachian gas producing area as a whole.*" There follows in the order certain comment on the cost of production "throughout the Appalachian area."

In other words, accepting the staff evidence that 27¢ predominates in the *central* Pennsylvania counties, there is equally compelling evidence for adoption of the *south* Pennsylvania rate approved by the Commission on April 3, 1963, at 27.5¢, or the announced adjacent area ceiling for West Virginia, which is 27.45¢ and, as the Commission says, appears equally appropriate to the Appalachian area as a whole.[42] This approach finds support in the recent Utah case, *California Oil Company* v. *F.P.C.* (CA10, March 28, 1963), 315 F. 2d 652, where the area ceiling for Wyoming was applied to a sale in Utah for which no area ceiling had been announced. Here, if only Pennsylvania prices are to be considered, a price condition of 27¢ might be claimed to be required, but it is evident from the Commission's action of April 3, 1963, and from the Allegheny and Utah decisions just cited, that the relevant area is not to be regarded as beginning and ending at the state line. The Commission's prescription of a ceiling price for West Virginia may be quite as relevant to these sales in Ohio and northwestern Pennsylvania as are the slightly lower rates from central Pennsylvania. It is not the suggestion that these three regions comprise three separate pricing areas; rather it is the view that all three regions have a geographic and economic unity near the large eastern market end of the lines and should be treated as one, for which purpose the predominating indication of the current or 1961 prevailing price is found to be that already announced by regulation for West Virginia, that is 27.45¢ at 15.025 (derived from the regulation calling for 28.0¢ at 15.325). It remains only to consider whether the circumstances mentioned justify an exception to that prevailing price.

Do storage and peaking warrant exceeding the 27.45¢?: It is claimed that two special and unique features of the Medina producers' contracts fully justify certificating the sales at the full rate of 30¢ upon the basis that the margin, if any such there be, over the prevailing price merely gives appropriate recognition to these features. The first one is the transfer of the storage rights, the second one is the privilege of the buyer to take only during the winter months.

(a) *Storage:* Staff (p. 31) says the applicants' claim with respect to storage seems virtually to have been abandoned, Medina saying that even without storage, their 30¢ is in line (Brief, p. 28) and the producer's briefs seeming to suggest that their real reliance is on the other item discussed below. Hence it needs no extensive treatment here except as it may help to show why this case has taken so long. All during the early stages, the indication was that the transfer of the storage rights was the real basis, or at least an equal basis, for the 30¢ price (Preh. T. 135; 1T67). At that time it was explained that the producers thought their storage potential was worth 2¢ or 3¢, in terms of the Mcf of gas now to be produced, and this explained their originally requested price of 32¢. When it developed that Medina could market the gas to Tennessee for not over 37¢, and required for its own economy a margin of 7¢ leaving only 30¢ for the producers. the latter (except for a few, who dropped out) concluded to accept the 30¢ price anyway, their final contracts calling for the sale of both the gas and the storage rights for

[42] According to *1962 Gas Facts*, at p. 34, marketed production of natural gas in West Virginia nearly doubles that in Pennsylvania—208,757 MMcf to 113,928 MMcf in 1960.

one lump sum price of 30¢ per Mcf of gas produced. By the time the gas gets to Tennessee the sale contract separates the two, since Medina sells to Tennessee at 33¢ per Mcf for the gas plus 4¢ per Mcf for the eventual storage rights.

What that storage right is needs some explaining. It seems to be more nearly an option, that is, a right or privilege granted by the landholder to the producer, by the producer to Medina, and by Medina to Tennessee, eventually (or when the gas is nearly all produced) to use the same wells thereafter for an indefinite period for the purpose of storage of gas by Tennessee. But the storage at that time is not to be free, as it developed only after most extensive questioning. Instead, Tennessee may or may not make a payment to the producer for the salvage value of the well which it concludes to be useful for storage and thereafter it will pay the lessor for the storage on an annual basis as it is utilized, paying from $1 to $2 per acre, or from $100 to $200 per well, each year (12T1309; 19T2357). What is currently transferred, therefore, is the option later on to enter into the storage arrangement *if* the particular well is determined to be of practical value for that purpose and *when* it is convenient to Tennessee's program to make that use.[43]

Perhaps inspired by the 4¢ price in the Tennessee contract for storage by itself, there was a great deal of dispute as to what the storage potential of a well can be worth at this early stage, before it is even drilled. It seemed to wind up to a concurrence that a proven, developed, and ready-to-use storage area is obviously of great value,[44] that the presence of a considerable number of wells from which substantial gas has been removed or is about to be removed suggests or indicates that some storage potential will be found, but does not measure it because a well that has produced gas may or may not be a well that will store gas (8T764; 10T972). From this it results that the transfer of the storage right is plainly a cognizable asset but not one of such precision that the claimed prices of 2¢ or 3¢ or 4¢ can be certified to be its value.[45] Perhaps, on this score, it is enough that Tennessee (along with most of the others in the case) is constantly active in promoting storage projects in this general area and from the costs they have incurred in so doing, they are satisfied that their valuation is a fair one (13T1539–74).

More to the point is the flat answer given by the staff and by the Consolidated interveners to the effect that all or nearly all of the jurisdictional sales in the Pennsylvania area, already priced at about 27¢, contain a clause which operates to transfer the storage rights, that is an option to buy the well. A provision to that effect appears in the New York State Natural's sandard oil and gas lease (Exhibit 13–14; while East Ohio asserts that 95% of their gas purchase contracts contain such an option (14T1608, Ex. 30). United Natural believes that its right to purchase the well carries with it the storage provision, if the producers' lease has one (17T2083). Finally the staff witness testified that 82 "approximately" out of the 101 jurisdictional sales in Pennsylvania, from which he derived his recommended 27¢ rate, contain an option provision which appears to transfer the eventual storage right to the buyer (7T658, 9T902).

It is true that transfer of storage potential is not quite universal. As to the existing deliveries by the several producers to various other buyers, Mr. Britton

[43] Note that these certificates do not cover the actual, eventual storage program by Tennessee, *nor* the transfer to Tennessee (which the present contracts provide for) of the gas "in place" at that time. Each of these items will require an FPC certificate to be obtained only after a new and current application.

[44] On January 18, 1963, the Commission authorized a $10 million investment by Tennessee, New York Natural, and United Natural to develop jointly the Ellisburg storage pool in Pennsylvania, which is proposed to contain 21,600,000 Mcf of top storage gas (CP62–275).

[45] *Cf.* p. 72 of the initial decision approved in *Panhandle,* Opinion No. 350, January 15, 1962, 27 FPC 35.

says, "Some do, some don't." (12T1346) But there is adequate evidence that the predominant, referable sales in the area do transfer the storage option, directly or indirectly, and without an extra bonus over the established price of 27¢ or 28¢. In that view, the storage option in the Medina contracts does not give warrant for a surcharge over the prevailing price of 27.45¢, as found above, since the storage is, in effect, included in the price so paid.

(b) *Winter peaking:* Much simpler, but perhaps more effective, is the applicants' claim which predominated the latter half of the proceeding, and now seems to be their main reliance, to the effect that their margin (now at 2.55¢) over the prevailing price is warranted and should be approved because their sale is provided to be made during the winter months only, from November through April, at Tennessee's option. It seems clear that Tennessee can, if it chooses, call for their entire annual quantity during the winter half of each year and, by turning their valves, effectively shut down for the six summer months the wells dedicated to them. There was pointed out the very serious possibility that the producers might incur considerable loss because of summer drainage from their areas caused by neighboring wells of other interests which are not shut down. The competing companies already in the area seem to shut down their wells only when there is ample protective acreage around them, that is, a sort of *cordon sanitaire* composed of sufficient undrilled acreage to insure that the pressure differentials build up during a period of several months' shutdown will not cause gas to seep over into the neighboring lands. This circumstance, together with the lack of an absolute assurance that Tennessee will take only in the winter (13T1532), gives some basis for the claim that the winter peaking program will not work out in actual practice.

But there can be no doubt that Tennessee's privilege to take the gas during the six months of its greatest need is an item of real value to Tennessee even if, like the potential storage, it is hard to measure. Its net effect of course is to operate the fields as a ready-made storage facility, with the benefit that no gas need be injected at first since, hopefully, it is already there. Except only by most general references, it was not developed to what extent this privilege is a detriment to the producers, although it was mentioned that perhaps one-fourh of their costs necessarily go on the year around, they will receive no income during the summer months, and their revenues are in effect discounted by the resulting extension of the period of their receipt over so many additional years. There was some effort to measure the value of this service to Tennessee by comparison with pipeline selling rates in the area and the differential between the rate for 100% load factor service (which would compare to year around delivery by Medina) with that for 50% load factor service (which compares to Medina's six-month sale). This is said to show that the winter sale provision is worth 6¢ to 8¢ per Mcf (1T118). The opposition (Con. Brief, p. 28) notes that this reliance on the value of service concept is most unusual indeed in the public utility field.

Perhaps the most dramatic evidence of the relevance of the winter peaking question is the practice of one of the local lines (intervener Pennsylvania Gas Company), which is the intrastate purchaser noted on line 4 of the first table above, p. 260. Their average price results from a winter rate of 35¢ and a summer rate of 25¢ for that quantity taken in the summer *up to* the amount of the winter take (Ex. 3, p. 4).[48] However, as explained above, the Pennsylvania Gas contracts are rather small in volume and for various reasons are not referable.

[48] The Public Utility Commission of the Commonwealth of Pennsylvania does not explain the policy under which it recommends that FPC hold to the 27¢ rate for interstate sales in Pennsylvania while at the same time their local law permits the intrastate sales to Pennsylvania Gas at the 30¢ to 35¢ rate.

The first answer to the claim for a 2½¢ margin or premium based upon winter peaking is that this is not a Medina invention at all. Exhibit 11 is the staff compilation of existing jurisdiction sales in Pennsylvania and Ohio, something over 200, and about half of the listings appear to provide for a distinct reduction in the quantity required to be taken during the summer season, usually calling for either one-third or one-half of the winter delivery rate to be maintained all summer. From this exhibit the Pennsylvania Commission has provided a helpful summary designed to show that the contracts which do not require summer deliveries command no higher initial prices than those with summer-take requirements. These partial provisions are not of course as favorable to the buyer or as detrimental to the seller as Medina's 100% winter delivery clause, but there was evidence of some other sales that do equate to this practice, such as those to East Ohio, which takes the entire output of their producers' wells for the 180 days of the winter season (14T1585). Their price is 27¢. Others, as might be expected, complicate their provisions somewhat, calling for the annual volume, for example, to be taken in 180 days or, if not taken, then in an additional 90-day make-up period (12T1321). Some others (including United Natural, 17T2085) have a provision to cut back in the summer to one-third of the winter quantity but in practice do not use it and take the entire production the year around. In none of those noted (except the Pennsylvania Gas purchase just described) does there appear a premium price paid for this partial peaking service, nor any margin over the established rate of 27¢ or 28¢. On the other hand, none of the remaining contracts cited, except East Ohio's and Lake Shore's, seem to call for 100% winter "take."

It may well be that this winter peaking is the type of disparate service which the 9th Circuit [47] tells us should be specially considered in relating proposed sales prices to the prevailing price, but this brief outline of its nature, its problems, its effects, and its policy implications would tend to demonstrate only that such a question does not belong in the proceeding at the certificate stage. After all, the producers will be free, even when conditioned back to the prevailing price of 27.45¢, to file for increases up to their contract price and collect them currently, subject to refund if it be not proved that, because of the winter peaking or the storage or otherwise, the higher price is just and reasonable. This approach—to defer such questions at this stage—seems to be commanded particularly by the more recent court decision cited above.

Finally, the policy response which seems to require that the certificate be conditioned at 27.45¢, without allowance for winter peaking, is well expressed by the staff brief from which the following is quoted:

> Fundamentally, the problem here is one of Commission policy in holding the line. Clearly the in-line price for the area is 27¢ per Mcf for pipeline quality gas. Over the years producers have used every conceivable and ingenious argument for attempting to break the line on the ground that they should be granted an allowance over and above the wellhead price for certain services beyond the wellhead. The Commission has consistently rejected these efforts (see Opinion No. 359, Standard Oil Company of California). The argument that a differential should be offered beyond 27¢ is predicated on the false assumption that 27¢ is a just and reasonable price and that peaking and other services should be compensated for on top of the just and reasonable price. But this (27¢) is an initial rate by which the Commission holds the line until such time as the just and reasonable rate for the area can be determined. To build up a series of differentials for various alleged services above the prevailing rate in the area is merely a method of

[47] *U.G.I. v. F.P.C., supra.*

defeating the principle laid down by the Supreme Court in the *Catco* decision. It may also be added that allowing the purchaser to take lesser quantities during the summer is part of the prevailing pattern in the area [48] and there is no reason to assume that the producers are not adequately compensated for such services by the payment of 27¢, since, for all we know, the just and reasonable rate may be substantially less than 27¢ per Mcf.

In short, it is simply impractical, unnecessary and illogical to program quick action and early disposition of producer certificate cases if each producer is free to select the special features of his sale and make a case for allowing a premium on those features. Instead, let the sale go through at the prevailing or the prescribed ceiling price or lower, the premium question to follow in an immediately-filed rate case. At *that* stage the premium features will be to be weighed and (for all that appears here) perhaps be canceled out or off-set against various deficiencies or points of undervalue or other circumstances which might have a countervailing influence on the just and reasonable rate. For example, in such a rate case, or in a general, area-rate, rule-making proceeding, it might feasibly be explored whether the existing and historically high price of Appalachian gas (8¢–10¢ over the Gulf Coast rates which, we were told, reflects its proximity to the metropolitan markets) does not already contain in the present in-line price a built-in premium for the two features here relied upon—storage and winter peaking. After all, both of those features get their special value from the same factual premise, the Eastern or market-end location of the facility.

VII. Feasibility of the Gatherer's Project

In the sense of a normal pipeline project—the standards for the certification of which were spelled out explicitly in the *Kansas Pipe Line* case over 20 years ago, 2 FPC 29—it would be difficult, perhaps out of the question, to apply such standards and issue a certificate to the Medina gathering company. Nearly all of the 87-page brief filed by the intervening Pennsylvania Gas Company and United Natural Gas Company (the National Fuel affiliates who now occupy the area of interest) is devoted to a series of questions about Medina's facilities, reserves, financing, program, and economic feasibility, without, however, first establishing *what* pipeline standards are required to be applied. In the following review of these questions, that reservation is withheld for discussion below. The obvious jurisdiction question is also reserved for the moment because the case was tried without pre-conclusion as to what part, if any, of Medina's program is within the statutory exemption of "gathering"—this in view of the absolute unanimity of disagreement on where the exemption begins or ends, also in view of the applicant's conclusion not to raise the technical jurisdictional question at all, but merely to seek such flexibility in the certificate as a gathering function requires (10T1045).

No final design of facilities: It was repeatedly made evident that the only gathering facility pretty definitely planned and designed is the 28.5-mile east-west "header" (A–D on the map, p. 245) which is to cost $960,000 out of the total planned investment of the Medina gathering project of $3,469,300 (spread over a two-year period, 11T1185). United-Pennsylvania gas point out there is still no definite plan for the remaining 78 miles of gathering lines, since they are not

[48] The *Allegheny Land and Mineral Company* case, Docket No. G–19030, 25 FPC 886, shows that 27½¢ at 15.025 psia is in-line for the area *and includes the peaking privilege.* The revelant area for comparison of prices is obviously not limited to the counties in which the dedicated acreage is located. The appropriate area under the Commission's Statement of General Policy No. 61–1 includes West Virginia as well as all the counties in the western tier of Pennsylvania. (Docket No. R–218) Proposed Revision-Pricing Areas.

to be located until the reserves are determined by actual drilling, that the first tentative program changed three times during the course of the proceeding, and the final design was obsolete when it was submitted (Ex. 31). Their brief concludes on this point that if a gathering company can get its certificate on this kind of a showing, then "Little statutory burden rests upon a pipeline gatherer when it applies for a certificate under Section 7 of the Natural Gas Act." (p. 61) Just what that statutory burden is does not seem to be explained, nor the effect of the total exemption of the gathering function itself by Section 1(b) of the statute cited, relied upon, and here to be applied. A reflection of this rather cavalier attitude toward the flat exemption the statute so plainly gives appears also in the staff brief: "Perhaps a gathering system should be treated differently than a major pipeline." (p. 22)

The objection is that the gathering system has been only tentatively outlined, is not settled upon; hence, its utility, feasibility and adequacy cannot be examined, determined or certificated. The first answer is that (except for 18) the wells have not yet been drilled and manifestly the gathering lines cannot be located until after the wells are spotted, drilled *and* determined to be productive. What instead was designed was a tentative system to reach all the dedicated areas where it is most logical to expect the first 225 wells to be drilled (10T1029, 11T1171). (Note this is the number of wells thought to be needed during the first three years, according to the original plan, Exhibit I with the application.) The second is that the dedicated acreage changes from time to time, including several amendments filed since the application came in a year ago, and there may be more by now. The result is the tentative, possible plan shown on the map, a total of 78 miles of gathering lines of various dimensions branching off the main gathering line (points C–Q, C–P, D–M, D–N, D–O). This much line, together with the necessary movable compression facilities, can be built for $2.5 million dollars, and the only plan that is now before the forum is to spend that much for gathering lines of that general character and description at whatever points may prove to be most desirable at the time of construction. Quite apart from any jurisdictional doubts, no reason is perceived to require that the plan be any more definite. This plan, or something like it, will carry the maximum load and can be built for the money to be provided. It is essential that the tentative status of the design remain.

Financing: The interveners take particular umbrage that financing witnesses were not provided, neither the policy officer of the company to explain its debt and equity fund-raising program, or the underwriter's representative to assure that the money could be raised. This second point brings up the hardly surprising fact that the financing plan went through several changes—first it was to be all equity without borrowing, the second one called for a loan which was then being sought from an insurance company, and the last presentation was a plan for mortgage bonds to the amount of $2,900,000, 15-year basis, to be sold through an establishment known as the Broad Street Associates, Inc., whose letter of just one year ago says the bonds to that amount can be placed privately. Evidently it is thought that without such testimony the finance-ability of the project cannot be determined or certified (United Natural brief, pp. 66–72). Again, the reference is to the practice where there is involved a major pipeline expansion, with many millions of dollars to be raised through public offering. It would be quite optimistic, perhaps out of the question, to expect for a project of this character, uncertain and necessarily with some speculation,[49] to furnish the same type of solid, well-ordered and fully underwritten financing that is

[49] "* * * a large element of risk * * * " (11T1147; 12T1400). Broad Street "understands" there will be 25% equity capital. The order subjoined so provides.

available to a public utility pipeline whose program is all worked out, plans complete, and consumers in position to indemnify whatever costs occur. Anyway, if the money is not raised the gathering system will not get built and no harm to the interveners or to the general public will be wrought. Finally, it is quite possible no financing will be required at all (4T544).

Market needs: The claim that Tennessee has shown no need for the gas is hardly an acceptable objection, as pointed out above, and, as Tennessee responds, is quite contrary to the findings in a number of recent orders of the Commission. The claim is also repeated that interveners Pennsylvania Gas and United Natural can themselves provide the market for these producers—to whom this information must come somewhat as a surprise in view of the producers' long-continued and repeated efforts to meet the interveners' terms and make sales to them, unsuccessfully except for a few and notably rather recent exceptions. The staff can locate no legal basis for denying Medina's application upon this ground (Staff brief, p. 19). It will be recalled that the Commission has said (13 FPC 221, 237):

> Certain interveners opposed the granting of a certificate to Pacific to take gas from the San Juan Basin on the grounds that this gas should be reserved for them if and when it should be desired * * * we find no merit to these interveners' contentions.

Economic feasibility: The pro-forma balance sheet, income statement and cash flow appear as revised schedules submitted with the applicant's letter of April 27, 1962, which is treated as an amendment to its application. They disclose a projected annual net income for the third and later years of $108,000, which is a little less than one-seventh of their revenues remaining after allowing for the cost of purchased gas. This net revenue figure is after allowing for state and federal income taxes, also $156,000 for depreciation and $165,000 for interest. The same schedules compute an average net return of 8.8%. With a sinking fund payment of $212,000 beginning the third year (based on borrowing only $2,750,000, not the full amount first discussed) the debt service ratio appears to be 1.25.

But it is painfully evident that all of these hypothese begin and end with the amount of gas that flows through the Medina system. The entire revenue which results in the net income of $108,000 is figured from the sale of 10,800,000 Mcf per year which, it will be recalled, comes from the maximum program of 60,000 Mcf per day throughout the winter season. It is evident that if the deliveries and thus the gross revenues were reduced by as much as one-fourth, the operation might tend to become marginal indeed. To illustrate this, the intervener witness, Mr. Comet of United Natural, using the same basic cost figures but forecasting sales volumes of only one-third of the amount of Medina's program, produced Exhibit 26 to demonstrate that sales at that volume level, with the same expenses, depreciation and interest, will result in a net loss of $261,000 for the third year. Thus the question of feasibility depends entirely upon the annual quantity of sales.

It was demonstrated above under the heading of "Reserves," Section IV, that the sales volume will depend entirely upon the number of wells drilled and found successful,[80] upon their deliverability and upon their potential reserves. The staff conclusion as quoted above is that "the project could have a deliverability life of seven to eight years," and counting the "possible reserves" it could be 12 to 13 years. Upon that basis, the showing made does not conclude unquestionably that the project is economically feasible, but neither does it negate that it may become so.

---

[80] Exhibit 40 as revised by the staff witness, 22T2259, suggests that 86 wells will be needed in each of the first three years.

However, consideration of Medina's program, and perhaps of any gathering program, necessarily has an aura of unreality—only part of the bond issue will be sold the first year, the lines will not be built until there is far more clear direction as to where the wells will be drilled and which ones turn out to be successful, only part of the steel pipe will be ordered at the beginning, and both the extent, sizes and direction of the various lateral lines will be determined and redetermined currently as conditions develop, as more or less wells prove out, and as new blocks of acreage may be added anywhere in the area. The patent infeasibility of determining feasibility results more from the inherently volatile nature of a gathering program than from any obvious deficiencies of the present one. What is most obviously demonstrated is that pipeline standards can hardly apply to what is predominantly *not* a pipeline program.[51] Derived from the custom and precedent that call for a finding of feasibility in a certificate case, which gives no regard to the special and perhaps inherently risky nature of any gathering program, it seems to have been assumed that no certificate could issue unless the Federal Power Commission first apply pipeline standards of feasibility in the findings required for a certificate of convenience and necessity. But Section 7 of the Natural Gas Act contains no such requirement.

Feasibility is to be proved, in the case of a long line major pipeline, because its costs properly incurred and its investment prudently made are the measure of its rates which, found just and reasonable, will be allowed and charged to the consumers. But Medina's rates are limited to its contract price of 37¢[52] which, as explained many times during the hearing, consists, so far as Medina is concerned, of 30¢ for the producer, leaving a margin of 7¢ for Medina. In the case of a pipeline, if its costs go up, its rates go up accordingly until, at least, they reach the point of no return. But, under *Mobile*, 350 U.S. 332, whether Medina's unit gathering costs turn out to be 7¢ or 70¢, there is no provision for the filing of a rate increase by Medina to exceed the contract price. Hence the risk and uncertainty and speculation, which are the foundation of the interveners' objections, are solely upon Medina and its investors and cannot redound to the harm of the gas consuming public. Whatever gas enters Tennessee lines will be at 37¢ or below (34.45¢ if no rate increase is filed and 37¢ is about 10% lower than Tennessee's full load factor sale price at that point (1T122).

In that view of the case, the solution is clear. It is not necessary to rest upon the conclusion—although it seems entirely supportable—that the Medina program from beginning to end is functionally and economically a gathering program

---

[51] It is believed this concept of the limits on the Commission's responsibility for what are predominantly (measured either functionally or financially) gathering systems synthesizes the decisions in this field, as listed below, in all of which one or more of the elements of deficiency here made issue of are omitted from any affirmative finding that they have been proved or otherwise examined and satisfactorily established:

Pacific Northwest Pipeline Corp., 22 FPC 117.

Lone Star Gathering Co.; CP62–179, September 7, 1962.

Barnes Transportation Co., 18 FPC 369.

The gathering companies in *Ben Bolt*, 26 FPC 825 (see especially page 10 of the Commission's brief in the pending review of this case in the Fifth Circuit, No 19587).

Oil, Inc., 25 FPC 1178.

The Joint Venture in *Skelly's* case, Opinion No. 362, August 30, 1962, 28 FPC 401; rehearing ordered October 26, 1962; opinion on rehearing 28 FPC 1065.

Pioneer Gathering System, Inc., 23 FPC 260.

Redlands Pipeline Co., G–9215, June 1, 1956.

West Texas Gathering Co., G–14302, June 27, 1958.

Valley Gas Trasmission Inc., 25 FPC 233.

[52] The 37¢ escalates, in 1¢ steps, to a ceiling of 40¢ over 12 years.

which the law exempts from the jurisdiction and therefore the responsibility of the Federal Power Commission, upon which basis no finding of feasibility should or even could be required for a certificate to permit Medina's sales and also to permit whatever incidental transportation takes place at the end of its technical gathering. In other words, the actual activity whose feasibility is inherently uncertain is the very activity which the statute exempts. Rather, in the staff's view and in its obviously sensible, proposed solution, the jurisdiction point does not become critical or controlling. Since the sale by Medina (as distinguished from its gathering) is clearly and fully jurisdictional (the very point of *Phillips*), the staff's solution is to limit Medina's sale price to its own proposal, that is 7¢ plus the cost of the gas. Their object, in keeping with the highest purpose of the FPC, is to foreclose potential injury to the public interest, to divert the inevitable risks from the consuming public to Medina itself. The rationale of the staff conclusion appears as follows at page 33 of the brief;

Medina has no right to pass its risks on to the public.

In the first place, Commission policy on this matter has already been established (Opinion No. 362, *Skelly Oil Company, et al.*). Medina in its entirety, will be regulated as a pipeline company within the meaning of Section 154.91(a) of our Regulations. Medina will have to file its contract with Tennesssee as a special rate schedule under Section 154.52. Medina has offered evidence to justify its transportation charge of 7¢ per Mcf. What their actual experience will be cannot be determined until two years after service is commenced, when they will be required, under the Commission's order, to submit their actual costs of operation. Unit cost of transportation may, in fact, be less than 7¢ Mcf. Due, however, to the speculative nature of much of the evidence submitted in this proceeding as to the amount of money required for laterals, and the considerable doubt as to the deliverability of 60,000 Mcf per day over a 12-year period, it might turn out that the unit cost of transportation, when the deliveries are substantially less than 60,000 will be higher than 7¢ per Mcf. This risk, however, is not one which should be borne by the public. We have given the Applicant the benefit of every doubt as to reserves, deliverability, and the amount of investment required in pipeline facilities, but we see no reason to go beyond that and to underwrite the Medina project by making the public pay for a speculative venture. In short, we recommend to the Examiner and the Commission that a fixed ceiling for the duration of the contract with Tennessee of 34¢ [34.45¢] be incorporated into any certificate to Medina. Without such a condition the staff recommends that Medina's application be rejected.

As indicated above, Medina will have to report its actual costs wtihin two years after service commences and whatever the unit cost of transportation may be, it should be added to the 27¢ [27.45¢] cost for purchased gas up to the maximum of 34¢ [34.45¢] per Mcf.

Medina's reaction appears in its reply brief (p. 11)—"Medina would not object to the attachment of this type of rate condition to its certificate, applicable to its *initial* rate." Its effect is to conclude the feasibility question by leaving entirely to Medina the full risks and consequences, if any such there be, of the infeasibility apprehended.

Further Findings and Conclusions

Upon consideration of the whole record, including the applications and the evidence, as well as the briefs filed, it is further found and concluded that:

(1) Tennessee Gas Transmission Company, a pipeline natural gas company subject to the jurisdiction of the Federal Power Commission, has stipulated it

will not rely upon the Medina reserves, so far as proved on the present record, as any part of its capacity for future expansion of its facilities or markets.

(2) Benedum-Trees Oil Company, Operator, *et al.;* Benedum-Trees Oil Company, *et al.;* Paul Benedum; Great Lakes Natural Gas Company, Inc.; The Grantley Company; Paul L. Britton, Jr., Operator, *et al.;* Worldwide Petroleum Corporation; Russell McConnell; Flanigan Brothers, Operator and Agent, *et al.;* are each, or upon initiation of the proposed sale to Medina will be, engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and are or will be "natural-gas companies" within the purview of the Natural Gas Act.

(3) Upon initiation of its proposed service and sale the Medina Gathering Corporation will be a "natural gas company" subject to the jurisdiction of the Commission.

(4) The sales of natural gas proposed by all of the producer applicants above-named and the jurisdictional transportation by the Medina Gathering Corporation and its sale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, are subject to the requirements of Section 7(c) of the Natural Gas Act. The sales are required by the public convenience and necessity, and certificates therefor should issue to each of them, as herein ordered, subject to the conditions herein stated, such conditions being required by the public convenience and necessity.

(5) The several applicants named are able and willing to do the acts and to perform the services proposed and to conform to the Natural Gas Act and to the requirements and regulations of the Commission thereunder.

ORDER

Accordingly, it is ordered, with the specific conditions herein specified, and subject to review by the Commission, that—

(A) Certificates of public convenience and necessity are hereby issued to the producer applicants named in (2) above, for the sales of natural gas in interstate commerce for resale as proposed in their several applications, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor.

(B) Certificate of public convenience and necessity is hereby issued to the Medina Gathering Corporation for the proposed transportation of natural gas in interstate commerce subject to the Commission's jurisdiction, and for the sale of natural gas to the Tennessee Gas Transmission Company, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor.

(C) Until their price or prices may be lawfully changed under authority of the Natural Gas Act, the certificates issued to the several producers (Dockets CI62-694 to 696, CI62-730 to 732, CI62-761-2, CI62-999) are hereby conditioned to prohibit any total initial price greater than 27.45¢ per Mcf at 15.025#. Before beginning its sale each producer shall file a rate schedule to that effect with the Commission.

(D) Medina Gathering Corporation's rate for its sale to Tennessee shall not at any time exceed seven cents per Mcf (at 15.025#) in addition to (a) 27.45¢ or (b) any future rate lawfully in effect for sale of gas to Medina by the producer applicants. Medina shall file as a special rate schedule a copy of its contract with Tennessee together with a statement of its effective rate in accordance with this certificate and its conditions herein stated.

(E) Medina shall, within 90 days after the first two years of operations, file detailed data setting forth its costs upon the basis of actual experience, and a revised rate schedule, if necessary, reflecting such costs up to 7¢ per Mcf. Further, the certificate is conditioned upon Medina's revising its plan of financing so that the long-term debt ratio will not exceed 75% of the total capitalization at the end of the second year of operation.

(F) These certificates are not transferable, and each is effective only so long as the applicant named therein shall continue the operations herein authorized subject to the Natural Gas Act and the applicable regulations and orders of the Commission. The certificates shall be accepted in writing within thirty days of the date on which this order is final and effective.

(G) The application of Atlas Exploration Company, Operator, in Docket CI62–760, is dismissed.

WILLIAM L. ELLIS,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

CITY OF PASADENA, CALIFORNIA, PROJECT NO. 1250

ORDER GRANTING EXEMPTION FROM PAYMENT OF ANNUAL CHARGES

(Issued July 16, 1963)

Application was filed on April 1, 1963 by the City of Pasadena, California, licensee for Project No. 1250, for exemption from payment of the net amount of annual charges under the license for the project for the calendar year ended December 31, 1962, pursuant to the provisions of Section 10(e) of the Federal Power Act (Act) and regulations of the Commission thereunder, on the ground that the balance of the project power not used for municipal purposes was sold to the public without profit.

The statement of annual charges rendered by the Commission for the year involved amounted to $151.92. The application sets forth that the project operations for the year 1962 resulted in a net loss, and that the power was sold by the licensee to ultimate consumers without profit.

The Commission finds:

(1) The licensee is a municipality within the meaning of Section 3(7) of the Act, and is entitled to claim exemption from payment of annual charges under Section 10(e) of the Act.

(2) The licensee is entitled to exemption of the net amount of annual charges for which it was billed for the year 1962.

The Commission orders:

The licensee is hereby exempted from liability under the license for Project No. 1250 for payment of the net amount of annual charges for which it was billed for the calendar year 1962.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

PENNSYLVANIA POWER & LIGHT COMPANY, PROJECT NO 1881

ORDER DETERMINING NET CHANGE IN ACTUAL LEGITIMATE ORIGINAL PROJECT COST AND ACCRUED DEPRECIATION, AND PRESCRIBING ACCOUNTING THEREFOR

(Issued July 16, 1963)

Pennsylvania Power & Light Company, Licensee for Project No. 1881[1] filed statements pursuant to Section 4.1 of the Commission's Regulations under the Federal Power Act, claiming for the period from June 1, 1955, through December 31, 1959, project additions and retirements resulting in: (1) a $1,310,154.82 net increase in project cost over the previously determined amount of actual legitimate original cost of the project, $16,773,419.71 as of June 1, 1955;[2] and (2) a resulting total claimed actual legitimate original cost of the project as of December 31, 1959, of $18,083,574.53.[3] The claimed net increase of $1,310,154.82 results from claimed and recorded project gross additions of $1,927,818.83 and retirements of $617,664.01, as more specifically shown in the attached schedule I.

Licensee also claimed a net addition to the project depreciation reserve account of $632,833.17 over the previously determined amount of accrued depreciation, $6,028,251.66, as of June 1, 1955,[4] resulting in a total claimed accrued depreciation as of December 31, 1959, of $6,701,084.83, as more specifically shown in the attached schedule.

The Commission's staff made a field examination of the books and records of the Licensee for the purpose of ascertaining the correctness of the foregoing amounts. Following the study an agreement, subject to Commission approval, was reached between the staff and Licensee's representatives with respect to certain adjustments involving: (1) the elimination of $285,593.25 from the claimed and recorded project cost as of December 31, 1959; (2) a net decrease of $262,937.79 in the claimed and recorded project reserve for depreciation as of December 31, 1959; and (3) the accounting disposition of all amounts involved in the proposed adjustments.

---

[1] The project, generally described as the Holtwood project, is located on the Susquehanna River, in Lancaster and York counties, Pennsylvania. The license authorizing operation and maintenance of the project issued pursuant to Section 4(e) of the Federal Power Act, effective as of January 1, 1938, and terminating as of June 30, 1970 (10 FPC 1162, 1368). Pennsylvania Power & Light Company became the Licensee in 1955 through transfer of the license (14 FPC 713).

[2] 17 FPC 98.

[3] Article 13 of the license and Section 4 of the Federal Power Act provide that the Commission shall determine the actual legitimate original cost of the project and accrued depreciation applicable thereto as of the effective date of the license, the difference being the net investment of the Licensee in the project as of that date. These provisions also require the determination of the changes in the actual legitimate original cost and related depreciation thereafter.

[4] 17 FPC 98.

The proposed eliminations from claimed project cost are shown in attached Schedule II and are associated with the following items:

Excess labor and overhead on E.R.* 300002	($5, 434. 52)
Excess overheads on E.R. 300005	(836. 53)
Excess labor and overhead on E.R. 300017	(11, 686. 34)
Excess labor and overhead on E.R. 300022	(3, 721. 95)
Excess labor and overhead on E.R. 300033	(8, 248. 61)
Delayed recording of retirements	(255, 665. 30)
Total	(285, 593. 25)

*Expenditure Requisition.

The accounting disposition of amounts included in the proposed adjustments required to bring the recorded project costs and accrued depreciation into agreement with the recommended amounts of project cost and project depreciation as of December 31, 1959, all as tentatively agreed to between Licensee and staff, is shown by the following composite journal entry.

	Debit	Credit
Account 250, reserve for depreciation, Project No. 1881	$262, 937. 79	
Account 538, miscellaneous income deductions	28, 520. 89	
Account 100.1, electric plant in service, Project No. 1881		$285, 593. 25
Account 144, retirement work in progress		** 5, 865. 43

**The account designations are those of the Commission's Uniform System of Accounts effective January 1, 1937.

By letter dated May 3, 1961, Licensee confirmed its agreement with staff's proposed adjustments, accounting dispositions, and resulting project costs and reserve for accrued depreciation applicable to project properties as described above.

The Pennsylvania Public Utility Commission was advised by letter of this Commission dated June 15, 1962, of the proposed adjustments, accounting dispositions, and resulting project costs and reserves for accrued depreciation and the views of the Commission were requested. By letter dated June 20, 1962, that Commission stated it has "no objection to the adjustment relative to the proposed decrease in the project original cost by $285,593.25.", and further stated that "No comment is made in the matter of the proposed decrease of the project depreciation reserve by $262,937.79."

The Commission finds:

(1) Licensee, by its tentative agreement to the staff recommendations, and the Pennsylvania Public Utility Commission, by its letter dated June 20, 1962, have obviated the necessity for notice and opportunity to protest provided by Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act.

(2) The foregoing adjustments, including the accounting dispositions, are reasonable and appropriate for the purposes of the Federal Power Act and therefore should be approved and directed as hereinafter provided.

(3) The net increase or change in the actual legitimate original cost of the project for the period from June 1, 1955 through December 31, 1959, is $1,024,-561.57, comprised of gross project additions of $1,897,890.88 and project retire-

ments of $873,329.31. The net increase or change in the reserve for accrued depreciation applicable to inservice project properties of Project No. 1881 for the period from June 1, 1955 through December 31, 1959, is $369,895.38. The actual legitimate original cost of Project No. 1881 as of December 31, 1959, is $17,797,981.28; and the reserve for accrued depreciation applicable to inservice project properties of Project No. 1881 as of that date is $6,438,147.04; all as more specifically set forth in the attached Schedule I.

The Commission orders:

(A) The provisions of Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act are hereby waived for the purpose of this order.

(B) The foregoing adjustments including the accounting dispositions, as proposed by staff and agreed to by the Licensee are hereby approved and directed to be made by the Licensee.

(C) Licensee, to the extent that it has not already done so, shall:

(a) establish and maintain control and detailed project plant accounts for Project No. 1881, showing the debit amount of $1,024,561.57 as the net increase or change in project cost during the period from June 1, 1955 through December 31, 1959, and the amount of $17,797,981.28 as the actual legitimate original cost of the project as of December 31, 1959; all classified by primary plant accounts of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees, and more specifically shown in the attached Schedule I; and

(b) establish and maintain a reserve account for accrued depreciation for Project No. 1881 showing the credit amount of $369,895.38 as the net increase or change in the reserve for accrued depreciation applicable to inservice project properties for the period from June 1, 1955 through December 31, 1959; and a total reserve for depreciation applicable to inservice project properties of $6,438,147.04 as of December 31, 1959, as more specifically shown in the attached Schedule I.

(D) Licensee shall within 90 days from the date of issuance of this order file three certified copies of its journal entries showing compliance with this order.

PENNSYLVANIA POWER & LIGHT COMPANY

SUMMARY BY DETAILED PLANT ACCOUNTS OF PROJECT COSTS AND PROJECT RESERVE FOR DEPRECIATION AS OF JUNE 1, 1955; CLAIMED CHANGES FOR THE PERIOD FROM JUNE 1, 1955 TO DEC. 31, 1959 WITH STAFF PROPOSED ADJUSTMENTS THERETO AND BALANCE ALLOWED AS OF DEC. 1, 1959

Account			(3)	(4)	(5)	Changes from June 1, 1955 to Dec. 31, 1959			
(1) Number		(2) Description	Approved [1] cost as of June 1, 1955	Reclassification after analysis of continuing property records	Approved cost [2] after analysis of continuing property records	(6) As claimed	(7) Staff proposed adjustments	(8) Net allowed	(9) Allowed cost as of Dec. 31, 1959
		INTANGIBLE PLANT							
	303	Miscellaneous intangible plant	$21,414.33		$21,414.33				$21,414.33
		HYDRAULIC PRODUCTION PLANT							
(330)	320	Land and land rights	2,056,677.72		2,056,677.72	($13,735.35)		($13,735.35)	2,042,942.37
(331)	321	Structures and improvements	1,486,839.36	($327,845.78)	1,158,993.58	11,062.89	($4,114.07)	6,948.82	1,165,942.40
(332)	322	Reservoirs, dams and waterways	5,900,207.10	351,031.25	6,251,238.35	(740.66)		(740.66)	6,250,497.69
(333)	323	Water wheels, turbines and generators	4,234,634.77	(253,313.76)	3,981,321.01	1,222,519.90	(46,544.53)	1,175,975.37	5,157,296.38
(334)	324	Accessory electric equipment	1,444,455.61	204,828.06	1,649,283.67	274,752.82	(158,646.21)	116,106.61	1,765,390.28
(335)	325	Miscellaneous power plant equipment	248,654.08	28,216.53	276,870.61	(3,505.41)	710.07	(2,795.34)	274,075.27
(336)	326	Roads, railroads and bridges	2,239.39		2,239.39				2,239.39
		Total hydraulic production plant	15,373,708.03	2,916.30	15,376,624.33	1,490,354.19	(208,594.74)	1,281,759.45	16,658,383.78
		TRANSMISSION PLANT							
(352)	342	Structures and improvements	18,442.84	105,275.99	123,718.83				123,718.83
(353)	343	Station equipment	1,289,089.06	(107,636.89)	1,181,452.17	(180,199.37)	(76,998.51)	(257,197.88)	924,254.29
		Total transmission plant	1,307,531.90	(2,360.90)	1,305,171.00	(180,199.37)	(76,998.51)	(257,197.88)	1,047,973.12
		GENERAL PLANT							
(397)	378	Communication equipment	70,765.45	(555.40)	70,210.05				70,210.05
		Total project plant	16,773,419.71		16,773,419.71	1,310,154.82	(285,593.25)	1,024,561.57	17,797,981.28
		DEPRECIATION BY FUNCTIONS							
		Hydraulic production plant	5,639,677.37		5,639,677.37	702,763.97	(186,982.11)	515,781.86	6,155,459.23
		Transmission plant	379,580.67		379,580.67	(78,723.80)	(75,955.68)	(154,679.48)	224,901.19
		General plant	48,993.62		48,993.62	8,793.00		8,793.00	57,786.62
		Total reserve for depreciation	6,068,251.66		6,068,251.66	632,833.17	(262,937.79)	369,895.38	6,438,147.04

Numerical account designation enclosed in ( ) are those effective January 1, 1961.

[1] Pursuant to Commission Order issued Jan. 31, 1957 (17 FPC 98).

[2] Pursuant to Commission Order issued June 30, 1960 (23 FPC 929).

737-870—66——21

Project No. 1881 (Holtwood) Schedule II

PENNSYLVANIA POWER & LIGHT COMPANY

RECORDED AND CLAIMED CHANGES IN PROJECT PLANT ACCOUNTS AND ALLOWED ACCOUNTING DISPOSITION THEREOF FOR THE PERIOD FROM JUNE 1, 1955 TO DEC. 31, 1959

Account			Required adjustments of claimed costs						
(1) Number		(2) Description	(3) No. 1, excess labor and overheads E.R. 300002	(4) No. 2, excess overheads E.R. 300005	(5) No. 3, excess labor and overheads E.R. 300017	(6) No. 4, excess labor and overheads E.R. 300022	(7) No. 5, excess labor and overheads E.R. 300033	(8) No. 6, unrecorded retirements	(9) Totals
		HYDRAULIC PRODUCTION PLANT							
(331)	321	Structures and improvements	($5,315.13)				$2,228.53	($1,027.47)	($4,114.07)
(333)	323	Water wheels, turbines and generators	(1,060.65)	$37.91		$0.28	18,356.51	(63,878.58)	(46,544.53)
(334)	324	Accessory electric equipment		(874.44)	($7,566.79)	(3,722.23)	(28,833.65)	(117,649.10)	(158,646.21)
(335)	325	Miscellaneous power plant equipment	941.26					(231.19)	710.07
		Total hydraulic production plant	(5,434.52)	(836.53)	(7,566.79)	(3,721.95)	(8,248.61)	(182,786.34)	(208,594.74)
		TRANSMISSION PLANT							
(353)	343	Station equipment			(4,119.55)			(72,878.96)	(76,998.51)
		Total project plant	(5,434.52)	(836.53)	(11,686.34)	(3,721.95)	(8,248.61)	(255,665.30)	(285,593.25)
		ACCOUNTING DISPOSITION							
(108)	250	Accumulated provision for depreciation, Project No. 1881	195.31	65.06	605.71	206.75	334.23	255,665.30	257,072.36
426	538	Other income deductions	5,239.21	771.47	11,080.63	3,515.20	7,914.38		28,520.89
		Totals	5,434.52	836.53	11,686.34	3,721.95	8,248.61	255,665.30	285,593.25

Numerical account designations enclosed in ( ) are those effective Jan. 1, 1961.

Before Commissioners: Charles R. Ross, Acting Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

NATURAL GAS PIPELINE COMPANY OF AMERICA, ET AL., DOCKET NO. CP62-243, ET AL.

ORDER DENYING APPEAL FROM ACTION OF THE COMMISSION'S SECRETARY

(Issued July 17, 1963)

By letter of June 14, 1963, the Secretary of the Commission rejected a joint appeal from rulings of the Presiding Examiner in the above-entitled proceeding, tendered for filing by Oklahoma Illinois Gas Pipeline Company (Oklahoma Illinois) and The Gas Service Company (Gas Service). The appeal related, in the main, to the Examiner's rulings excluding specified evidence submitted by the Appellants. We now have before us an appeal from the Secretary's rejection.

Questions relating to the admissibility or exclusion of evidence during the course of a hearing must, of course, be determined initially by the presiding officer. These rulings, when properly excepted to, are subject to our review at the time of our consideration of the Examiner's initial decision. To examine on appeal every interlocutory ruling made by a presiding officer with respect to the admissibility of proffered evidence would require piecemeal examination of voluminous exhibits and testimony proffered.[1] This Commission has consistently indicated, even as recently as July 8, 1963[2], that barring extraordinary circumstances, it is a much better practice to review such material at a time when it can be considered in relation to all other evidence in the record.

Section 1.28(a) of the Rules of Practice and Procedure, as amplified by the Commission's "Order Rejecting Appeal From Ruling of Presiding Examiner Excluding Evidence," issued December 5, 1962, in United Fuel Gas Company, *et al.*, Docket No. G-20270, *et al.*, permits interlocutory appeals to the Commission from a presiding officer's rulings only under extraordinary circumstances where prompt decision by the Commission is necessary to prevent detriment to the public interest and the presiding officer refers his ruling to the Commission for determination. In the instant proceeding the Presiding Examiner refused to find that there existed extraordinary circumstances as to warrant referral of his rulings to the Commission. Our study of the pleadings fails to disclose anything which would indicate that the Examiner's ruling was other than the normal type of determination which it is his function to make in the course of his duties or that any other circumstances exist which would warrant our passing on this evidentiary matter at this time. Consequently the rejection of the appeal was proper and we sustain the action of the Secretary.

The Commission orders:

The Appeal by Oklahoma Illinois and Gas Service from the action of the Secretary rejecting an appeal from the Presiding Examiner's rulings tendered for filing by said Appellants, is hereby denied.

---

[1] An offer of proof was made as to all evidence excluded by the Presiding Examiner. See answers filed in opposition to the appeal pending before us.

[2] Order Denying Appeal From Presiding Examiner's Ruling, *Union Texas Petroleum, et al.*, Docket No. G-13221, *et al.*, *supra*, p. 58.

Before Commissioners: Charles R. Ross, Acting Chairman; L. J. O'Connor, Jr. and Harold C. Woodward.

PACIFIC POWER & LIGHT COMPANY, DOCKET NO. E-7108

ORDER AUTHORIZING THE ISSUANCE OF FIRST MORTGAGE BONDS AND PREFERRED STOCK

(Issued July 17, 1963)

Pacific Power & Light Company (Applicant), a corporation organized under the laws of the State of Maine and doing business in the States of Oregon, Washington, Wyoming, California, Montana and Idaho, with its principal business office at Portland, Oregon, filed an application on June 13, 1963, and supplements thereto on June 18 and 20, 1963, for authorization, pursuant to Section 204 of the Federal Power Act, to issue and sell at competitive bidding $30,000,000 principal amount of First Mortgage Bonds, ——% Series due 1993 and 100,000 shares of Serial Preferred Stock, par value $100 per share.

Applicant proposes to issue the Bonds under its Indenture of Mortgage and Deed of Trust between Applicant and Guaranty Trust Company of New York (now Morgan Guaranty Trust Company) and Oliver R. Brooks (Wesley L. Baker, successor), dated as of July 1, 1947, as heretofore supplemented and as to be further supplemented by a proposed, new Sixteenth Supplemental Indenture to be dated as of August 1, 1963.

The Applicant proposes to issue 100,000 shares of new Serial Preferred Stock, par value $100 per share, total par value $10,000,000. The new Preferred Stock will be issued under and pursuant to the applicable provisions of the Applicant's By-laws, as heretofore amended and as to be further amended by an appropriate amendment thereto creating the new series and establishing its distinctive characteristics. The new Preferred Stock will be entitled to cumulative dividends at a rate per annum to be fixed by competitive bidding, and the holders thereof will be entitled to one vote for each share held, together with certain additional voting privileges during any periods when preferred stock dividends may be in arrears.

Applicant further proposes, on or about July 18, 1963, to invite sealed, written bids for the purchase of the proposed Bonds and Preferred Stock by newspaper publication and by distribution of a Public Invitation for Bids, together with a statement of terms and conditions relating thereto and a form of purchase contract.

Each bid, whether made by a single bidder or a group of bidders, must be for the purchase of all of the Bonds, or all the Preferred Stock and must be in writing on the Form of Bid provided by the Applicant. Each bid for the Bonds must specify: (1) the coupon rate to be borne by the bonds, which rate shall be a multiple of ⅛ of 1%; (2) the price exclusive of accrued interest to be paid to Applicant for the Bonds, which price shall be expressed as a percentage of the principal amount of the Bonds and shall not be less than 98½% nor more than 102¾% thereof; and (3) that Applicant shall be paid the amount of accrued interest on the Bonds from August 1, 1963 to the date of payment therefor and delivery thereof. Each bid for the Preferred Stock must specify the dividend rate to be borne by the Preferred Stock, which shall be a multiple of 1/25 of 1%; and, (2) the price to be paid to the Applicant, which price shall be not less than $100, nor more than $102.75 per share.

Each bid for the Bonds must be accompanied by a certified or official bank check or checks in the aggregate amount of $900,000 and for the Preferred Stock in the amount of $300,000.

Unless postponed, all bids for the purchase of the proposed Bonds or Preferred Stock must be received by Applicant before 11:00 a.m. for the Bonds and 12:00 noon for the Preferred Stock, New York Time on July 30, 1963 at Room 2033, Two Rector Street, New York 6, New York. Unless Applicant rejects all bids for the proposed issuance of Bonds and all bids for the Preferred Stock (which it reserves the right to do) or excludes a bid or bids for reasons specified in the statement of terms and conditions, it will accept the bids which provide it with the lowest annual cost of money.

Upon issuance of the new Preferred Stock, the Applicant proposes to call its 90,000 shares of 6.16% Serial Preferred for redemption at a redemption price of 106.625% of $100 par value, plus unpaid accumulated dividends to the date of redemption. The redemption of the presently outstanding 90,000 shares of 6.16% Preperred Stock at 106.625% will require $9,596,250, plus unpaid accumulated dividends.

The Applicant proposes to use the remaining proceeds of the Preferred Stock and the net proceeds of the First Mortgage Bonds for:

(1) retirement of the $17,996,000 of promissory notes (Docket No. E–7061) used in part to refund and retire First Mortgage Bonds originally issued by California Oregon Power Company and assumed by the Applicant in a merger, and

(2) the balance to retire approximately $13,000,000 of an estimated $27,000,000 of short-term unsecured promissory notes under a $45,000,000 credit agreement (Docket No. E–7052) which are expected to be outstanding at the time of the consummation of the issuance and sale of the new Bonds and new Preferred Stock. The Applicant states that any amounts required for such purposes not provided through the issuance and sale of the new Bonds and new Preferred Stock will be provided from treasury funds.

Applicant's construction expenditures for 1963 are estimated at $57,200,000 of which $12,500,000 had been expended on April 30, 1963. Applicant proposes to finance said expenditures through the issuance of additional Promissory Notes under the $45,000,000 credit agreement (Docket No. E–7052) which will have an estimated unused balance of $31,000,000 after completion of the transactions proposed herein.

Of the $57,200,000 estimated for 1963, $18,500,000 is allocated to the installation of a 200,000 kw unit at Applicant's Dave Johnston steam plant at Glenrock, Wyoming. Other major projects of the company for 1963 include:

(1) 230-kv line—Klamath Falls, Oregon, south into California to interconnect with system of Pacific Gas and Electric, $2,000,000.

(2) 230–kv line—Walla Walla, Washington to Wanapum Dam, $650,000.

(3) 230–kv line—Rock Springs, Wyoming to Flaming Gorge Project, $1,300,000.

(4) 230–kv line—Thermopolis, Wyoming to Muddy Ridge, Wyoming, $700,000.

(5) 230–kv line—Frannie, Wyoming to Oregon Basin by way of Garland Dome, $1,235,000.

Total expenditures for generation facilities are $19,886,000, for transmission facilities are $12,991,000, and for distribution are $16,444,000. Proposed additions to non-electric plant total $1,909,000 and proposed expenditures for other plant facilities, surveys and investigations are $5,970,000.

Written notice of the application has been given to the Public Utilities Commissioner of Oregon, the Wyoming Public Service Commission, the Washington Utilities and Transportation Commission, the Public Utilities Commission of the State of California, the Public Service Commission of Montana, and the Idaho Public Utilities Commission and to the Governor of each of those States.

Notice has also been given by publication in the Federal Register on June 26, 1963 (28 F.R. 6602), stating that any person desiring to be heard or to make

any protest with reference to the application should file a petition or protest on or before July 10, 1963 with the Federal Power Commission, Washington 25, D.C. No protest, petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission, as heretofore determined and set forth in the Commission's order issued March 28, 1962, *Pacific Power & Light Company*, in Docket No. E-7025, 27 FPC 620.

(2) The proposed issuance and sale of Bonds, and Preferred Stock as described above, will constitute issuances of securities within the purview of Section 204 of the Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issues here involved are regulated by a State commission within the meaning of Section 204(f) of the Act; and the proposed issuances of securities are, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(4) The proposed issuance and sale of Bonds, and Preferred Stock as hereinafter authorized will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purposes.

The Commission orders:

(A) The proposed issuance and sale of Bonds, and Preferred Stock upon the terms and conditions and for the purposes specified in the application, as described above, are hereby authorized, subject to the provisions of this order.

(B) The proposed issuance and sale of Bonds and Preferred Stock at competitive bidding shall not be consummated until:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2 (h) of those Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations;

(ii) The Commission, by a further order, shall have approved the price to be received by Applicant for the proposed issuance of Bonds and Preferred Stocks and the interest rate and dividend rate respectively, thereof.

(C) This authorization shall expire unless the transactions hereby authorized are consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission.

(E) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States with respect to any securities to which this order relates.

OPINION NO. 398

PLACID OIL COMPANY, DOCKET NO. G–13183; PLACID OIL COMPANY, G–13184; BERKSHIRE OIL COMPANY, G–13197; HASSIE HUNT TRUST, G–14109; THE SUPERIOR OIL COMPANY, G–16380; THE SUPERIOR OIL COMPANY, G–16388; J. RAY MCDERMOTT & COMPANY, INC., G–17337; KILROY PROPERTIES, INC., ET AL., G–17338; CALLERY PROPERTIES, INC., G–17340; CALLERY PROPERTIES, INC., G–17341; OCEAN DRILLING AND EXPLORATION CO., G–17342; OCEAN DRILLING AND EXPLORATION CO., OPERATOR, ET AL., G–17343; CAROLINE HUNT SANDS, ET AL., G–17398.

OPINION AND ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 17, 1963)*

Syllabus

1. Economic and financial evidence, whether on individual or area-wide basis, is irrelevant to initial price question. P. 287.
2. Post *CATCO* field price statistics provide no valid basis for determination of proper price line in Southern Louisiana area. P. 289.
3. 18.5 cents per Mcf, exclusive of tax reimbursement, is proper public interest initial price applicable to instant sales. P. 289.
4. Record fails to establish that a tax reimbursement greater than 1.5 cents per Mcf is warranted by statutory standard. P. 290.
5. Although original certificates were unconditioned as to price, reissued certificates require producers to refund, with interest, difference between sums received under prior authorization and sums which would have been received under instant conditioned rate. P. 290.
6. Superior was not prejudiced by non-inclusion in listing of parties to which notice of refund obligation was given in previous order, since no rights had been adjudicated prior to joinder of Superior by subsequent order. P. 291.
7. Once permanent certificate is granted, temporary authorization ceases to have any prospective application and is, in effect, automatically cancelled. P. 292.
8. Since deliveries had already begun and termination thereof had not been authorized under Section 7(b), rejection of temporary authorization was without force or legal effect. P. 293.
9. Where producing properties have been sold to third party while application is pending and potential refund liability exists, [to date of such sale] refund obligation falls upon immediate successor of first applicant. P. 293.
10. Rate condition and refund requirements made applicable to all volumes paid for from date of contracts—refunds for prepaid gas to be made in kind over life of contract. P. 294.
11. Citing *Amerada* as controlling, Commission *rejects* suggestion that producers be permitted option to reject proposed replacement certificates containing price condition where unconditioned temporary certificates had been issued, facilities constructed and flow of gas begun. P. 295.

---

*Initial decision appears on p. 304. Opinion 398–A, issued September 11, 1963, denied rehearing; granted stay, etc., 30 FPC 682. Order issued September 30, 1963, rejecting offer of settlement, 30 FPC 884. Reversed and remanded, *sub nom Callery Properties, Inc.* v. *F.P.C.*, 335 F. 2d 1004 (CA5–1964.) Affirmed, *U.G.I.* v. *Callery Properties, Inc.*, 382 U.S. 223 (1965).

12. Since it does not appear that any past prepayment will necessarily be forfeited, Commission does not require total refund as to all prepayments for gas not taken. P. 296.
13. *Concluding* that public interest *requires* certificates be conditioned to preclude future escalations triggering favored nation clauses, Commission *orders* moratorium on increases in excess of 23.55 cents per Mcf, inclusive of tax reimbursement, pending final decision in South Louisiana area proceeding, or until July 1, 1967, whichever is earlier. P. 298.
14. Upon remand, Commission *reissues* certificates of public convenience and necessity conditioned as to price. Pp. 299–301.

Commissioner O'Connor, *concurring in part; dissenting in part.*

Commissioner Ross, *concurring in part; dissenting in part.*

Commissioner Morgan *joined* in Commissioner Ross' statement.

John C. Snodgrass for The Pure Oil Company

J. Evans Attwell for Kilroy Properties, Inc.

Richard F. Generelly for Callery Properties, Inc.

H. Y. Rowe for Ocean Drilling and Exploration Company

W. Russell Gorman and *John Hendren* for Mississippi River Fuel Corporation

William T. Wise and *Oliver L. Stone* for Shell Oil Company

Herbert W. Varner, F. P. Jones, Jr., and *Homer Penn* for the Superior Oil Company

William H. Davidson, Jr., William N. Bonner, Jr., R. V. Loftin, Jr., Richard J. Connor, and *Thomas F. Ryan, Jr.* for Transcontinental Gas Pipe Line Corporation

J. Harry Mulhern, James R. Lacey, Edward S. Kirby, and *William R. Duff* for Public Service Electric and Gas Company

Henry P. Sullivan and *Samuel G. Miller* for Philadelphia Electric Company

Morton L. Simons, Kent R. Brown, and *Barbara M. Suchow* for Public Service Commission of the State of New York

Bertram D. Moll, David K. Kadane, and *Edward M. Barrett* for Long Island Lighting Company

Edwin F. Russell and *Harry G. Hill, Jr.* for The Brooklyn Union Gas Company

John E. Holtzinger, Jr. and *J. David Mann, Jr.* for The United Gas Improvement Company

W. O. Crain, Vernon W. Woods, Pike Hall, Jr., and *C. Huffman Lewis* for United Gas Pipe Line Company

Dale A. Wright and *Harry S. Littman* for Piedmont Natural Gas Company, Inc.

R. J. Nery for the North Carolina Utilities Commission

Tom P. Hamill for Socony Mobil Oil Company, Inc.

J. J. Schmidt, Thomas A. White, Norman A. Flaningam, and *Thomas F. Brosnan* for Hope Natural Gas Company

Donald J. Mulvihill for J. Ray McDermott and Co., Inc.

Paul W. Hicks, for Placid Oil Company

H. H. Hillyer, Jr. and *Andrew McAuliffe* for Berkshire Oil Company, J. R. Frankel and R. R. Frankel

Robert E. May, John A. Ward, III, Herf M. Weinert, and *Joiner Cartwright* for Sun Oil Company

Robert W. Henderson and *Robert M. Kennedy* for Hassie Hunt Trust and Caroline Hunt Sands

David J. Bardin and *Reuben Lozner* for the Staff of the Federal Power Commission

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

WOODWARD, *Commissioner:*

This is a reopened proceeding of an originally large number of dockets[1] consolidated for hearing under Section 7(c) of the Natural Gas Act "for the limited purpose of determining the public interest initial price, or prices, applicable to these proceedings."[2] Previously the Commission had issued permanent certificates of public convenience and necessity without rate condition in separate consolidated proceedings, all of which were returned for review on judicial remand disclosing error in the original proceedings or on rehearing granted by us upon the basis of the principles laid down in such court decisions. An outline of the essential facts is contained in the Commission's orders of January 10 and March 7, 1962, and the history of the proceeding is adequately summarized in the examiner's decision. Subsequent to the aforementioned consolidation, 34 dockets were severed from the reopened proceeding and permanent certificates of public convenience and necessity were reissued to the applicants in those dockets by order issued July 30, 1962, in *Texaco Inc., et al.*, Docket No. G–13169, *et al.*, Order Approving Proposed Settlements and Conditionally Reissuing Certificates of Public Convenience and Necessity, 28 FPC 247. Nineteen additional dockets were accounted for by other severance orders issued prior to June 18, 1962, when the hearing began.

The 21 dockets remaining at the time of hearing involved requests for Commission authorization of sales of gas produced from fields located in or offshore Southern Louisiana at initial contract prices ranging from 21.4 cents per Mcf[3] with no tax reimbursement to 23.8 cents per Mcf for those subject to the taxing authority of the State of Louisiana. Since the hearing, final settlements have been negotiated in an additional eight dockets,[4] leaving 13 dockets in which the initial price is now to be determined by the Commission. These dockets, and the various court decisions rendered thereon, are as follows:

(1) *The Transco-Seaboard case:* sales to Transcontinental Gas Pipe Line Corporation.

Docket No. G–	Contract date	Field	Rate schedule
13183	Aug. 13, 1957	Thibodaux	19
13184 [5]	Aug. 13, 1957	Raceland	18
13197	Aug. 12, 1957	N. Thibodaux	4
14109	Nov. 1, 1957	Rousseau	19

[5] Placid Oil Co., applicant in Docket No. G–13184, states that sales commenced March 18, 1959, but that the reserves underlying the dedicated acreage were depleted within 3 months. Abandonment of the sale was permitted by order issued January 12, 1962, in Docket No. CI61–1459. See footnote 27, *post*.

Opinion No. 315 and Order issuing permanent certificates, 20 FPC 264, affirmed *U.G.I.* v. *F.P.C.*, 269 F. 2d 865, judgment vacated and cases remanded to the Court of Appeals with directions to remand the cases to this Commission

[1] The proceeding at one time involved 74 applications for certificates of public convenience and necessity by 42 independent producers.

[2] *Texaco Seaboard Inc., et al.*, Docket No. G–13169, *et al.*, order issued March 7, 1962, ordering paragraph (B), 27 FPC 482.

[3] All prices are at 15.025 psia.

[4] *Sun Oil Co.*, Docket Nos. G–13710, G–14254, G–15122, order issued November 14, 1962, 28 FPC 809; *Mississippi River Fuel Corp.*, Docket No. G–17413, order issued November 30, 1962, 28 FPC 915; *The Pure Oil Co.*, Docket No. G–14351, order issued December 6, 1962, 28 FPC 948; *Perry R. Bass (Operator)*, Docket No. G–17399 and *Shell Oil Co.*, Docket No. G–17560, order issued March 13, 1963, 29 FPC 472; *Phillips Petroleum Co.*, Docket No. G–14244, order issued March 26, 1963, 29 FPC 581.

for "reconsideration and redetermination in the light of" *CATCO, P.S.C. of New York* v. *F.P.C.*, 361 U.S. 195.

(2) *The Hope or Bayou Pigeon case:* sales to Hope Natural Gas Co.

Docket No. G—	Contract date	Field	Rate schedule
17337	Nov. 14, 1958	W. Cameron, blk. 33	12
17338	Dec. 8, 1958	Bayou Pigeon	3
17340	Dec. 10, 1958	Little Bayou Pigeon	2
17341	Dec. 16, 1958	W. Rayne	9
17342	Oct. 23, 1958	E. Cameron, blk. 4	1
17343	Dec. 13, 1958	Bayou Pigeon	2
17398	Aug. 13, 1958	S. Thornwell	5

Opinion No. 327 and Order issuing permanent certificates, 22 FPC 378, "reversed insofar as it grants unconditional certification to the initial price proposals" and case remanded to the Commission for further proceedings, *P.S.C. of New York* v. *F.P.C.*, 287 F. 2d 146, cert. den., *sub nom.*, *Hope Natural Gas Co.* v. *P.S.C. of New York* 365 U.S. 880.

(3) Sales by the Superior Oil Co. to United Gas Pipe Line Co.

Docket No. G-	Contract date	Field	Rate schedule
16388	Sept. 8, 1958	Bayou Penchant, Four Isle Dome, and Palmetto Bayou.	89

Order, 22 FPC 252, issuing permanent certificates vacated and cause remanded for further proceedings, *U.G.I.* v. *F.P.C.*, 283 F. 2d 817, cert. den., *The Superior Oil Co.* v. *U.G.I.*, 365 U.S. 879.

(4) Sales by the Superior Oil Co. to Transcontinental Gas Pipe Line Corp.

Docket No. G-	Contract date	Field	Rate schedule
16380	Sept. 17, 1958	Vermilion, Blks. 71 and 76	78

Order, 22 FPC 369, issuing permanent certificates set aside and cause remanded for further proceedings, *U.G.I.* v. *F.P.C.*, 290 F. 2d 147, cert. den., *sub nom. The Superior Oil Co.* v. *U.G.I.*, 366 U.S. 965.

On December 7, 1962, the presiding examiner issued an initial decision granting permanent certificates to the applicants herein subject to certain conditions. These conditions require (a) the filing of an initial price of 18.5 cents per Mcf, except that an additional 1.5 cents per Mcf might be charged in areas where the production is subject to State tax; (b) refund to the pipeline purchasers, with 7 percent interest, of the difference between the amounts received by the producers under their original temporary or permanent certificates and the initial price now determined to be required under Section 7 of the Act; and (c) modification of the take-or-pay requirement in each contract to be subject to the final order in the Docket No. R–199 rulemaking proceeding as of the effective date of that order. The examiner also (1) rejected a staff proposal for adoption of a 16-cent triggering line on certain of the sales on the ground that recent settlements in cases involving sales from the same "triggering area" have been made at prices in excess of both the proposed triggering line and the 18.5-cent price found by him to be required for these sales; (2) rejected a recommendation by staff for

refund of all monies received by the producers under take-or-pay provisions as payment for gas not delivered; and (3) concluded that a proposal by staff and The United Gas Improvement Co. that the producers be given an option to reject the conditioned certificates could not be justified.

Exceptions to the decision have been filed by all nine remaining producers as well as by Transcontinental Gas Pipe Line Co., U.G.I., and staff. In general, the producers have excepted to each condition imposed by the examiner which operates to grant to them a less favorable certificate, and to the imposition of a refund requirement with respect to the past payments. Transco, which had taken no position on the question whether a price condition should be imposed, excepted only to the examiner's direction of a refund applicable to all volumes "delivered" by the producers, noting that in the case of at least one sale it has made prepayments for gas which it has been obligated to take-or-pay for. It requests that if a refund condition is imposed, the condition be extended to include all gas for which payment has been made at the contract prices. A similar exception was filed by staff and U.G.I. In addition, staff excepted to the examiner's refusal to order total refund of the prepayments for gas paid for but not taken, while U.G.I. excepted to the refusal to give the producers an option to reject the new certificates. No exception was taken to the rejection of the staff's "triggering line" proposal.

The controversy in this proceeding, as exemplified in the exceptions, centers on five basic questions:

(1) Is the Commission required to consider cost-type economic and financial evidence in determining the initial price question in producer certificate cases generally, and in this proceeding in particular?

(2) Is the Southern Louisiana "in-line" price of 18.5 cents per Mcf, where State taxes are not applicable, and 20 cents per Mcf, where subject to the State tax, determined by the Commission in the remanded *CATCO*[6] proceedings also the public interest initial price applicable to the sales involved in this proceeding?

(3) May the Commission redetermine its prior orders in these dockets and grant conditioned certificates effective as of the dates of the original orders; if so, should the producers be required to refund the amounts collected by them in excess of the amounts that would have been payable if certificates conditioned as to initial price had been issued?

(4) If conditioned certificates are ordered, should the producers be accorded an option to reject?

(5) Should total refunds be ordered as to all prepayments made for gas not taken?

Upon review of the record, we find we are in almost complete accord with the decision of the presiding examiner and, except for certain modifications, conclude that the decision as therein entered should, with this decision, constitute the decision of the Commission. In particular, we affirm the decision as to its holding that economic and financial evidence, whether on an individual company or on an area-wide basis and whether of the type characterized as cost-of-service studies, cash flow studies, demand-supply, cost, profit and market price trends, area cost-revenue trends, comparative well cost data and gas replacement costs, plays no part in and is irrelevant to the determination of the initial price question in independent producer certificate cases;[7] that the

[6] *Atlantic Refining Co.* v. *Pub. Serv. Comm. of N.Y.*, 360 U.S. 378.

[7] *Continental Oil Company, et al.*, Opinion No. 351, issued January 22, 1962, 27 FPC 96; *Socony Mobil Oil Company, Inc.*, Docket No. G–13780, order issued February 9, 1962, 27 FPC 347; *Skelly Oil Company, et al.*, Opinion No. 362, issued August 30, 1962, 28 FPC 401; *Texaco Seaboard, Inc., et al.*, Opinion No. 383, issued March 27, 1963, 29 FPC 593; *Jake L. Hamon, et al.*, Docket No. G–16747, *et al.*, Order Adopting Examiner's Decision, issued

[*Continued on page 288.*]

"in-line" price of 18.5 cents per Mcf was properly determined as the price required for initial service under these contracts; that conditioned certificates should be issued effective as of the dates of the original orders and refunds required; and, finally, that there can be no option allowed the producers to reject the conditioned certificates, even under the particular circumstances involved in this proceeding. Since the exceptions serve primarily to reargue the determinations made by the examiner and present little, if any, material not adequately disposed of in that decision, our discussion of the above issues will be limited to those few points concerning which the examiner's decision should be modified or amplified. In addition, it is our conclusion that the present and future public convenience and necessity requires that the permanent certificates issued to the producers be further conditioned to hold in abeyance, beyond a level as herein determined, the price escalations provided in the contracts and related rate schedules for a period pending the determination of just and reasonable rates for these sales.

The Post-CATCO Line

Beginning with the Commission's redetermination in *CATCO* of 18.5 cents and 20 cents as the in-line price for 1956 contracts and the area rate of 19.5 cents and 21.25 cents fixed in the Fourth Amendment to the Policy Statement for the initial service from and after October 31, 1961, the examiner stated that the only question was whether the in-line price for instant 1957 and 1958 contracts should be fixed at the 19.5-cent level for contracts executed after October 1961 or at the 18.5-cent level of *CATCO*. Although the producers pointed out that 25 percent of the 1957 Southern Louisiana contracts not subject to court or Commission review were priced at 21.3 cents or more, and 25 percent had a price 22 cents or more in 1958, the examiner rejected this argument, stating "there can be no doubt" that these contracts were affected by the *CATCO* price and that such prices "though not currently under review ought to be regarded as suspect" and could not be relied upon in determining the in-line price. He noted that the producers made no attempt to show that the 1957-8 "suspect like" prices at levels above 18.5 cents were not subject to the same infirmities which produced the *CATCO* reversal.

After eliminating all prices above 18.5 cents as suspect, the examiner found that there were 47 contracts executed in 1957 with volumes of 56,500 MMcf and 59 contracts executed in 1958 with volumes of 70,500 MMcf[8] at initial prices of 18.5 cents or less. Also, out of a total 1958 deliveries of 241,200 MMcf from Southern Louisiana under contracts made prior to the initial erroneous *CATCO* order, only 63,900 Mmcf was sold at prices above 18 cents. He thereupon concluded that "If the Commission's originial *CATCO* order of June 1957 had correctly drawn the initial price line for Southern Louisiana at the 18.5-cent level finally established retroactively in Opinion No. 351, thus avoiding the fatal errors which led the court to nullify the original unconditioned certificate *ab initio*, it is reasonable to assume that the line would have been held at 18.5 cents per Mcf in a substantial portion of the *other* contracts executed in 1957 and 1958."

[*Continued from page 287.*]

April 22, 1963, 29 FPC 784; *El Paso Natural Gas Company, et al.*, Opinion No. 390, issued June 19, 1963, 29 FPC 1175. For court decisions upholding the Commission's refusal to examine relative production costs for comparative purposes in determining in-line prices, see *U.G.I.* v. *F.P.C.*, 283 F. 2d 817; *California Oil Company, Western Division* v. *F.P.C.*, No. 7148, 315 F. 2d 652, (CA10, March 28, 1963); *Atlantic Refining Company* v. *F.P.C.*, 316 F. 2d 677, No. 17166 (CADC, March 21, 1963).

[8] Although not stated in the decision, the exhibits show that 116 contracts were executed in 1957 with delivery volumes of 207,000 MMcf and 139 were made in 1958 with 261,100 MMcf to be delivered.

In our opinion, the evidence previously presented in the course of the initial proceedings in these dockets and expanded upon in this reopened proceeding confirms the long-developing conclusion that the field price history in Southern Louisiana was decisively influenced by the *CATCO* transaction, our original decision in *CATCO*, and the widespread attention which that decision received. Post-CATCO there was a new floor to prices at 21.4 cents per Mcf and pipelines either had to meet this price or go without the reserves needed for their expansion programs. The Supreme Court's admonition[9] to the effect that the Commission's determination of a proper price in *CATCO* would set the pattern for the Southern Louisiana area is yet to be finally confirmed.[10] What is now certain is that our erroneous order in June 1957 set a pattern of prices substantially in excess of any prices previously existing in the area.

In Opinion No. 351, we recognized that in the years from 1957 through 1959 a number of contracts were executed in the range between 20 and 23 cents, although observing that "even in those years there were many contracts around 18 cents and below and a scattering below 15 cents." It must also be noted, however, that many of the contracts referred to in that Opinion as having initial prices of 20 cents or more are the very same sales which are involved in the instant proceeding. In formulating the price line applicable here, the producers would have us rely upon a presentation which, to a large extent, not only incorporates the complete number of contracts originally involved in this proceeding, but likewise includes the *CATCO* contracts, and all at the original contract prices. The decision of the Ninth Circuit remanding one of the dockets involved in this proceeding,[11] which was followed by other courts in setting aside other orders of the Commission granting certificates for sales from Southern Louisiana at prices of 21.4 cents and above,[12] has made it clear that sales which are under Commission or court review are not legally relevant for purposes of determining an in-line price. The same decision also makes plain that like prices in the same area, even though themselves not under review, are equally suspect and "ought not to be relied upon in fixing a line except upon evidence and findings to the effect that they are not subject to the same infirmities which are under test in the pending proceedings."[13] We agree with the finding by the examiner that the record does not show that the 1957–1958 "suspect like prices" at levels above 18.5 cents were not subject to the same infirmities which produced the *CATCO* reversal. It is our opinion, therefore, that the post-*CATCO* field price statistics relied upon by the producers to support their contract prices provide no valid basis for determination of a proper price line in the Southern Louisiana area. For the reasons set out herein and in the initial decision, we conclude that 18.5 cents per Mcf, exclusive of tax reimbursement, is the proper public interest initial price applicable to the instant sales.

Tax Reimbursement

In addition to the 18.5-cent base price, the examiner allowed a 1.5-cent tax reimbursement on the sales subject to the Louisiana severance tax.[14] A footnote to the decision shows that the allowance "follows the Commission's tax treat-

[9] *Atlantic Refining Co.* v. *P.S.C. of New York*, 360 U.S. 378, 390.

[10] For a recent observation by the Court see *Wisconsin, et al.*, v. *F.P.C.*, Nos. 72, 73 and 74, 373 U.S. 294, 312 (1963).

[11] *U.G.I.* v. *F.P.C.*, 283 F. 2d 817, *re* The Superior Oil Company, Docket No. G–16388.

[12] *P.S.C. of New York* v. *F.P.C.*, 287 F. 2d 146 (CADC, 1960), cert. denied, 365 U.S. 880 (1961); *U.G.I.* v. *F.P.C.*, 287 F. 2d 159 (CA10, 1961); *U.G.I.* v. *F.P.C.*, 290 F. 2d 147 (CA5, 1961), cert. denied, 366 U.S. 956 (1961).

[13] 283 F. 2d 824–825.

[14] It appears that the only sales involved in this proceeding which are not subject to the State tax are those in Docket No. G–16380.

ment in *CATCO*", but that evidence submitted by the producers indicates that the weighted average tax reimbursement for Southern Louisiana contracts executed in 1957 and 1958 and which provided for a base price of 18.5 cents or less was 1.69 cents. Exception has been taken by several of the producers to the failure to allow the tax reimbursement of either 2.05 cents or 2.3 cents as provided in their contracts. One producer, Superior, contends that the "error" is even greater than indicated in that the weighted average tax reimbursement under contracts comparable with the price fixed by the examiner was 1.85 cents.

In connection with the applications for rehearing of our Opinion No. 351, we had occasion to reconsider the tax reimbursement allowance granted the producers in that proceeding.[15] At that time we indicated that "We did not intend the 1.5-cent tax reimbursement as an in-line tax provision as of the time of the contract, but because Louisiana taxes, if applicable, were increased on December 1, 1958, we are of the opinion that the partial tax reimbursement of the tax increases provided in the contracts were in the public interest and required by the public convenience and necessity." In our opinion the evidence presented in this record fails to establish that a tax reimbursement greater than 1.5 cents per Mcf is warranted by the statutory standard or that the conclusion quoted above is not equally applicable to the contracts involved in this proceeding.

Refunds

As in the *CATCO* decision, the examiner's decision would require the producers to refund, with interest, the difference between the sums received from the pipeline purchasers and the sums that would have been received under the conditioned rate. Insofar as the general obligation of the producers to make refunds is concerned, we conclude that refunds should be required for the reasons set out in the examiner's decision. All arguments of the producers against their imposition, whether on the basis that we have no power to order reparations, that the original certificates are still outstanding and thus, it is contended, distinguish the Commission's refund action in *CATCO*, or that such a requirement at the present time would amount to "entrapment", have been fully and carefully considered in the initial decision and, we are convinced, correctly decided. Our review gives us no cause to overturn or otherwise disturb the determination made therein. Additional discussion is necessary, however, on certain of the exceptions by Superior and J. R. Frankel, *et al.*, as well as on various ancillary matters bearing on the refund requirement which leads to modification of the order with respect to the computation of interest payments and to the volumes of gas subject to refund requirements.

Superior has excepted to all findings and conclusions based upon or made in reliance on our orders of January 10 and March 7, 1962. It will be recalled that in the first order referred to the Commission, "to the extent that we are empowered to do so", imposed a refund obligation on the producers as to all amounts collected by them in excess of the amounts finally determined herein to accord with the requirements of the public convenience and necessity. Superior's contention is stated as follows:

> The error in relying on such orders, from Superior's viewpoint, is readily apparent from the orders, themselves. The January 10, 1962, Order was entered in a docket in which Superior was not a party. Superior's rights were not involved or affected thereby. The March 7, 1962, Order, denying rehearing on the January 10, 1962, Order necessarily did not consider Superior's dockets, and, but for the matter of consolidation in the hearing therein ordered, clearly is related to dockets and proceedings to which

[15] *Continental Oil Company, et al.*, Docket No. G–11024, *et al.*, Order Denying Rehearing and Clarifying Opinion, issued March 22, 1962, 27 FPC 592.

> Superior was not a party. Superior is denied every element of due process of law guaranteed by the *Fifth Amendment* to the *Constitution* of the *United States* if its rights are to be determined in administrative decisions to which it is not a party.

We agree that Superior's rights were not involved or affected by our January 10, 1962 order. Nor, in our opinion, were the rights of any other producers adversely affected by that order. The order did not purport to establish an absolute obligation to make refunds with respect to the certificates involved but merely included a caveat that, in the circumstances of the cases, the Commission could and would order refunds at the conclusion of the proceedings if the initial certificate rates ultimately approved turned out to be less than the rate then being collected. As such, it neither added a "rate condition" nor changed the rate schedules of the producers concerned; it simply gave notice of the Commission's view that a contingent refund obligation existed because of the timely challenges which had been filed to the orders originally granting certificates for the sales involved. Since no obligation was added with respect to the rates that would not have existed absent the expression of our views, and since the order was addressed solely to the potential effect of future administrative action, it was not reviewable as a final order of the Commission.[16] We conclude, therefore, that Superior was not prejudiced by its non-inclusion in the listing of parties to which the notice of the refund obligation was given in the January 10, 1962 order for the reason that no rights respecting the obligation had been adjudicated prior to joinder of Superior by our order of March 7, 1962. Superior's exception, accordingly, will be denied.

Superior also alleges error in requiring that refunds to be made on the sales to Transco in Docket No. G–16380 from Vermilion Block 76 field. It contends that this sale was commenced and has continued under a temporary authorization without price condition issued October 22, 1958, the validity of which has never been challenged on appeal, and therefore, the sale is not factually distinguishable from the *Skelly* case[17] where we held that refunds should not be ordered for the period prior to the effective date of the permanent certificates then being issued.

A review of the prior history of this sale shows that an unconditioned temporary certificate was in fact issued to Superior on October 22, 1958, pursuant to applications filed September 23 and 24, 1958. Thereafter a hearing was held and, on February 19, 1959,[18] an initial decision was issued granting a permanent certificate. Ordering paragraph (C) provided that "The certificates issued to The Superior Oil Company and to Transcontinental Gas Pipe Line Company shall be deemed accepted and of full force and effect, unless refused in writing and under oath by these applicants within 30 days from the date of issuance of this order * * *." No notification was received that the certificate was not acceptable to Superior; rather, the company submitted a motion for expeditious consideration and disposition of exceptions filed by U.G.I. On August 10, 1959,[19] the Commission issued an order adopting, with modifications not now material, the decision of the examiner. Rehearing was denied by order issued October 7,

---

[16] *Sunray Mid-Continent Oil Co.* v. *F.P.C.*, 270 F. 2d 404, 407 (CA10), and cases there cited. Numerous petitions for review of the Commission's order of January 10, 1962, in this proceeding were filed and four of these petitions are still pending in the Fifth Circuit, but have not been acted upon. The only court to have actually considered the question of finality of the Commission's order has been the Third Circuit, which, on October 2, 1962, dismissed the petition in *Shell Oil Co.* v. *F.P.C.*, No. 14031, for lack of jurisdiction. [Not reported.]

[17] *Skelly Oil Company, et al.*, Opinion 362 (28 FPC at pp. 412–413).

[18] 22 FPC 372.

[19] 22 FPC 369.

1959.[20] The order was vacated by a decision rendered February 22, 1961,[21] and certiorari was denied on June 19, 1961.[22] Thereafter, Superior submitted an application for a temporary certificate to continue the sales from Block 71, indicating that the sale had been discontinued upon the vacating of the Commission's order. In response thereto the Commission dispatched a telegram indicating that no authorization had been granted for discontinuance of the sale in Docket No. G–16380 and stated that "Deliveries should be immediately resumed." The telegram was followed up by a letter order dated August 2, 1961, which stated:

> The Superior Oil Company is hereby authorized to continue the sale of natural gas, in interstate commerce to Transwestern [sic] Gas Pipe Line Corporation, produced from the Offshore Block 71 and 76 Fields, Vermilion Parish, Louisiana as proposed in Docket No. G–16380. This authorization is subject to the condition that the total rate of 21.4¢ per Mcf at 15.025 psia thereunder shall be subject to such conditions as the Commission shall lawfully prescribe in issuing a permanent certificate in Docket No. G–16380, including any provision for refund thereby imposed. The above specified rate and the condition attached thereto shall remain in effect until changed by further Commission order in the proceeding, Docket No. G–16380.

Superior, however, replied that the foregoing authorization "was neither requested nor desired insofar as Block 76 Field is concerned. As to that field, this Company was authorized by your letter of October 22, 1958, to commence and continue that sale. For this reason the authorization in letter of August 2, 1961, is superfluous and neither accepted nor acted upon as to Block 76." The final word in this chain of events, prior to the present discussion, is contained in the Commission's reply of August 16, 1961, where we stated:

> The order of the Fifth Circuit Court of Appeals vacating this Commission's order issued August 10, 1959, 22 FPC 369, in Docket No. G–16380 covered not only the August 10, 1959 order, but also all previous actions taken in Docket No. G–16380. For this reason, the temporary authorization for the continued sales of natural gas to Transcontinental issued August 2, 1961, covers sales from both Offshore Block 71 and Offshore Block 76 Fields.

In our opinion, once we granted Superior a permanent certificate in Docket No. G–16380, the temporary authorization ceased to have any prospective application and was, in effect, automatically cancelled. Assuredly the two charters did not coexist, providing duplicate authority for the same sale. Had the permanent certificate imposed a condition rendering inoperative certain contract provisions, the parties certainly could not have relied on the temporary authorization subsequent to August 10, 1959, to support their continued observance of the original provisions. This is so for the reason that a temporary authorization which may be (and here was) granted without notice or hearing cannot predetermine the Commission's prospective action after notice and hearing, to the end that any temporary authorization can only be effective *pendente lite*. Section 157.28 of the Commission's Regulations under the Natural Gas Act, pursuant to which the temporary authorization was granted to Superior, specifically provides that under such an authorization an independent producer may "continue such sale or transportation pending final Commission action under Sections 4 and 7 of the Natural Gas Act. * * *" The Commission's order of August 10, 1959, constituted such final action in both respects, granting a permanent certificate and continuing acceptance of the rate schedule previously

---

[20] 22 FPC 655.
[21] *U.G.I.* v. *F.P.C.*, 290 F. 2d 147.
[22] *Superior Oil Co.* v. *U.G.I.*, 366 U.S. 965.

filed. Under Section 1.13(c) of the Commission's Rules of Practice and Procedure, the August order became effective when issued.[23]

It is clear, therefore, that from and after August 10, 1959, when the permanent certificate was issued, any sales made by Superior from Block 76 under the contract in question could only have been pursuant to that permanent certificate and not the superseded temporary authorization.[24] Whatever rights might have accrued to Superior under the ensuing permanent certificate were wiped away by the court's action, leaving Superior as a practical matter operating without certificate authorization. The court's judgment that the permanent certificate was void did not and could not reinstate the temporary authorization nor restore its vitality; a new temporary authorization was needed and was granted by our August 2, 1961 order. Since deliveries had already begun and termination thereof had not been authorized under Section 7(b) of the Act, Superior's rejection of the temporary authorization was without force or legal effect, and that authorization is the basis for the continuation of the sale pending the redetermination made herein on the permanent certificate.

J. R. Frankel, *et al.*, *de facto* successors to the Berkshire Oil Company, applicant in Docket No. G–13197,[25] has excepted to the examiner's findings and conclusions on the ground that, effective November 2, 1961, the producing properties there involved were sold to Continental Oil Company. Frankel contends that Berkshire is, therefore, no longer "engaged in the sale of natural gas" nor is Berkshire now "able and willing" to perform the acts originally proposed.

By order issued May 6, 1963,[26] we approved, to the extent therein specified, a proposed settlement by Continental Oil Company and issued a permanent certificate, effective November 2, 1961, for continuation of the sale by Continental. However, no action was taken to vacate Docket No. G–13197 in view of the potential refund liability for the period prior to November 2, 1961.[27] In line with the decision reached herein, this refund obligation now falls to J. R. Frankel, *et al.*, with interest thereon to be computed in the manner hereinafter specified.

While not brought out in the body of the initial decision, ordering paragraph (D) imposes a 7 percent interest charge upon the entire refund. As several of the producers point out in their exceptions, at the time deliveries began in 1958 and 1959 the Commission's Regulations under the Natural Gas Act (Sec-

[23] Section 16 of the Act provides that "Orders of the Commission shall be effective on the date and in the manner which the Commission shall prescribe." Section 1.13(c) of the Rules of Practice and Procedure specified that "Orders of the Commission shall be effective as of the dates of issuance unless otherwise specially provided in the orders." No different date is specified in the August 10 order. Moreover, under Section 19(c) of the Act, neither the filing of an application for rehearing nor a petition for review operates as a stay of a Commission order.

[24] Since the original temporary authorization for the Vermilion Block 76 sales did not contain a refund condition, no refund will be required for gas delivered or paid for prior to the issuance of the August 10, 1959 certificate.

[25] A motion to substitute J. R. Frankel, *et al.*, as parties to this Docket in the place and stead of Berkshire Oil Company was filed January 11, 1963, but has not been previously acted upon. The motion states that Berkshire Oil Company has disposed of all of its producing properties and was dissolved and fully liquidated as of September 28, 1962. The motion also states that the only stockholders of Berkshire were J. R. Frankel, *et al.*, and who, insofar as this proceeding is concerned, succeeded to all the rights and obligations of Berkshire as evidenced by a letter from their counsel to the Commission dated October 22, 1962. Based on the averments contained in the motion, the succession of J. R. Frankel, *et al.*, is hereby approved.

[26] *Continental Oil Company*, Docket No. CI62–1508, Order Conditionally Approving Proposed Settlement and Conditionally Reissuing Certificate of Public Convenience and Necessity, 29 FPC 887.

[27] *Cf.*, *Sohio Petroleum Company, et al.*, Docket No. CI61–343, *et al.*, *Placid Oil Company*, CI61–1459, Finding and Order Permitting and Approving Abandonment of Service, etc., issued January 12, 1962.

tion 154.102(c)) provided for interest on refunds at the rate of 6 percent per annum. It was not until March 1, 1960, that the 7 percent rate was imposed. Although the provision contained in the Regulations concerns the refunding of excess charges in proceedings arising under Section 4 of the Act, the percentage of interest as specified in that section likewise constitutes our best judgment as to the interest to be charged in this proceeding. Accordingly, in the exercise of our responsibilities under Section 7, we shall require that interest on the refunds be computed at the rate of 6 percent per year up to March 1, 1960, and 7 percent thereafter.

In addition, U.G.I., Transco, and staff have noted that the refund obligation imposed by the examiner would apply only to volumes delivered to the pipeline purchasers from the date of initial delivery and that, under this provision, there would be no refunds made for gas paid for but not taken. Superior's sales to United in Docket No. G–16388 and to Transco in Docket No. G–16380 apparently are the only sales in which prepayments have actually been made and are currently outstanding. The request in the exceptions that the rate condition and refund requirement be made applicable to all volumes paid for from the date of the contracts would, we believe, afford greater justice and will be adopted.[28] Transco has indicated that they would have no objection to a provision that the refund with respect to the prepaid gas be made in gas rather than in money. To the extent that the recommendation is limited only to the quantity of gas paid for but not taken we have no objection to the recommendation and shall include a provision in our order permitting the refund to be made in kind over the life of the contracts without further payment.

The settlement agreements approved by the Commission in the *Transco*, *United* and *Hope* rate proceedings[29] require that the refund and interest payments to be made by the producers as a result of our decision herein will be passed on to the pipeline's customers and further provide that, subject to certain limitations, these pipelines will file reductions in their rates to reflect the reductions in rates of their suppliers. Accordingly, no further action is necessary in this proceeding to assure that the pipelines will not be unjustly enriched as a result of these refunds. Although Transco and United may, if agreeable to Superior, elect to take the refund on the prepaid gas in kind as stated above, the intent in the settlement agreements that the refunds by the pipelines to their customers be in money remains unchanged. For purposes of the flow-through provisions of those agreements, we shall require that Transco and United treat these refunds as though received concurrently with the refunds made by Superior on the gas actually delivered.

Option To Reject

The examiner denied a suggestion by staff and U.G.I. that the Commission allow the producers an option, after making appropriate refunds, of rejecting a conditioned certificate. In essence, both parties argue that there is no "need" for the gas involved in this proceeding. Hope Natural Gas Company and Transco, two of the three pipelines involved, objected strenuously to the recommendation on the ground that the gas represented in this proceeding is needed by them to meet their customers' requirements, that extensive investment in pipeline facilities have been made, and that termination of the sales would establish a dangerous precedent in the administration of the Act. The examiner held that

[28] See footnote 24, *supra*, for differing treatment with respect to sales from Vermilion Block 76.

[29] *Transcontinental Gas Pipe Line Corporation*, Docket No. RP61–13, order issued February 2, 1962, 27 FPC 187; *United Gas Pipe Line Company*, Docket No. G–9547, *et al.*, order issued March 12, 1962, 27 FPC 504; *Hope Natural Gas Company*, Docket No. G–5474, *et al.*, order issued December 7, 1962, 28 FPC 958.

"Where the producers under such circumstances [commencing of deliveries while initial price was under litigation] have permitted their pipeline customers to construct facilities to obtain such supplies of gas, which since then have become a significant part of the latter's total gas supplies required for continued service to their customers, the producers must be regarded as having assumed and accepted the risk that their initial contract prices might ultimately be reduced as a result of such review proceedings. It would be inequitable under such circumstances to permit the producer applicants to now discontinue that service, merely because they might be dissatisfied with the Commission's action in carrying out the remand of the reviewing courts."

Only U.G.I. excepted to the refusal to grant the option, arguing: (1) that since the Commission's function in these remanded proceedings is to fashion an equitable remedy that will most nearly restore the parties to the position they would have occupied in the absence of the Commission's original erroneous orders, the producers should be accorded the same opportunity to accept or reject certificates as they would have had had the Commission originally issued price conditioned certificates; (2) that the "dangerous precedent" can be avoided merely by pointing out that granting of the option to reject is based on the particular equities and circumstances presented here and is not to be construed as a waiver of the Commission's authority under Section 7(b); (3) that Transco has already included in its rate base any facilities that might be affected by termination of the sales and is receiving a return thereon; (4) that no producer has indicated that it would choose termination; and (5) that the option would forestall claims as to future deliveries that the price condition is confiscatory.

As recently as February 5, 1963, in an order in *Amerada Petroleum Corporation, et al.*,[30] we rejected a similar suggestion by U.G.I. and others that the producers in that proceeding be permitted an option to reject proposed replacement certificates containing a price condition where unconditioned temporary certificates had been issued, facilities constructed, and the flow of gas had begun. Although the situation was factually distinguishable in that only temporary authorizations were involved, our decision as there expressed is controlling with respect to the present exception. We may note that the qualification regarding "extraordinary conditions" has been met precisely by the circumstances in these proceedings. Furthermore, any question as the need for this gas is beyond the scope of the present inquiry as established by us in our March 7, 1962, order.

Prepayments

Staff alone has urged that the producers be required to refund, *in toto*, all monies received by them on account of payments for gas not taken. The justification for this request lies in the contention that the operation of take-or-pay provisions may "in practical effect increase the stated price for gas." The examiner rejected the request on the observation that few, if any, prepayments have ever been forfeited through failure to take make-up volumes; he did, however, condition the certificates to render the take-or-pay provision subject to ultimate determination in the Docket No. R–199 proceeding, the same approach as taken in the *Skelly* opinion. Staff excepted on the basis of lack of evidentiary support for the finding regarding lack of forfeiture of prepayments and that there is no assurance "forfeiture will clearly be avoided here." Exception also was taken by some producers to conditioning the certificates to the Docket No. R–199 proceeding.

[30] Docket No. CI62–1544, *et al.*, Order Denying Motion To Impose Price Condition in Temporary Certificates, 29 FPC 218.

As previously noted, Superior's sales to United and Transco apparently are the only ones having prepayments. Transco's Form 2 Annual Report shows prepayments to Superior of $1,297,914 as of the end of 1961, while United had prepaid $138,726 as of the same period. Filings by Superior subsequent to submission of the exceptions reveal that the make-up period has been extended from one year to two years in the sale to United[21] and from two years to five years on a portion of the Transco sale.[22] At the present time it does not appear that any past prepayment will necessarily be forfeited. Therefore no action will be taken on the exception by staff. The matter of the take-or-pay provisions, however, is appropriately the subject of consideration in Docket No. R–199 and the producer certificates issued herein were rightfully made subject to the results of the rulemaking proceeding.

Price Increases

To this point our discussion has concerned only those matters on which exceptions have been taken to the determinations made in the initial decision. We now come to the consideration of a question which, though raised in the brief of the New York Public Service Commission and discussed by the examiner, was not the subject of an exception.

The contracts submitted with the certificate applications and the various rate schedules filed with the Commission at the time of the initiation of service provide for periodic increases in the price of the gas to be delivered to the pipeline buyers. In general, the contracts call for a base initial price, exclusive of tax reimbursements,[23] of either 21.4 or 21.5 cents per Mcf with increases of 1 or 2 cents per Mcf each four years until a stated maximum is attained. In the majority of the contracts, the date fixed for the first escalation above the initial price is July 1, 1962. In one, the date is March 1, 1963. In others, no precise date is stated, the time for the first escalation being computed as four years after the commencement of initial deliveries. In all cases, the time limitation on the applicability of the initial price has passed and the producers could, under their contracts, file applications with the Commission to put into effect the first of the increases. These rate increases would, of course, be open to suspension for a maximum of five months but then could be collected by the producers subject to refund under Section 4(e) of the Act as to all amounts not ultimately proven to be just and reasonable.

In *CATCO* the Supreme Court wrote: (360 U.S. 378, 391–392)

> Where the application on its face or on presentation of evidence signals the existence of a situation that probably would not be in the public interest, a permanent certificate should not be issued.
>
> There is, of course, available in such a situation, a method by which the applicant and the Commission can arrive at a rate that is in keeping with the public convenience and necessity. The Congress, in § 7(e), has authorized the Commission to condition certificates in such a manner as the public convenience and necessity may require. Where the proposed price is not in keeping with the public interest because it is out of line or because its approval might result in a triggering of general price rises or an increase in the applicant's existing rates by reason of "favored nation" clauses or

---

[21] Rate Schedule No. 89, Supplement No. 2, effective March 21, 1963.

[22] Rate Schedule No. 78, Supplement No. 3, filed February 18, 1963. This filing has not yet been accepted by the Commission.

[23] Depending on the percentage of tax reimbursement in the individual contracts, the total initial price for the on-shore sales is either 23.55 cents or 23.8 cents per Mcf. Superior's off-shore sale in Docket No. G–16380 is within the Federal domain and carries an initial price of 21.4 cents per Mcf.

otherwise, the Commission in the exercise of its discretion might attach such conditions as it believes necessary.

This is not an encroachment upon the initial rate-making privileges allowed natural gas companies under the Act, *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp., supra*, but merely the exercise of that duty imposed on the Commission to protect the public interest in determining whether the issuance of the certificate is required by the public convenience and necessity, which is the Act's standard in § 7 applications. [The Commission] * * * so conditions the certificate that the consuming public may be protected while the justness and reasonableness of the price fixed by the parties is being determined under other sections of the Act. Section 7 procedures in such situations thus act to hold the line awaiting adjudication of a just and reasonable rate. * * * On the other hand, if unconditional certificates are issued where the rate is not clearly shown to be required by the public convenience and necessity, relief is limited to § 5 proceedings, and, as we have indicated, full protection of the public interest is not afforded.

While it is true that the decision spoke primarily in terms of holding the price line through a certificate issued at the contract price but conditioned upon payment of refunds if a lower just and reasonable price was subsequently fixed (with the producers reforming contract rights to file further increases also subject to refund), nothing therein suggests that such action would exhaust the Commission's power under Section 7(e) "to attach to the issuance of the certificate *and the exercise of the rights granted thereunder* such terms and conditions as the public convenience and necessity may require." Although dictum in the opinion, the quoted language clearly states that the Commission, at least in the circumstances described, one of which being where unconditioned approval "might result in a triggering of general price rises," not only may but should exercise its conditioning power to hold the line until a just and reasonable rate can be determined. The examiner's rejection of the staff's proposed 16-cent "anti-triggering" line was correct to the extent that no triggering would occur at the 16-cent level. Consequently, there would have been no blocking of a triggering price rise. This, however, is not true of the escalated prices. Obviously, the line cannot be held simply by conditioning the initial price where, as here, the producers would be at liberty to file price increases immediately on certification at a level which will have a widespread triggering effect in South Louisiana, resulting in the redetermination of many outstanding prices and a general increase in the "asking price" level within the area.

Moreover, the fact that any rate increases, including those adequate to cause triggering and price redeterminations, would themselves be subject to the refunding provisions of Section 4(e) would not, we believe, afford to the consuming public "the complete, permanent and effective bond of protection" which the court has described as the purpose of the Act. That the refund remedy is itself not adequate in many situations to protect the public was specifically recognized by the Supreme Court in its recent decision in *F.P.C.* v. *Tennessee Gas Transmission Company, et al.*, 371 U.S. 145, 154, where it stated:

* * * True, the exaction would have been subject to refund but experience has shown this to be somewhat illusory in view of the trickling down process necessary to be followed, the incidental cost of which is often borne by the consumer, and in view of the transient nature of our society which often prevents refunds from reaching those to whom they are due.

This general inadequacy of the refund remedy is additionally highlighted in this

proceeding by the extensive repercussions which could flow from the very collection of the increased rates provided in the rate schedules.

We conclude that the present and future public convenience and necessity militates against any grant authorizing the collection of rates in excess of the level at which triggering of favored-nation clauses will occur or which may serve as a basis for price redeterminations at a higher rate under gas purchase contracts in the Southern Louisiana area. Accordingly, it is our opinion that the public interest requires that the certificates now issued to the producers be conditioned to preclude such escalations in the price of the gas here involved. An examination of the applicable contracts of Transco, Hope and United reveals that triggering and price redeterminations will take place at a price in excess of 23.55 cents per Mcf.[24] Since hearings soon will begin in the Docket No. AR61–2 area rate proceeding, which has as its purpose the fixing of a just and reasonable rate on production in Southern Louisiana, a moratorium will be ordered on all price increases in excess of 23.55 cents per Mcf, inclusive of tax reimbursement, pending our final decision in that proceeding or until July 1, 1967, whichever is earlier. In ordering such moratorium, we note that all permanent certificates issued in Southern Louisiana since the decision in the remanded *CATCO* proceeding have contained a similar provision and that the inclusion of the provision has been a major factor in our decision to issue those certificates.

The exceptions submitted by five of the producers include a request for an opportunity to present oral argument before the Commission. We conclude that no useful purpose would be served by such argument and that the requests should be denied. The exceptions not discussed herein are disposed of by the examiner's discussion or are immaterial to the result in this case. Except to the extent herein granted, all the exceptions filed are without substantial support or reasonable basis in law and should be denied. The examiner's decision should be modified in accordance with this opinion and as so modified should, with this opinion, be adopted by the Commission as its decision in this case.

The Commission further finds:

(1) Placid Oil Company, J. R. Frankel, *et al.* (successor to Berkshire Oil Company), Hassie Hunt Trust, the Superior Oil Company, J. Ray McDermott and Company, Inc., Kilroy Properties, Inc., *et al.*, Callery Properties. Inc., Ocean Drilling and Exploration Company, individually and as Operator, and Caroline Hunt Sands, *et al.*, are or, at times material herein, have been engaged in the sale of natural gas in interstate commerce for ultimate public consumption and each is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The sales of natural gas hereinbefore described, as more fully described in the applications, are made in interstate commerce, subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Subject to the requirements of our order herein and the conditions attached to the certificate herein issued, the applicants are able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

---

[24] While a few prices higher than 23.55 cents are being collected in Southern Louisiana, it appears that those sales are not applicable to the line we are drawing here.

(4) The sales of natural gas by the independent producers referred to in the above paragraph (1), together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are and have been required by the public convenience and necessity, and certificates therefor should be issued as hereinafter ordered and conditioned.

(5) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

(6) Except as herein granted, the exceptions to the examiner's decision should be denied.

The Commission orders:

(A) Permanent certificates of public convenience and necessity are hereby issued, upon the conditions hereinafter set forth, authorizing the sales and services proposed by:

(1) Placid Oil Company in its contracts with Transco dated August 13, 1957, and filed as Placid's FPC Gas Rate Schedule No. 18, Supplements No. 1, 2, 3 and 4 and Rate Schedule No. 19, Supplements No. 1, 2, 3, 4 and 5;

(2) J. R. Frankel, *et al.*, successor to Berkshire Oil Company, in the contract with Transco dated August 12, 1957, and previously filed as Berkshire's FPC Gas Rate Schedule No. 4, Supplements No. 1, 2, 3 and 4.

(3) Hassie Hunt Trust in its contract with Transco dated November 1, 1957, and filed as Trust's FPC Gas Rate Schedule No. 19, Supplement No. 1;

(4) J. Ray McDermott and Company, Inc. in its contract with Hope dated November 14, 1958, and filed as McDermott's FPC Gas Rate Schedule No. 12, Supplement No. 2;

(5) Kilroy Properties, Inc. in its contract with Hope dated December 8, 1958, and filed as Kilroy's FPC Gas Rate Schedule No. 3, Supplements No. 1 and 2;

(6) Callery Properties, Inc. in its contracts with Hope dated December 10, 1958, and December 16, 1958, and filed respectively as Callery's FPC Gas Rate Schedule No. 2, Supplements No. 1, 2, 3, 4, and 5 and Rate Schedule No. 9;

(7) Ocean Drilling and Exploration Company in its contracts with Hope dated October 23, 1958, and December 13, 1958, and filed respectively as Ocean's FPC Gas Rate Schedule No. 1, Supplement No. 1 and Rate Schedule No. 2, Supplements No. 1 and 2;

(8) Caroline Hunt Sands in its contract with Hope dated August 13, 1958, and filed as Sands' FPC Gas Rate Schedule No. 5, Supplement No. 1;

(9) The Superior Oil Company in its contracts with United dated September 8, 1958, and Transco dated September 17, 1958, and filed respectively as Superior's FPC Gas Rate Schedule No. 89, Supplements No. 1, 2, and 3, and Rate Schedule No. 78, Supplements No. 1, 2, and 3;

and, in each instance, the operations and construction reasonably necessary thereto.

(B) Each certificate issued severally as provided in paragraph (A) above is hereby conditioned so that the base price effective under each of the contracts, from the effective date thereof, and until lawfully changed in the manner provided by the Natural Gas Act, shall be 18.5 cents per Mcf at 15.025 psia, except that the applicants may charge an additional 1.5 cents per Mcf for gas produced in any area subject to the taxing authority of the State of Louisiana, subject to refund to the pipeline purchaser, with interest, if it is finally adjudicated that such area is not subject to the taxing authority of the State of Louisiana. Within 30 days from the date of issuance of this order the applicants shall file supplements to their presently filed rate schedules reflecting the conditioned price as their initial price in lieu of the initial prices provided in their contracts; provided that the notice provisions of Section 154.94(b) and the detailed submit-

tal provisions of Section 154.94(f) of the Commission's Regulations Under the Natural Gas Act are waived insofar as they apply to the reductions in rate hereby ordered.

(C) Each certificate issued in Paragraph (A) above is further conditioned to provide for a moratorium on the filing of all price increases in excess of 23.55 cents per Mcf, inclusive of tax reimbursement, pending the issuance of a final decision in the area rate proceeding in Docket No. AR61–2 or until July 1, 1967, whichever is earlier.

(D) Each of the applicants shall, within 60 days of the date upon which this order shall become effective, refund to the pipeline purchasers, with interest, a sum equal to the difference between the price charged to and collected from such purchasers and the base price set forth in paragraph (B) above, applied to all volumes paid for by such purchasers under the contracts which form the subject matter of this proceeding from the date of the contracts until the effective date of this order; provided, that no refund is required with respect to the sales made by Superior from the Vermilion Block 76 Field prior to August 10, 1959. The interest charge specified herein and in paragraph (B) above shall be calculated at the rate of 6 percent per annum for all gas paid for prior to March 1, 1960, and at 7 percent per annum thereafter, until full refund has been made.

(E) With reference only to that portion of the refunds which shall involve the outstanding prepayments made by Transco and United under the contracts set forth in Superior's FPC Gas Rate Schedules No. 78 and 89 as required by the take-or-pay provisions of such contracts, Superior may refund, over the life of the contracts a volume of gas attributable to the difference between the conditioned price of 18.5 cents per Mcf and the contract initial base prices. The volume of such refund gas shall be calculated at the initial price fixed herein, and no interest shall be charged. In all other respects the provisions of the contracts pertaining to quantity shall be unaffected. For purposes of the flow-through provisions of Transco's and United's rate settlements, the refunds made under this paragraph shall be treated as though received concurrently with the refund made by Superior on the gas actually delivered.

(F) Within 10 days of the date of the refund provided in paragraph (D) above, each of the applicants shall file with the Commission an officially certified statement showing the amount of the refund, its manner of computation, the interest payments related thereto, and a statement from the purchaser acknowledging receipt thereof.

(G) The certificates herein issued are granted upon the further express condition that the allowance of the take-or-pay for provisions in the applicants' contracts is subject to our ultimate disposition with respect to such provisions in the rule-making proceeding in Docket No. R–199. Upon the establishment, by regulation or policy statement, of a general policy governing such provisions in producer contracts, the applicants shall within 30 days file amended rate schedules in conformity therewith, acceptable to the Commission. The producers shall not be required to file take-or-pay provisions for less than 80 percent of the annual contract quantities. Any changes or modifications to be made in accordance with this paragraph shall be prospective only.

(H) The certificate herein issued to J. R. Frankel, *et al.*, in Docket No. G–13197, shall be deemed to have been effective as to all deliveries made from the acreage therein concerned from the date of the contract through and including November 1, 1961. Further, the certificate herein issued to Placid Oil Company in Docket No. G–13184 shall be deemed to have been effective as to all deliveries made from the acreage concerned therein from the date of the contract through and including January 12, 1962. Upon the submission to, and acceptance by, the Commission of the material required in paragraph (F) above, the cer-

tificates so issued and the related rate schedules shall be held vacated and without further force or effect.

(I) The certificates herein issued are not transferable and shall be effective only so long as each of the applicants continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(J) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or of Part 154 of the Regulations thereunder. Such grant is without prejudice to any findings or order which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the applicants. Further, the action in this proceeding shall not foreclose nor prejudice any further proceedings or objections by the Commission relating to the operation of any price or related provision in the gas purchase contracts here involved.

(K) The motion for opportunity to present oral argument before the Commission is denied.

(L) Except as herein granted, the exceptions to the examiner's decisions are hereby denied.

(M) The examiner's decision, to the extent not inconsistent herewith, is hereby adopted as part of this opinion and order.

Commissioner O'Connor, *concurring in part* and *dissenting in part*.

Commissioner Ross, *concurring in part* and *dissenting in part*.

Commissioner Morgan, *concurring in part* and *dissenting in part*, joined in Commissioner Ross' statement.

O'CONNOR, Commissioner, *concurring in part* and *dissenting in part:*

The Commission is here concerned with contracts executed in 1957 and 1958 by a number of producers for the sale of gas from the Southern Louisiana area. The contracts range in initial price from 21.40 cents per Mcf, involving no tax reimbursement, to 23.8 cents per Mcf including tax reimbursement. Permanent unconditioned certificates were granted at these prices by the Commission in 1959. Appeals were taken by various intervenors, and the Commission's decisions granting permanent certificates were reversed and/or remanded by the courts. In the remanded proceeding the examiner determined that the in-line price of 1957 and 1958 to which the certificates in these cases should have been conditioned was 18.5 cents plus 1.5 cents tax reimbursement, for a total of 20 cents. He further determined that the Commission's error in granting the 1959 certificates should be corrected retroactively and that the producers should be required to make refunds back to 1959 of all excessive amounts collected under the erroneous certificates. In this order the Commission affirms the examiner on both points.

I am in agreement with the determination by the examiner and Commission of the in-line price of 20 cents inclusive of taxes and with the conclusion that this must be made effective as to these producers retroactive to the date certificates were granted. However, I believe that equitable considerations compel this Commission at the same time to permit the producers to file for rate increases up to their contract price and to place these increases into effect retroactively.

Whatever technical characterization might be used for the effect of the Courts of Appeals mandates and our duty thereunder, it is quite clear that the practical effect of our order is to turn back the clock to 1959 in order now to give consumers the protection from and after that date to which they are entitled. It is my opinion that we are required by fundamental fairness to do the

same for the producers. If the Commission in 1959 had correctly granted certificates to these producers conditioned down to a total price of 20 cents, the producers would have had the right under their contracts and under the statute to file for rate increases up to the contract price. After the 30 day notice provision, these would have been suspended for five months and then placed into effect subject to refund. As a result, for the intermediate years 1959–1963 the producers would have collected the higher rate subject to refund; and if the just and reasonable rate ultimately proves to be in excess of 20 cents, they would receive the full benefit of this amount to which they are entitled under their contracts and the Natural Gas Act.

Were the Commission to fail to correct the initial price to 20 cents effective as of the date the certificates were issued, the consumers would be deprived the protection which the Act affords. Correspondingly for the Commission to reduce retroactively the initial price yet fail to allow a retroactive increase by the producers to their contract price would be to deprive permanently the producers of their contractual and statutory right to collect (subject to refund) the increased rate over a four year period. A resolution which gives full protection to the rights of all interests is to be found, I believe, in giving retroactive effect to all elements of the transaction. Two consumer-oriented parties in this proceeding—the Commission staff and United Gas Improvement Company—seem to sense that if turning back the clock is sauce for the consumer goose, it is equally good gravy for the producer gander—for each in its initial brief before the examiner suggests (with certain qualifications) that the Commission permit a retroactive increase for the producers.

In conclusion, the problem posed by the determination that the certificates here were issued initially at an excessive price can be answered in one of three ways. The first, proposed by the producers, would enable the Commission to correct the in-line price error at this time but in a prospective manner only, leaving the consumer to bear the burden from 1957 to 1963 of the Commission's earlier error. The second, adopted by this order, enables the Commission to correct retroactively its earlier error but permits the producers to exercise their rights under their contracts and Section 4(e) of the Act only in a prospective manner, thereby placing a possible permanent loss on them for the 1957–1963 period as a result of the Commission's earlier error. The third approach, suggested by staff and UGI before the examiner as proposed herein, permits a correction of the earlier error with no loss to any party by turning back the clock for all interests. It correctly establishes the in-line price at which the initial sale will be made in 1959, permits an increase by the producers up to their contract price, and subjects that increase to suspension and a refund obligation covering any amount in excess of the just and reasonable price which will be determined in the newly initiated Southern Louisiana area rate proceeding.[1]

Thus, while I agree with all other aspects of the majority's opinion, I cannot join an unconditional order of refunds without provision for a retroactive price increase to effect evenhandedly the correction of the earlier error.

Ross, Commissioner, *concurring in part* and *dissenting in part:*

I dissent only to that portion of the order which limits the refund obligation of Superior Oil Company in Docket No. G–16380 to the period covered by the permanent certificate. In my opinion, Superior should be required to refund the difference between the previously authorized rate and that found proper herein beginning at the time deliveries of gas under the contract commenced.

---

[1] Since the majority of the Commission has determined not to order refunds for sales made under temporary permits, there is no occasion to consider whether retroactive increases would be appropriate in such circumstances.

The facts relevant to this Docket are set forth at pages 291 through 293 in the majority opinion. Briefly, Superior filed an application to make a sale of gas to Transco at a price of 21.4¢ per Mcf which was docketd as G–16380. Superior requested temporary authority to make the proposed sale and, without notice or hearing, was granted such authority. Superior's application was set for hearing after which it was issued a permanent certificate to make the sale at the requested rate. The Fifth Circuit Court of Appeals vacated the Commission's order granting Superior's application in Docket No. G–16380 and remanded the proceeding for further appropriate action.[1]

Section 7(c) of the Natural Gas Act provides, in part, that "* * * the Commission may issue a temporary certificate * * * pending the determination of an application for certificate." The temporary issued to Superior in this docket stated: "This authorization and the acceptance of the rate schedule are without prejudice to such final disposition of the application for certificate as the record may require. * * *"

It therefore seems apparent, as the majority has intimated, that Superior's rights and concomitant responsibilities under the temporary were merged into the permanent certificate subsequently granted on the same application and in the same docket. Accordingly, when the Court vacated the Commission's order granting the permanent certificate, it also effectively repudiated the Commission's prior grant of temporary authority. Under this view, there is no basis for limiting Superior's refund responsibilities to the period covered by its permanent certificate.

This interpretation of the Court's action is clearly consistent with the Commission's earlier letter of August 16, 1961, in this matter in which we stated:

> The order of the Fifth Circuit Court of Appeals vacating this Commission's order issued August 10, 1959, in Docket No. G–16380 covered not only the August 10, 1959 order [which granted the permanent certificate], but also *all previous actions taken in Docket No. G–16380.* [Emphasis added.]

This all-embracing language certainly must be held to include the issuance of temporary authority in that docket.

In addition, the exclusion of the period covered by temporary authority in requiring refunds unjustifiably and improperly ascribes a vitality and legal effect to temporaries, which are considered on an *ad hoc, ex parte* basis, greater than that accorded permanent certificates issued only after all interested parties have had their day in court. The majority is holding that while all of Superior's rights under the Commission's order granting the permanent were extinguished by the Court's reversal, the interim rights which were embodied in the temporary, somehow survived. Because of the summary fashion in which applications for temporary authority are granted, temporary certificates should be given substantially less—not greater—weight than the ensuing permanent certificates.

A unanimous Commission stated in CATCO:[2]

> In our opinion the examiner acted properly in ordering refunds, although we have no power to order reparations. Here we granted CATCO a certificate and approved the proposed 21.4 cent rate. That certificate was subject to challenge when issued and was challenged successfully. The proceedings were remanded by the Supreme Court, and our order of June 24, 1957 was "vacated" by the mandate of the Court of Appeals. We now find that the rate should have been 18½ cents. If CATCO were permitted to

[1] *United Gas Improvement Company* v. *F.P.C.*, 290 F. 2d 147 (1961), cert. den., 81 S. Ct. 1926.

[2] *Continental Oil Company, et al.*, 27 FPC 96 (1962).

> retain what its has collected under the 21.4 cent rate and file the 18½ cent rate prospectively only, CATCO would be permitted to retain the portion of the rate found unlawful, the Supreme Court's decision and the subsequent hearing would be rendered in part futile, and CATCO would be unjustly enriched because of procedural delays. * * * To require restitution of the difference between the two rates, in our opinion, is a reasonable condition of issuing permanent certificates to the CATCO companies under the provisions of Section 7(e) of the Natural Gas Act. [27 FPC 110.]

To the extent Superior is not obliged to make refunds for the period covered by its temporary, it would be permitted to retain a portion of the rate found unlawful, the court's decision and the subsequent hearing would be rendered in part futile. and Superior would be unjustly enriched because of procedural delays.

For these reasons, I would adopt the Examiner's proposed ordering paragraph (D) to the extent that it provides for refunds equal to the difference between the price charged to and collected from the pipeline purchasers and the base price with respect to all volumes paid for under the contracts here in question.

Commissioner O'Connor properly states the principle which I believe should govern our disposition of this matter, i.e., to give retroactive effect to all elements of the transaction. His suggestion, however, falls far short of this goal. While he would insure against any unfair loss to producers in this case, pipeline purchasers would not enjoy equiavlent protection under his position ennunciated in other proceedings.

In order to give full retroactive effect with respect to producer sales, it is necessary to provide for refunds from the time the sales begin in order to protect consumer interests in those situations where the initially authorized price exceeds that ultimately found just and reasonable. However, a majority of the Commission, composed of Chairman Swidler, Commissioners O'Connor and Woodward explicitly have held that refund provisions *will not normally be imposed in temporary certificates.*[3] How then would his proposal give "full protection to the rights of all interests?" Until such time as a majority of this Commission is willing to go both ways, adoption of Commissioner O'Connor's suggestion would only aggravate an already lopsided situation favoring the producers.[4]

I concur with the imposition of the condition in these certificates which precludes the filing of a rate increase above the triggering line. Such a condition may be helpful in view of the majority's position on the triggering question in *Shell Oil Company, et al.*, Docket No. RI61–515, *et al.*, Opinion No. 382, order dated March 15, 1963, 29 FPC 498. However, that condition would have been unnecessary if the minority position in *Shell, supra*, of which I was a part, had been adopted.

Commissioner Morgan has authorized me to state that he joins in this statement.

INITIAL DECISION

UPON APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 7, 1962)

ZWERDLING, *Presiding Examiner:* These proceedings involve twenty-one producer certificate cases which are before the Commission upon remand as the

---

[3] *Amerada Petroleum Company,* Docket No. C162–1544, *et al.*, order dated February 5, 1963, 29 FPC 218.

[4] See *Skelly Oil Company,* Opinion No. 362, August 30, 1962, in which the Commission did not provide for refunds during the term of temporary authority, 28 FPC 401.

result of judicial review proceeding.[1] In such judicial proceedings the courts set aside prior Commission orders granting unconditioned permanent certificates to the instant producer applicants under Section 7(c) of the Natural Gas Act, for sales of natural gas to Transcontinental Gas Pipe Line Corporation (Transco), Hope Natural Gas Company (Hope), and United Gas Pipe Line Company (United) from leases offshore and onshore Louisiana—at initial contract prices ranging from 21.40 cents, involving no tax reimbursement, to 23.8 cents per Mcf, including tax reimbursement.[2] The contracts in question were executed in 1957 and 1958, and deliveries commenced in 1959.[3] The various applications here involved were originally consolidated into and heard in five groups, whose prior history is summarized in Appendix A to this decision.

The only controverted issue in this case is that of the proper public interest initial price or prices applicable to these sales, and the related question of whether refunds should be required in the event a rate condition is imposed.

The Commission originally consolidated these remanded and reopened proceedings for hearing with Docket No. AR61–2, the Southern Louisiana area rate proceeding. By order issued January 10, 1962 in *Texaco-Seaboard, Inc., et al.*, Docket No. G–13169, *et al.*, 27 FPC 15,[4] the Commission confirmed that initial prices at the levels proposed in the instant dockets

> are out of line and cannot be approved unless justified by compelling evidence after full hearing; such evidence has not been adduced to date. [Order, p. 16.]

The Commission further concluded that it would be fairer and wiser under the circumstances to offer the instant applicants a further opportunity to adduce evidence in Docket No. AR61–2, *et al.*, in support of their proposed prices. However, in order to provide the public with some interim protection the Commission directed that the amounts collected by the applicants

> shall be subject to such refund provisions as the Commission may lawfully prescribe by its final order in these proceedings * * * to the extent, if any, that the rate which has been collected exceeds the rate ultimately found to accord with the requirements of the public convenience and necessity. [Order, p. 17.]

Subsequently, numberous parties filed applications for rehearing of this order, attacking (among other things) the validity of the refund obligation therein imposed. On March 7, 1962 the Commission issued an Order Denying Rehearing, 27 FPC 482, but laid down new procedures for the handling of the instant applications "designed to abbreviate the duration of applicants' refund uncertainties". In this order the Commission concluded that the unconditioned certificates previously isued to these producer applicants

> were erroneously issued in the first place and as a result of the invocation of Section 19 have never assumed finality * * *. The courts having lain bare the errors, it remains our task equitably to correct them. * * * we have concluded that our 1958 order was erroneous, that the record does not show the price proposals of the producers to be in the public interest, and that the

[1] Since the conclusion of the instant hearing, a number of these producer applicants have submitted offers of settlement to the Commission. Offers of settlement have been approved by the Commission as to Sun Oil Company, The Pure Oil Company, and Mississippi River Fuel Corporation, and their respective dockets have been severed, or will shortly be severed from the instant consolidated proceeding. Those dockets have accordingly been dropped from the entitlement of this case.

[2] At 15.025 psia.

[3] With the exception of the Sun Oil Company sale to United in Docket G–15122, as to which deliveries commenced in February 1960.

[4] The original entitlement of the consolidated proceeding prior to orders severing a number of the consolidated dockets.

record shows, rather, that the proposed prices are out of line. [Order, p. 483.]

Although the Commission adhered to its earlier position that the producer applicants should be afforded further opportunity to be heard, it concluded that the initial price question in these cases should not be left to abide the outcome of the Area Rate proceeding, stating:

> We are anxious to expedite final resolution of proceedings which have already been heard and decided once, but which remain on our docket by virtue of Section 19 of the Act. We are also impressed by representations as to the practical problems posed by continuing pendency of these proceedings. As several producers observe, the uncertainties as to these initial prices complicate settlements with royalty owners and interfere with prudent budgeting and other financial matters. We are convinced that such uncertainties can quickly be dispelled in these proceedings as a result of the "ground rules," established by our recent *Catco* opinion, for certificate cases originally heard prior to issuance of our General Policy Statement. [Order, p. 485.]

Accordingly, the Commission severed the instant dockets from Docket No. AR61–2 and consolidated them for the limited purpose of determining the public interest initial price or prices applicable to such severed and consolidated proceedings.

Hearing in the instant severed and consolidated proceeding commenced on June 19, 1962 and concluded on June 22, 1962. Final briefs were filed by September 4, 1962 and the case is now ready for decision.

The producer applicants request approval of the initial contract prices, and object to the imposition of any price condition. The Commission Staff contends that the proper in-line public interest price to be applied here is the same as that determined in *CATCO*, Op. No. 351, 27 FPC 96—*i.e.*, 18.5 cents per Mcf plus applicable tax reimbursements. However, with respect to five of the instant applications involving sales to Transco (Docket Nos. G–13183, 13184, 13197, 13710 and 14109), the Staff recommends that a 16-cent "triggering line" (plus applicable tax reimbursements) be fixed as the appropriate initial price. Interveners The United Gas Improvement Company (UGI) and Philadelphia Electric Company contend that the price line found applicable by the Commission in *CATCO*, *supra*, is, by definition, applicable to the post-CATCO sales in the instant proceeding; that accordingly the proper in-line price to be applied here is 18.5 cents per Mcf, plus an additional 1.5 cents per Mcf for gas produced in any area subject to the taxing authority of the State of Louisiana. The Public Service Commission of the State of New York (PSC) contends that the proper in-line price to be applied here is 18 cents per Mcf, including tax reimbursement, and 16 cents or 17 cents excluding tax—these being the same initial prices for which it unsuccessfully contended in *CATCO*, *supra*.

I. Economic and Financial Evidence

At the outset of the proceeding the instant producer applicants offered in evidence a tremendous mass of cost-type, economic and financial evidence—consisting of approximately 70 exhibits and the testimony of 35 witnesses. This evidence, although taking a large variety of different forms, may be characterized roughly as falling generally into three basic categories, as follows:

(1) *Cost of service studies* of various types. It may be noted that substantial portions of this evidence were defective in that they employed methods and techniques inconsistent with those previously adopted by the Commission in *Phillips*, Op. No. 338, and *CATCO*, Op. No. 351.[5]

[5] A detailed analysis of such defects is set forth in the Motion to Strike filed by the Eastern Seaboard Intervenor group. (R–4 : 586–618)

(2) A number of *discounted cash flow studies*, similar to the one rejected by the Commission in *CATCO*, Op. No. 351.

(3) *Economic trend data studies* of various types, setting forth data related to drilling trends and costs, data related to supply, demand, revenues and profits, and market trend data.

Certain of these studies were identical in nature with similar studies which the Commission in the *El Paso* certificate case, *El Paso Natural Gas Co., et al.*, Op. No. 358 (June 11, 1962), found to have "no real probative value". (Op. No. 358, pp. 1137 and 1138)

If this mountain of cost-type, economic and financial evidence had been received in the instant proceeding the instant hearing would, in effect, have amounted to the trial of some 16 different individual producer cost-type cases, and the decisional process required would have involved, in effect, the writing of some 16 different individual producer rate decisions. Any such proceeding would plainly have amounted to an administrative monstrosity. It would obviously have been completely contrary to the objectives emphasized in the Commission's instant order of March 7, 1962—*i.e.*, to obtain a prompt determination of the initial price question (and of the refund obligations of the producer applicants), by a limited proceeding on the basis of the "ground rules" already established by the Commission in *CATCO*, Op. No. 351 [27 FPC 96].[6] In addition, any such procedure would have been completely inconsistent with the Commission's clearly expressed policy determination that producer rates are hereafter to be tried and decided on an area basis, rather than on an individual producer cost basis.

For the reasons indicated above, and for other reasons set forth at length on the record (R–1:106–119), the Presiding Examiner granted a motion by intervenor PSC to exclude all such cost-type, economic and financial evidence.

Since the date of this ruling, the entire problem has been squarely resolved by the Commission in *Skelly*, Op. No. 362 (August 30, 1962), 28 FPC 401. The Commission there held, in strong and unequivocal terms, that economic and financial evidence is generally not to be regarded as germane in resolving the initial price question in producer certificate cases. It will be useful here to quote the Commission's full discussion of this problem in *Skelly*, which is equally applicable and controlling with respect to all of the cost-type, economic and financial evidence offered by the applicants in the instant proceeding. The Commission there stated:

> Texaco's evidence is designed to show the replacement cost of the gas which it sells. It presents industry-wide cost trends and also data on the costs of replacing gas consumed for the United States as a whole and for the Texas Gulf Coast area, using a variety of statistical sources and employing a number of estimates based on judgment. To some extent the results depend on the future demand for gas, for Texaco introduces a factor so as to include not only the cost of replacing the present gas consumed but also additional gas necessary to meet future needs. Thus under Texaco's

[6] The Commission took note of the complaints made by the producer applicants as to the burdens imposed upon them by the extended period required for the final resolution of these problems, stating:

> As several producers observe, the uncertainties as to these initial prices complicate settlements with royalty owners and interfere with prudent budgeting and other financial matters. We are convinced that such uncertainties can quickly be dispelled in these proceedings as a result of the "ground rules," established by our recent *Catco* opinion, for certificate cases originally heard prior to issuance of our General Policy Statement. [27 FPC at 485.]

The Commission characterized the procedures laid down for the instant proceeding as "designed to abbreviate the duration of applicants' refund uncertainties." [27 FPC at 482.]

theory the present consumer would, in effect, be burdened not only with the cost of the already-discovered gas he now consumes, plus at least some of the cost of replacing it, but also with costs associated with the discovery of additional volumes of gas based upon future demand trends. From the country-wide and area-wide data Texaco then attempts to draw similar conclusions with respect to its own financial needs by comparing its exploration and drilling costs with the industry figures.

In support of its presentation Texaco quotes the *Phillips* case which states in effect that our ultimate objective will be the determination of fair prices for gas based on the reasonable financial requirements of the industry. It argues that by "reasonable financial requirements" we mean the revenues required by the producing industry from sales of natural gas in order to provide funds sufficient to search for, develop and produce gas supplies adequate to meet the continuing demands of the public for gas. In our opinion these observations and Texaco's evidence are not germane to this certificate proceeding. The principal criterion that should be employed here is whether the proposed prices were "in line" at the time of contract execution as required by the Supreme Court's CATCO opinion. Texaco's observations and evidence may have an important bearing on determinations to be reached in an area rate proceeding, or might be relevant in an individual company rate case although they fall short of showing Texaco's costs. However, we do not think it necessary or appropriate in a certificate proceeding to consider evidence of area costs or financial requirements, or of individual company costs or financial requirements. Any such approach is of limited utility and leads to complicated, long-drawn-out proceedings, detrimental to the public.

Questions concerning the cost of replacing present reserves, and more particularly whether such costs should be borne by present customers or by venture capital are not questions to be decided in a section 7 certificate proceeding. Rather, they are central questions to be decided in area rate proceedings.

We therefore hold that cost of service and financial requirements evidence normally is not relevant in producer certificate cases and that the initial price in such proceedings shall be determined by the "in line" price in the area at the time the producer contract in issue was executed and by our guideline ceiling price for the area. We do not mean to foreclose the possibility that a producer may present compelling circumstances in a particular proceeding to justify a higher price, but we wish to emphasize that with the guidelines herein established the price issue in certificate cases should be handled expeditiously and that before any evidence which would customarily be presented in establishing a just and reasonable rate can be admitted in evidence, a convincing showing must be made that such evidence is essential to the just disposition of the price question.

Obviously, we cannot permit every individual certificate case to be converted into a full-blown rate case; the proof in this proceeding demonstrates the lack of utility of a limited cost of service presentation.

* * * * * * *

To correct those defects would require a complete rate case, which we have found not warranted in a certificate proceeding. [Op. No. 362, pp. 410–411, footnotes omitted.]

II. The "In Line" Price

In its recent decisions in *CATCO*, Op. No. 351, and *Skelly*, Op. No. 362, *supra*, the Commission has laid down in clear terms the controlling principles

which are to govern the determination of the public interest initial price in producer certificate cases.

The Commission held in *CATCO* that the rate condition issue must be determined on the basis of the "in line" price as of the year when the contracts were executed, stating:

> The first question is as to the date of the "in lineness". This question should be determined as of a past date; *otherwise CATCO would be enriched because of procedural delays.*
>
> * * * * * * *
>
> In our opinion a sale would not meet the test of public convenience and necessity if the price at the time the contract was made was not "in line" with other prices in the area. [27 FPC 100; emphasis supplied.]
>
> In our opinion, if the price was out of line at the time it was first established in the contract, it is not consistent with the present or future public convenience and necessity, nor with the public convenience and necessity from the time deliveries commenced in 1958. [Order Denying Rehearing, issued March 22, 1962, p. 593.]

Similarly, in *Skelly*, the Commission held:

> Following the Supreme Court Opinion in *CATCO* we must determine the appropriate price "line" for District No. 4. This line should be determined as of the time the contracts were made * * * (Op. No. 362, p. 408)

It is also important to note that the Commission made it clear in *Skelly, supra*, that in determining the proper "in line" price, it is necessary to exclude from consideration all those contracts which were "under a cloud" or suspect because their initial rate was under court or Commission review, or because they fell into approximately the same price categories as those subject to review.

The fact is that the Commission in its order of March 7, 1962, in the instant proceeding has already made clear its views with respect to the determination of the proper public interest initial prices *for the instant sales*, as follows:

> In Opinion No. 351 (*Continental Oil Co.*, 27 FPC 96, issued January 22, 1962) we determined the proper initial price by considering old and new field prices in the south Louisiana area, as of the year of the sales contract, and excluding the prices which the courts have called into question. We held the proper price line to fall between the highest group of prices and the median price and concluded, on the basis of a comprehensive record, that the "in line" price for 1956 contracts would be not in excess of 18.5 cents per Mcf, where State severance tax did not apply, and 20 cents per Mcf, where such tax applies. It is our present opinion that the "in line" price is also the "public interest" price in these proceedings. The instant proceedings, however, involve contracts executed after 1956; and we recognize that some parties may wish an opportunity to show that the appropriate price line in these proceedings differs from that we determined in *Catco*. Furthermore, we shall not foreclose any party from presenting evidence which he believes would compel the conclusion that a higher price would be in the public interest. [P. 485.]

In the light of this Commission conclusion already expressed in the instant proceeding, and the subsequent clear holding by the Commission in *Skelly, supra*, that economic and financial evidence is not to be regarded as germane in resolving the initial price question in producer certificate proceedings, there is left for consideration here only the very limited question as to whether a higher price line is justified in this proceeding than the 18.5 cent price approved in *CATCO*, simply because the instant contracts were executed in 1957 and 1958.

At the threshold of this discussion, it is of interest to note the Commission's Fourth Amendment to its Statement of General Policy No. 61–1, issued October 31, 1961. The Commission there concluded that four Courts of Appeals, in decisions therein cited, had unanimously viewed the 21.5 cent area price level originally established by the Commission for South Louisiana in its First Amendment to the Statement of General Policy, issued October 25, 1960, as being "out-of-line". The Commission accordingly, by the Fourth Amendment, fixed new initial area rates for South Louisiana, from and after October 31, 1961, at the level of 19.5 cents per Mcf, exclusive of taxes, and 21.25 cents where tax reimbursement was applicable. Under these circumstances it is difficult to see how it could seriously be contended here that prices as high as 21.5 cents and above, exclusive of taxes, could now be approved as proper "in line" prices for contracts executed in 1957 and 1958. The only serious question here is whether the "in line" price for 1957 and 1958 contracts should be rolled back, as in *CATCO*, Op. No. 351, from the 19.5 cent level established in the Fourth Amendment for contracts executed after October 31, 1961, to the 18.5 cent level approved in *CATCO* for contracts which were executed prior to the Statement of General Policy.

The producer applicants here contend that even if the rate condition issue in the instant case is to be determined on the basis of the "in line" price as of the years 1957 and 1958, when the instant contracts were executed, the "in line" price for those years as correctly determined fully supports their initial contract prices. They rely, in this connection, upon Exh. X–42, Sched. 7, Sheet 1, par. 7,[7] which shows that out of the permanently certificated sales under 1957 and 1958 long-term South Louisiana contracts which are "not subject to Court or Commission review", 25% of such sales, on the basis of volume, were at prices of 21.3 cents or more during 1957 and 25% were at prices of 22 cents or more during 1958.

However, the difficulty with the Exh. X–42 tabulation is that although it does exclude (Sched. 7, par. 7) those contracts which were subject to court or Commission review, it nevertheless violates what the Commission in *Skelly* (Op. No. 362) referred to with approval as "a corollary principle stated by the Court in the *U.G.I.* case" (as reported in Op. No. 362, p. 409)—*i.e.*, that

> * * * where a substantial number of certificated prices are thus under court or Commission review, like prices in the same area though not currently under review ought to be regarded as suspect. In such circumstances it would seem that such similar prices ought not to be relied upon in fixing a line except upon evidence and findings to the effect that they are not subject to the same infirmities which are under test in the pending proceedings.[8]

The Commission itself applied this "corollary principle" in *Skelly*, *supra*, as a basis for excluding from its "in line" price study in that case certain upper-range prices under temporary certificates subsequently made permanent, and certain prices under permanent certificates for the years 1955–1957 relating to sales at 16 to 17 cents to Coastal Transmission Corporation. The Commission stated:

> The prices under temporary certificate fall into approximately the same price categories as those subject to review and thus under the court's reasoning must be regarded as suspect. The applicants have not shown that the prices under temporary certificates are not subject to the same infirmities as those which are under test in the *Skelly* proceeding pending before us. Specifi-

[7] Sponsored by witness Dr. J. Rhoads Foster.
[8] *United Gas Improvement Co.* v. *F.P.C.*, 283 F. 2d 817, at 824 (CA9).

cally, no attempt has been made to show that these suspect like prices were themselves "in line" at the time they were made.

* * * * * * *

Likewise, the record does not show that the Coastal 1956–1957 sales were not subject to the same infirmities as those in the present proceeding. There is no showing that these earlier prices, which were markedly higher than any jurisdictional sales ever made in Texas District No. 4, established a valid new line for sales to established pipelines in the District. On the contrary, as the table shows in the succeeding three years the great majority of sales (including almost all not procedurally defective) were at less than 15 cents. [Op. No. 362, pp. 409–410.]

In addition, it is clear that the Commission applied this "corollary principle" from the *U.G.I.* case in its *CATCO* decision (Op. No. 351), as evidenced by the following statement therein:

> We shall rather determine the "in line" price using the field price evidence available in the record. This evidence includes prices at the time of the sale in 1956, and before, *which were not affected by initial prices which the courts have called into question.* [27 FPC 100; emphasis supplied.]

There can be no doubt here that those 1957 and 1958 contracts which were executed at price levels *higher* than the 18.5-cent "in line" price ultimately approved by the Commission in *CATCO*, Op. No. 351, "were * * * affected by initial prices which the courts have called into question"—i.e., by the initial CATCO price of 21.4 cents per Mcf, which the Commission certificated without rate condition in its original order of June 24, 1957 (17 FPC 880), which the Supreme Court subsequently "called into question" in its CATCO decision of June 22, 1959, reversing the Commission,[9] and which the Commission thereafter in Op. No. 351 branded as "out of line" and cut down to 18.5 cents per Mcf.

The Commission made this clear in Op. No. 351, where it noted that "there were few prices above a basic rate of 18 cents before the CATCO contracts", but that in 1957, 1958 and 1959 many contracts appeared in the range between 20 and 23 cents.[10] In addition, in its Order Denying Rehearing in that case the Commission noted that—

> in the period July 1, 1954 to June 30, 1956, all but five of 68 contracts contained base prices of 18.5 cents or below and included 88 percent of the gas. *It was not until 1957 and 1958 that the situation changed substantially.* [Order, 27 FPC 592, at p. 593; emphasis supplied.]

The impact of the initial CATCO 21.4 cent price unconditionally certificated by the Commission in its original order of June 1957, upon subsequent pipeline purchases in 1957 and 1958 in the South Louisiana area was made clear in testimony presented by Transco witness Stanwood in the *Transco-Seaboard* case, where the instant Docket Nos. G–13183 to G–14351 were originally certificated. Stanwood testified:

> Since Transcontinental was attempting to secure substantial volumes of additional gas supplies for its new market requirements, and since producers with available gas supplies generally equivalent in size to the Rayne Field reserves and the CATCO reserves were fully aware of these higher prices, it was obvious to me that Transcontinental would have to offer prices of this same magnitude in order to attract equivalent reserves. In other words, we were obliged to negotiate for the new gas reserves against the background established by these higher prices. [20 FPC 301.]

---

[9] *The Atlantic Refining Co., et al., v. F.P.C.*, 360 U.S. 378.
[10] 27 FPC 101.

The Supreme Court in its *CATCO* decision, *supra*, took note of the price impact of the Commission's June 24, 1957 unconditional certification of the *CATCO* 21.4 cent original contract price, as follows:

> * * * the initial price will set a pattern in an area where enormous reserves of gas appear to be present * * * The price certificated will in effect become the floor for future contracts in the area. This has been proven by conditions in southern Louisiana where prices have now vaulted from 17 cents to over 23 cents per Mcf. New price plateaus will thus be created as new contracts are made and unless controlled will result in "exploitation" at the expense of the consumer, who eventually pays for the increases in his monthly bill.
>
> * * * * * * *
>
> * * * The fact that prices have leaped from one plateau to the higher levels of another, as is indicated here, does not make price a consideration of prime importance. [360 U.S. 378, at 390–1.]

In view of the circumstances referred to above, it is clear that the substantial upward price changes which occurred in the South Louisiana area in 1957 and 1958 were the result of the Commission's original June 1957 unconditional certification of the *CATCO* 21.4 cent contracts; that we thus have a situation in which the 1957 and 1958 prices at levels higher than 18.5 cents "though not currently under review ought to be regarded as suspect", because they were "like prices in the same area" where "a substantial number of certificated prices were under court or Commission review" [11]—and where, in fact, the Supreme Court's review of the bellwether 21.4 cent *CATCO* contracts ultimately resulted in a finding that the unconditional certification of such 21.4 cent prices was improper, and that the proper "in line" price therefor was 18.5 cents per Mcf. Furthermore, no attempt was made in the instant proceeding to show that the 1957 and 1958 "suspect like prices" at levels above 18.5 cents were "not subject to the same infirmities" which were under test and ultimately proved fatal in the *CATCO* litigation, which was pending in the courts in 1957 and 1958.

If we therefore eliminate from our 1957 and 1958 comparative price consideration the "suspect like prices" at levels above 18.5 cents per Mcf, there will still remain, as prices which may properly be considered in fixing a price line, the following: 47 contracts executed in 1957, with volumes totaling 56.5 billion cubic feet, and 59 contracts executed in 1958, with volumes totaling 70.5 billion cubic feet, at initial base prices of 18.5 cents or less. In addition, as noted in *CATCO*, Op. No. 351, with respect to contracts entered into during the period July 1, 1954 to June 30, 1956, prior to the Commission's original erroneous *CATCO* order of June 1957 which triggered the general upward movement of prices in South Louisiana, it appears that out of the total 1958 deliveries amounting to 241.2 billion cubic feet, only 63.9 billion cubic feet were sold at prices above 18 cents, while the remaining volumes were sold at lower prices. (27 FPC 102) If the Commission's original CATCO order of June 1957 had correctly drawn the initial price line for South Louisiana at the 18.5 cent level finally established retroactively in Op. No. 351, thus avoiding the fatal errors which led the court to nullify the original unconditioned certificate *ab initio*, it is reasonable to assume that the line would have been held at 18.5 cents per Mcf in a substantial portion of the *other* contracts executed in 1957 and 1958.

Under all these circumstances, it is concluded that the proper public interest initial price applicable to the instant sales is a base price of 18.5 cents per Mcf, adjusted to 20 cents where tax reimbursements are applicable—and that such a price line for the instant 1957 and 1958 contracts is properly based upon and

[11] *U.G.I.* v. *F.P.C.*, 283 F. 2d at 824.

fully supported by the comparative prices under which a substantial amount of natural gas then moved in interstate commerce.[12]

Before closing the discussion of this particular point, it is of interest to note that the instant producer applicants, in opposing any such determination, have relied heavily upon the following language in the *U.G.I.* decision, *supra*:

> * * * we find without merit the contention that the price line must necessarily accord with the pre-CATCO line. We agree with the view expressed by the Commission in Texas Gas Transmission Corporation, *et al.*, 22 FPC 378, 388, that factors such as increased production costs since CATCO, comparative accessibility of field locations, and comparative depth of sands tend to make pre-CATCO prices irrelevant for comparative purposes in other cases. [283 F. 2d at 823.]

It must be clear, upon a reading of this case, that the quoted language amounted to *dictum*. The important thing to examine here is what the court really did. It should be noted at the outset that this case involved our instant Docket No. G–16388, being the Superior Oil Company sale to United under a 1958 contract, at an initial price of 21.5 cents per Mcf plus 2.3 cents tax reimbursement. The issue before the court was the validity of the Commission's original order of August 10, 1959, granting a permanent certificate for that sale without rate condition. The court held improper "the acceptance of questioned existing prices as a guide in setting the line", stating:

> When an order certificating an initial rate is under court or Commission review, it is possible that the certificate may be eventually denied or price conditions may be attached. In our opinion an existing rate subject to such a hazard does not provide a reasonably reliable basis upon which to predicate a price line.
>
> * * * * * * *
>
> We go further and express the view that where a substantial number of certificated prices are thus under court or Commission review, like prices in the same area though not currently under review ought to be regarded as suspect. [283 F. 2d at 824.]

The court then concluded that it was an abuse of discretion for the Commission in establishing a price line "to rely upon producer prices which are under such a cloud", stating:

> * * * with respect to the use for comparative purposes of prices presently under review * * * the criteria employed by the Commission in fixing a line by which to test the proposed initial rates * * * fall short of what is required under CATCO and the Act.

The court then held that in issuing a permanent and unconditional certificate upon the basis of a line so determined, the Commission had abused its discretion. Accordingly, the court vacated the Commission order and remanded the case to the Commission for further proceedings consistent with its opinion. (283 F. 2d at 826.) Such further proceedings have now been held in the instant case.

It seems clear that in relying upon the quoted *dictum* in the *U.G.I.* case, *supra*, as an argument sustaining the reaffirmation here of the identical unconditioned

---

[12] The 1.5-cent tax reimbursement allowance here provided follows the Commission's tax treatment in *CATCO*, Op. No. 351. In its March 7, 1962 order in the instant proceeding, the Commission described what it did in *CATCO* as follows:

> We * * * concluded, on the basis of a comprehensive record, that the "in line" price for 1956 contracts would be not in excess of 18.5 cents per Mcf, where State severance tax did not apply, and 20 cents per Mcf, where such tax applies. [Order p. 485]

It is of interest to note, in this connection, that Sched. 6 of producer witness Foster's Exh. X–42 shows that the weighted average tax reimbursement for South Louisiana contracts executed in 1957 and 1958 which provided for a base price of 18.5 cents and under was 1.69 cents per Mcf.

certificate, at the 21.5 cent base price, which the court in that very case set aside as an abuse of Commission discretion, the instant producer applicants seek to elevate pure *dictum* into the law of the case. This, of course, would amount to a nullification of the court's real holding, and the producer argument must therefore be rejected.

III. The Staff Proposal for Adoption of a 16-cent "Triggering Line" for Certain Sales to Transco

The Staff contends that certain of the instant consolidated dockets which were originally a part of the *Transco-Seaboard* case (*i.e.*, Docket Nos. G–13183, 13184, 13197, 13710, and 14109)[13] are "involved in the 'triggering' of favored-nation clauses of Transco"; that the appropriate initial price for these particular sales should be fixed at 16 cents per Mcf, plus applicable tax reimbursements; that the fixing of such a lower "triggering line" is now the "the only possible way of giving effect to the separate test regarding favored-nations clauses announced in *Atlantic Refining* v. *P.S.C.*, 360 379, 931." (Staff brief, p. 14.) In making this recommendation, Staff relies on the fact that the initial decision issued on June 17, 1958 in the original certificate proceeding involving these dockets[14] concluded that certification at that time at the initial contract price of 21.5 cents per Mcf would cause substantial triggering of Transco's first-party favored-nation clauses. Since the highest price paid by Transco in South Louisiana prior to the date of these contracts was 16 cents per Mcf, Staff contends:

> In order to obey the Supreme Court's injunction against allowing ever-higher initial prices to trigger off favored nations clauses, the Commission must fix a 16-cent initial price for these sales. [Staff brief, p. 15.]

The Staff's reference to "the separate test regarding favored-nations clauses", announced in the Supreme Court's *CATCO* decision, is based upon the criteria there laid down to the effect that a certificate should be issued without price condition only (1) if the proposed initial rates were not "out-of-line",[15] and (2) if their approval would not result in a "triggering" of general price rises or an increase of the applicants' existing rates.

It seems apparent, however, that the Supreme Court's "anti-triggering" criteria as laid down in *CATCO*, *supra*, were intended for use in determining whether a rate condition was required in the public interest in order to accomplish the *blocking* of a triggering price rise. As pointed out by Transco (reply brief, p. 8), by orders recently issued in certain of the dockets severed from the instant proceeding (on July 30, 1962 in *Texaco, et al.*, G–13169, *et al.*, and on August 24, 1962, in *Socony Mobil Oil Company, Inc., et al.*, G–13746, *et al.*) the Commission accepted settlements of producer certificate cases involving sales to Transco from this same "triggering" area, at prices in excess of Staff's alleged "triggering line"—*i.e.*, at 20.625 cents per Mcf including tax reimbursement where applicable, and 19 cents where tax reimbursement was not involved. Under these circumstances, whatever "triggering" impact could result for Transco's other gas purchases, triggering their price up from the 16-cent level which pertained prior to the Transco-Seaboard sales here involved, *has already occurred*—and at levels even higher than the 18.5-cent "in line" price here approved. The Staff proposal is thus meaningless in terms of any objective to "cure" or wipe out a "triggering" problem for Transco's general gas purchases in South Louisiana.

In addition, Transco contends that if a 16-cent "anti-triggering" ceiling is established for these particular contracts in South Louisiana, as distinguished

---

[13] See Group A in Appendix A to this decision.

[14] *Seaboard Oil Company*, 20 FPC 330.

[15] Or, if out-of-line, that the public convenience and necessity of certifying at those rates had been established.

from the 18.5-cent "in line" price which is otherwise generally being adopted here, it will not be able to compete on equal terms with other pipelines offering 18.5 cents for new gas in South Louisiana. In view of the fact that adoption of the Staff proposal could not in any event have any "anti-triggering" effect for the reasons set forth above, there does not appear to be any justification for placing Transco in such a damaging competitive position. The Staff's proposed 16-cent "anti-triggering" line is therefore rejected.

IV. Staff's Refund Proposal With Regard to Prepayments

Entirely apart from the general question (to be discussed *infra*) as to whether the Commission should here impose a refund obligation with respect to amounts collected in excess of the "in line" price herein approved, the Staff urges that the producer applicants should be required to refund, *in toto*, such monies as they may have received under take-or-pay provisions as payments for gas never delivered. Staff contends, in this connection, that the operation of take-or-pay provisions may "in practical effect increase the stated price of gas"; that payment for gas not taken really conceals an effective price which is even higher than the contract level; and that it is necessary to require that such prepayment amounts be refunded "so that the public interest line be held in fact rather than fancy". (Staff brief, pp. 16–17)

The producer applicants point out, however, that under the make-up provisions of the take-or-pay clauses the pipeline purchaser actually suffers no ultimate loss if within the make-up period, as provided or extended, it remedies its earlier partial default; that actually little, if any, money prepaid under a take-or-pay clause has ever been forfeited through failure of application against make-up volumes. Applicant Superior Oil Company, for example, points out that very recently purchasers have requested extensions of the make-up period to prevent any such forfeiture, and that it has granted such extensions to United and Transco. (reply brief, pp. 20–21)

It is pertinent to note that in a rule-making proceeding now pending in Docket No. R–199 the Commission is giving general consideration to the problem of take-or-pay provisions in producer contracts. In recent independent producer certificate cases the Commission has made a practice of conditioning the certificate so as to make its allowance of the proposed take-or-pay provision in the contract subject to its ultimate disposition with respect to such provisions in the Docket R–199 proceeding. That will be done in the instant order.

It is concluded here that the Docket R–199 rule-making proceeding is the proper forum in which this particular problem should be raised. It is noted in this connection that in *Skelly*, Op. 362, the Commission recognized that in *Michigan Wisconsin Pipe Line Company*, Op. No. 353 (March 7, 1962), 27 FPC 449, it had granted an allowance reflecting prepayments for gas by the pipeline purchaser in a rate proceeding. The Commission then stated:

> While we may allow such prepayments, such an allowance does not require us to approve take-or-pay provisions in producer contracts. This matter, however, is the subject of our Notice of Proposed Rule Making of May 22, 1961, in Docket No. R–199, so that it would be inappropriate to pass upon it now. However, we shall make the producer certificates issued herein subject to the results of the rule-making proceeding. [Op. No. 362, p. 413.]

It seems clear that the Commission intends to deal with the problems arising out of such take-or-pay provisions as a matter of *prospective* rule-making. It is not regarded as appropriate or fair to attempt in the instant proceeding to arrive at any general public policy conclusions with respect to the take-or-pay practice *per se*, and to then impose refund obligations upon the instant producer applicants on the basis of conclusions thus arrived at in the instant case alone.

V. The Refund Question

Substantial controversy has arisen in this proceeding as to whether the Commission should impose a refund obligation upon the producer applicants, in connection with the imposition of a rate condition reducing the initial price to 18.5 cents per Mcf. The producers contend strongly that the imposition of any such refund condition would be improper and unlawful.

The Commission's recent decisions in *CATCO*, Op. No. 351, and *Skelly*, Op. No. 362, have laid down the controlling criteria for disposition of the refund problem here. In the original *CATCO* proceeding the Commission on June 24, 1957, had granted unconditioned permanent certificates at the producers' proposed 21.4-cent rate. However, PSC and other intervenors initiated review, and the Commission order was subsequently vacated by the Court of Appeals in *P.S.C. of New York* v. *F.P.C.*, 257 F. 2d 717 (CA3). This action was subsequently affirmed by the Supreme Court in *Atlantic Refining Co.* v. *F.P.C.*, 360 U.S. 378, and pursuant to the Supreme Court order a "vacation and remand" was issued by the Court of Appeals on November 16, 1959. In Op. No. 351, issued January 22, 1962, the Commission conditioned the certificates theretofore issued to provide a base price, *effective from the date of initial service under the contracts*, of 18.5 cents per Mcf, exclusive of tax reimbursement. In addition, the Commission required the producer applicants to refund to Tennessee a sum equal to the difference between the base price thus approved and the original contract prices charged to Tennessee, applied to all volumes delivered under such contracts from the date of initial delivery until the effective date of the Commission order.

In *Skelly*, Op. No. 362, *supra*, after the first hearing the Commission had issued a decision on November 22, 1960 (24 FPC 979), finding that the proposed contract prices ranging from 9 cents to 17 cents per Mcf were "in line," and approving permanent certificates. However, upon application by PSC the Commission granted a rehearing. Following the rehearing the Commission issued Op. No. 362, in which it conditioned the certificates to prohibit any total initial price, including all reimbursements and charges, greater than 15 cents per Mcf, *from the date of issuance of such order*. Throughout the period prior to Op. No. 362, the producer applicants had operated under unconditioned temporary certificates.

The Commission in Op. No. 362 rejected a proposal for the imposition of refunds, on the ground that the producer applicants had there been operating under unconditional certificates, *validity of which had not been challenged on appeal in the courts*. The Commission distinguished *CATCO*, *supra*, on the ground that the unconditional price certificates *in that case* were subject to timely court review because challenged and appealed, stating:

> Unlike the situation in *CATCO* where all of the unconditioned price certificates by which gas was dedicated to interstate commerce were either subject to timely court review because challenged and appealed or (in one case) granted pending such review, the producers here have been operating, pending this hearing on their permanent certificate application, pursuant to effective temporary certificates containing no price condition, the validity of which have never been challenged on appeal. Under these circumstances we believe that there is no basis for ordering refunds for the period, prior to the effective date of the permanent certificates being issued herewith, during which the producers were receiving the higher prices unconditionally authorized in their temporary certificates. [P. 413.]

Our instant case falls squarely within *CATCO* criteria, in that the validity of the unconditioned certificates originally issued by the Commission to the instant producer applicants *was* subsequently, in due course, challenged on ap-

peal in the courts, and upon such appeal the Commission orders were reversed and remanded. (See Appendix A to this decision) It is thus clear that a refund obligation should properly be imposed here, under the precedent laid down by the Commission in *CATCO*, and that *Skelly* is not applicable on the refund issue in this proceeding.

Another controlling precedent is found in the Commission's order issued February 9, 1962, in *Socony Mobil Oil Company, Inc.*, Docket No. G–13780, 27 FPC 347, where the relevant facts were identical to those here involved. Socony was one of the producer applicants to which unconditioned permanent certificates were originally issued by the Commission on September 4, 1958 (at 22.8 cents per Mcf in Socony's case) in *Transcontinental Gas Pipe Line Corporation*, 20 FPC 264. Socony commenced deliveries to Transco under this certificate on September 17, 1959. The validity of this order was subsequently challenged on appeal in the courts, and the Supreme Court in *Public Service Commission* v. *F.P.C.*, 361 U.S. 195, vacated a Court of Appeals judgment affirming the Commission and remanded the case to that Court with directions "to remand the cases to the Federal Power Commission for reconsideration and redetermination in the light of *Atlantic Refining Co.* v. *Public Service Commission of New York.* * * *." After subsequent proceedings pursuant to the court remand, the Commission issued a final order of February 9, 1962, in which it determined that the correct "in line" price was 18 cents per Mcf, and that the certificate issued to Socony should be conditioned to provide a total price of 18 cents per Mcf "*effective* * * * *from the date of initial service*" under the contract. The order further directed that Socony should refund to Transco a sum equal to the difference between 22.8 cents and 18 cents per Mcf "applied to all volumes delivered to Transco under Socony's FPC Gas Rate Schedule No. 198 from the date of initial delivery to Transco until the first billing date under this order." (Order, p. 349)

Many of the basic arguments raised by the producer applicants against the imposition of refunds in the instant proceeding were similarly raised and fully considered by the Commission in *CATCO*, *supra*, and were there rejected. Those arguments have no greater validity in the instant proceeding. In Op. No. 351, the Commission stated:

> In our opinion the examiner acted properly in ordering refunds, although we have no power to order reparations. Here we granted CATCO a certificate and approved the proposed 21.4 cent rate. That certificate was subject to challenge when issued and was challenged successfully. The proceedings were remanded by the Supreme Court, and our order of June 24, 1957 was "vacated" by the mandate of the Court of Appeals. We now find that the rate should have been 18½ cents. If CATCO were permitted to retain what it has collected under the 21.4 cent rate and file the 18½ cent rate prospectively only, CATCO would be permitted to retain the portion of the rate found unlawful, the Supreme Court's decision and the subsequent hearing would be rendered in part futile, and CATCO would be unjustly enriched because of procedural delays. * * * To require restitution of the difference between the two rates, in our opinion, is a reasonable condition of issuing permanent certificates to the CATCO companies under the provisions of Section 7(e) of the Natural Gas Act. [27 FPC 110.]

In its *CATCO* rehearing order, the Commission further stated:

> CATCO argues that we have no authority to order refunds of the difference between the 18.5 cent rate determined in our opinion and order and the 21.4 cent rate actually charged. * * * The gist of CATCO's argument is that our certificate granted in June of 1957 allowing the 21.4 cent rate was voidable, not void, and that the rate schedule filed pursuant to our June

1957 order was the legal rate which the applicants were required to charge, citing *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U.S. 246, 251.

In our opinion the original certificate was nullified *ab initio* insofar as it was found defective for lack of an appropriate price condition. The same holds true of the rate schedule filed under that certificate. Section 19(b) of the Natural Gas Act provides that the Court shall have authority to "affirm, modify or set aside" an order in whole or in part. Set aside means to annul, cancel, make void. Pursuant to section 19 the Court of Appeals "vacated" our original order and its action was affirmed by the Supreme Court. The situation differs in *Atlantic Coast Line R. Co.* v. *Florida*, 295 U.S. 301, 311 cited by CATCO. * * * Unlike the situation in the *Atlantic Coast Line* case we are not merely curing a defect of form in the first order and re-establishing the same rate; we have found that the first order arrived at the wrong initial price and that a lower rate is required by the public convenience and necessity.

As observed in the *Atlantic Coast Line* case the refund question must be examined in light of the equities. The equities are in favor of a refund here because the 21.4 cent price was charged by CATCO upon the authority of a certificate whose final validity had not been adjudicated, and which was eventually found to be inconsistent with the public convenience and necessity. We are not awarding reparations, in the sense of investigating an effective rate, finding it unlawfully high and ordering a refund; we are reissuing a certificate of public convenience and necessity in place of the certificate issued in June 1957, but with a price condition which in our opinion is consistent with the mandate of the Supreme Court. [Order, pp. 595–596.]

In an attempt to distinguish the Commission's refund action in *CATCO*, *supra*, the producer applicants here stress that the instant unconditioned certificates were not "set aside", and that the Commission itself has recognized that the instant certificates are "still outstanding".[16] It is contended that this represents an important distinction from the situation in *CATCO*,

> * * * where the certificates were vacated by the Supreme Court * * *. Thus, the discussion of "void" and "voidable" certificates at page 596 of the order denying rehearing in the *CATCO* case is not applicable here.[17]

It is concluded that this argument is without merit. Obviously, the Commission itself did not regard the formalistic act of setting aside the unconditioned certificate as a condition precedent to its authority to impose a refund obligation, in view of the following statement in its order of January 10, 1962:

> Recently, in *Socony Mobil Oil Company, Inc.*, Docket No. G–13780, when confronted with the same problem as is presented here, we set aside the permanent certificate and issued temporary authority properly conditioned. But upon further study of this problem, and particularly of the mandate of the District of Columbia Circuit covering Group II of these proceedings, we are now convinced that we can adequately protect the public by redetermining the price issue in the light of governing legal standards. This makes it unnecessary to set aside the certificates. [Order, p. 16.]

The various Court of Appeals decisions involved in the judicial remands of the original unconditioned certificate orders in the instant dockets all found that the Commission action approving permanent unconditioned certificates was erroneous. However, as a matter of form, the ordering paragraphs at the end of these court decisions varied in their precise language, from one case to another. For

[16] The January 10, 1962 order, 27 FPC at 15.

[17] Initial brief of Kilroy Properties, Inc., p. 27, footnote 20.

example, the Supreme Court decision in *Public Service Commission* v. *F.P.C.*, 361 U.S. 195 (relating to the Group A dockets in Appendix A to this decision) vacated the Court of Appeals judgment and remanded the cases to that Court "with directions to remand the cases to the Federal Power Commission for reconsideration and redetermination in the light of *Atlantic Refining Co.* v. *Public Service Commission of New York.*" The Court of Appeals decision in *Public Service Commission* v. *F.P.C.*, 287 F. 2d 146 (CADC), relating to the Group B dockets, reversed the Commission order and remanded the case to the Commission for further proceedings. The Court of Appeals decisions in *United Gas Improvement Co.* v. *F.P.C.*, 283 F. 2d 817 (CA9), and *United Gas Improvement Co.* v. *F.P.C.*, 290 F. 2d 147 (CA5), relating to the Group C and D dockets, respectively, *vacated the Commission order* and remanded the matter to the Commission for further proceedings. Finally, the Court of Appeals decision in *United Gas Improvement Co.* v. *F.P.C.*, 290 F. 2d 133 (CA5), relating to the Group E docket, held that the Commission order must be "set aside" and the proceedings remanded for further appropriate action by the Commission.

Surely it cannot seriously be contended that under such circumstances the propriety of a Commission order imposing refunds upon the producer applicants should hinge upon the precise formalistic language used by the reviewing court in its order reversing and remanding. If such a position were adopted, obligations involving the refund of millions of dollars would be governed not by the facts and the law, but would hinge upon variations in style in the ordering paragraph of the court's decision reversing the Commission. This producer contention is accordingly rejected, and it is concluded that the facts here presented in connection with the refund issue are not reasonably distinguishable from those involved in *CATCO, supra.*

In its March 7, 1962 order in the instant proceeding the Commission stated: "The remedial action to be taken by us in either event will turn on the equities presented." (Order, p. 483.)

The producer applicants contend that the equities here militate against the imposition of a refund obligation, emphasizing that they commenced deliveries of gas in good faith reliance upon the unconditioned permanent certificates originally issued by the Commission. In addition, they contend that the imposition of refund obligations at this time would create a multitude of operating and financial problems which would impose severe burdens upon them. It is alleged that they have paid substantial royalties on the basis of the Commission's original unconditional certification of their initial contract prices, and that any efforts to recoup any portion of such royalty payments would encounter serious complications at this time.

This precise question as to the "equities" involved in connection with the refund issue has now been resolved by the Commission, subsequent to its March 7, 1962 order in the instant proceeding, by its Order Denying Rehearing in the *CATCO* case, issued March 22, 1962. The Commission there stated:

> As observed in the *Atlantic Coast Line* case the refund question must be examined in light of the equities. *The equities are in favor of a refund here* because the 21.4 cent price was charged by CATCO upon the authority of a certificate whose final validity had not been adjudicated, and which was eventually found to be inconsistent with the public convenience and necessity. We are not awarding reparations, in the sense of investigating an effective rate, finding it unlawfully high and ordering a refund; we are reissuing a certificate of public convenience and necessity in place of the certificate issued in June 1957, but with a price condition which in our opinion is consistent with the mandate of the Supreme Court. [Order, p. 596.]

It seems obvious that the types of financial burdens cited here as flowing from the imposition of a refund obligation at this stage must have similarly been involved in the *CATCO* case, *supra*. In fact, similar contentions with respect to possible financial burdens could be made by a producer applicant in any certificate proceeding where, subsequent to the commencement of deliveries under an unconditioned certificate, the validity of the Commission order may be challenged on appeal and subsequently reversed. However, this argument was found not persuasive by the Commission in *CATCO*, *supra*, and it must be rejected here.

It should finally be noted that many of the arguments advanced in the instant produced briefs in opposition to a refund obligation have actually already been considered and rejected by the Commission *in this very proceeding—i.e.*, in its order of March 7, 1962.

In its earlier order of January 10, 1962, the Commission had directed that the amounts collected by the producer applicants during the interim

> shall be subject to such refund provisions as the Commission may lawfully prescribe by its final order in these proceedings * * * to the extent, if any, that the rate which has been collected exceeds the rate ultimately found to accord with the requirements of the public convenience and necessity. [Order, p. 17.]

Numerous producer applicants thereafter filed applications for rehearing of that order, characterizing it as a "refund order" and attacking the Commission's authority to impose refund obligations under such circumstances. In its order of March 7, 1962, rejecting these applications for rehearing, the Commission characterized its January 10 order as declaring "an obligation to make refunds on the part of the producer-applicants in those proceedings"; and described the new procedure laid down in the March 7th order as "designed to abbreviate the duration of applicants' refund uncertainties". (Order, p. 482.)

Certain of the instant producer applicants had attacked the validity of any such refund obligation as amounting to "entrapment," contending:

> * * * If such procedures were valid, the Commission could simply issue unconditional certificates, as it has done in this case, and then after the producer has commenced deliveries, summarily issue him a new temporary or permanent certificate subject to the condition that he refunds all amounts in excess of the initial rate ultimately determined to be proper in some later proceeding. Thus, the producer would be effectively denied a free choice to accept or reject such conditioned certificate and would be given no opportunity to present evidence to support his initial contract price prior to the imposition of the refund condition.

The Commission rejected this argument, stating:

> Our January 10 order asserts no such general power to modify final orders, properly issued after hearing pursuant to Section 7(c) of the Natural Gas Act. The special history of these three groups of proceedings defines the limited power of modification involved here. In every case the statutory hearing has already been held and the producers afforded an opportunity to adduce evidence supporting their price proposals. Our unconditional certificate orders under Section 7 were erroneously issued in the first place and as a result of the invocation of Section 19 have never assumed finality. (The provisions of Section 19 sharply distinguished this Act from the statute construed in *C.A.B.* v. *Delta Air Lines*, 367 U.S. 316) Obviously the substantive errors were ours in accepting the arguments propounded by the producer applicants; equally obvious, the New York Public Service Commission and the Eastern Seaboard Companies have consistently, publicly, and in the final analysis successfully urged the error of

these arguments. The courts having lain bare the errors, it remains our task equitably to correct them. [P. 483.]

The Commission noted that the instant producer applicants had accepted unconditional certificates and commenced deliveries in the face of a situation where they knew that their price proposals were being seriously and aggressively litigated. With respect to the Group A dockets in the instant proceeding, the Commission stated:

> Docket No. G–13169 *et al.* were heard and originally decided by us in 1958, prior to the Supreme Court's 1959 decision in *CATCO* (360 U.S. 378). The producers accepted the unconditional certificates prior to the expiration of the 30-day period prescribed by Section 19(a) of the Act for seeking rehearing, and commenced deliveries. No producer sought an extension of time in which to accept the certificates. But the record and the briefs show that the producers' price proposals were opposed throughout the 1958 proceedings. *Thus the producers have not been "entrapped"; rather, in presenting their cases and commencing deliveries, they took a calculated risk as to the outcome of any review proceedings which might be brought.* Such proceeding in fact resulted in the remand. *P.S.C. of New York* v. *F.P.C.*, 361 U.S. 195. [P. 484.]

In addition, with respect to the Group B dockets, the Commission noted:

> Docket No. G–17336, *et al.* were in hearing at the time of the Supreme Court's *Catco* decision. We issued unconditional certificates on August 10, 1959, largely in reliance upon the Court of Appeals' affirmance of our order in Docket No. G–13169, *et al.*, 269 F. 2d 865 (CA3, August 4, 1959), reversed 361 U.S. 195. The P.S.C. of New York actively contested the producer price proposals. The Court of Appeals held the record inadequate to support the initial prices proposed and remanded for further proceedings in which the producers might either augment the record or seek an appropriate price condition. [Order, p. 484; emphasis supplied.]

The situation with respect to the Group C and D dockets was the same.

Accordingly, for all the reasons indicated above, it is concluded that a refund obligation *should* be imposed in the instant proceeding.

However, it is noted that both the Staff and UGI direct attention, in this connection, to a recent decision of the Court of Appeals for the Fifth Circuit in *H. L. Hunt* v. *F.P.C.*, issued on July 19, 1962, subsequent to the close of the instant hearing. The court there held that where the Commission rate-conditions the contract price down to a lower initial price level, it may not include a condition prohibiting the producer from filing for his higher contract price under Section 4 of the Act. Staff recommends that, in the event the *Hunt* decision should be sustained,[18] those instant producer applicants who desire to contest the imposition of a refund obligation should be given the option to file retroactively for their original contract price under Section 4; that where this occurs, such increased rate should be retroactively suspended for the full statutory period, with subsequent collections to be held subject to refund under Section 4; that where this option is exercised by the producer applicants, the Commission should vacate the remanded certificates, deny the applications, and cancel the related rate schedules, "thus excluding this excessively-priced gas from jurisdictional commerce in the future and holding the line." (Staff brief, pp. 18–19)

Similarly UGI, referring to the *Hunt* decision, states:

> * * * in the event the decision is sustained and deemed applicable, UGI would have no objection to an order which would permit the refund ques-

[18] 306 F. 2d 334. The Commission's petition for rehearing, filed with the 5th Circuit on August 23, 1962, has not yet been acted on. [Certiorari granted 375 U.S. 810 (1963); Fifth Circuit reversed, 376 U.S. 515 (1964).]

tion, with respect to volumes delivered up to the date of the Commission order, to be determined in a proceeding in the nature of a Section 4(e) proceeding. [UGI brief, p. 34, footnote 18.] [19]

It is to be noted that if any such procedure were considered, the Section 4-type inquiry referred to in both the Staff and UGI proposals would have to be conducted as part of the Southern Louisiana Area Rate proceeding, if the Commission is to adhere to its already clearly expressed policy that producer rates are hereafter to be tried and decided on an area basis, rather than on an individual producer cost basis. The net effect would be that the refund issue, after almost a year of activity, would revert to the same posture it occupied at the time of the January 10, 1962 order—a posture which the Commission later concluded, in its March 7th order, was undesirable because it indefinitely prolonged the duration of the applicants' refund uncertainties.

In view of the fact that the *Hunt* decision, *supra*, is currently being appealed, it is concluded that it would be premature for the Presiding Examiner, in determining the appropriate relief to be provided here, to give any consideration to the possible implications of that decision or the extent to which the matters therein set forth may have a bearing upon the issue here involved. Accordingly, no further consideration will be given at this time to the Staff and UGI proposals referred to above.

VI. The Option to Reject Conditioned Certificates

The Staff suggests that, under the particular circumstances involved in this proceeding, the Commission might properly allow the producer applicants the option, after making appropriate refunds, of rejecting a conditional certificate. It notes that if the Commission had, in fact, imposed price conditions in the certificates as originally issued, the producers could freely (and arbitrarily) have rejected them. The Staff concludes that when the producers commenced deliveries under the original unconditioned certificates, they gave up any such absolute right *as a matter of law;* that nevertheless the Commissiion has the power to return such a right to the producers, in its discretion, and that the circumstances here involved present sound reasons for the Commission to so exercise its discretion. Staff notes, in this connection, that the producers in the Group A dockets accepted their original certificates before the Supreme Court in its *CATCO* decision "corrected a wide-spread misunderstanding of the Natural Gas Act"; and that the other producer applicants "may have acted upon the same misplaced reliance as the Commission on the court of appeals' affirmance of *Transco-Seaboard.*"

In order to accomplish this result, the Staff suggests that the Commission should vacate all outstanding certificates, reissue conditional ones, and specifically provide that the producers may either accept such certificates (subject to court review) or reject them out-of-hand; that where a producer exercised such option to reject, his application should be deemed denied and the related rate schedule should be cancelled. (Staff brief, pp. 17–18)

UGI makes a similar proposal. It recommends that conditioned certificates be issued, with a refund obligation; that the produced applicants be given 30 days within which to accept or reject such certificates; that where an applicant chooses *not* to accept such a conditioned certificate, service should be discontinued promptly, the applicable rate schedule should be cancelled, and appropriate refunds should be ordered.

[19] Under the UGI proposal, the producer applicants would be given an option to reject conditioned certificates. The proposal for determination of the refund question in a Section 4-type proceeding would come into play only where the producer elects to reject the conditioned certificate.

Both Transco, purchaser in the instant Group A and D dockets, and Hope Natural Gas Company, purchaser in the Group B dockets, object to any suggestion that the producer applicants be given the option to reject conditioned certificates in this proceeding. Hope Natural Gas Company alleges that ten of the instant applications involve contracts under which it purchases natural gas from producers in southern Louisiana. The gas under contract to Hope is gathered and transported to southern Ohio and Pennsylvania delivery points, for the account of Hope, through the facilities of Texas Gas Transmission Corporation and Texas Eastern Transmission Corporation. Hope states that the total package of gas which it has assembled in southern Louisiana for transportation to its market area permits the delivery of up to 100,000 Mcf per day to its customers; that approximately 54 percent of its total transportation gas purchased from independent producers is involved in the instant proceeding; that the Louisiana transportation gas has been flowing steadily to its customers since late 1959, and during this period has become a significant part of the total supply required by Hope, and by the Consolidated Natural Gas System of which it is a part; that if Hope were denied any substantial part of this package of Louisiana gas, it would be impossible to meet the requirements of its customers, under their present firm demands, without the construction of additional facilities or without contracting for a replacement supply to be delivered at the same points where the transportation gas now enters into Hope's markets. Hope finally contends that the adoption here of any proposal providing the producer applicants with an option to reject would create an undesirable precedent, in conflict with past Commission policy requiring the continuation of deliveries in interstate commerce, once initiated, and would threaten the entire scheme of firm, reliable and continuous service which the certificate provisions in Section 7 of the Act were designed to guarantee. Hope urges that, in the event an option to reject should nevertheless be granted to the instant producer applicants, it and the consumers dependent upon its supply must have interim protection *before* the gas flowing from such producers is cut off. It contends that at least a year's time would be the minimum required to find and arrange for a replacement supply for its Louisiana transportation gas.

Similarly, Transco argues that any attempt by the Commission to sanction the termination of sales by producers, in the absence of the procedures required by Section 7(b) of the Act, would establish a dangerous precedent in the administration of the Natural Gas Act. It contends that in reliance upon the Commission's consistent policy with respect to termination of sales, Transco has invested millions of dollars in pipeline facilities for the purpose of obtaining supplies of gas from producers, even though the producer certificates were not final in that the issue of price was being contested in the courts; that if the Commission were to change its policy at this juncture, for whatever reason, neither Transco nor any other pipeline could take the risk of constructing facilities until after the lengthy process of court review had run its course; that the result of such action would be to delay the expansion of pipeline facilities and to hamper pipelines and distributors in rendering adequate service to their markets.

It is concluded here that a proposal giving the instant producer applicants the option to reject conditioned certificates at this stage could not be justified by the equities of the situation, nor would it be an acceptable solution in terms of the public initerest. This seems clear from an examination of the language used by the Commission in rejecting the "entrapment" argument of the producer applicants in its March 7, 1962 order in the instant proceeding. The Commission there stated:

> The courts having lain bare the errors, it remains our task equitably to correct them.
>
> Taking such remedial action differs from the ordinary processing of certificate applications. The typical Section 7(c) case involves ultimately the broad question whether the applicant should be permitted to enter the field; review of proposed initial rates is but one facet of our certificate powers. *When an applicant first proposes interstate service (and prior to dedication under 7(c) of the Act)* he is not only entitled to the statutory processes, fairly administered; but *he is also privileged to reject, for whatever reasons he wishes, any tendered certificate, no matter how reasonable the terms offered. In these remedial proceedings, we are called upon to exercise only our rate review powers under Section 7;* no question arises as to the propriety of allowing the producers to introduce their gas into jurisdictional commerce. Thus nothing imperils the producers' "security of certificate." By the same token, *there can be no private option here to accept or reject the results of our initial rate review at the regulated company's whim,* any more than a company is free to accept or reject the results of a rate review proceeding under Section 4 or 5 of the Act.[20]
>
> [Order, p. 483; emphasis supplied.]

As already noted above, the Commission in its March 7, 1962 order emphasized that the instant producer applicants had accepted unconditional certificates and commenced deliveries in the face of a situation where they knew that their price proposals were being seriously and aggressively litigated. The Commission concluded, in this connection:

> Thus the producers have not been "entrapped"; rather, in presenting their cases and commencing deliveries, they took a calculated risk as to the outcome of any review proceedings which might be brought.

Where the producers under such circumstances have permitted their pipeline customers to construct facilities to obtain such supplies of gas, which since then have become a significant part of the latter's total gas supplies required for continued service to their customers, the producers must be regarded as having assumed and accepted the risk that their initial contract prices might ultimately be reduced as a result of such review proceedings. It would be inequitable under such circumstances to permit the producer applicants to now discontinue that service, merely because they might be dissatisfied with the Commission's action in carrying out the remand of the reviewing courts.

PSC makes a somewhat different proposal, which could similarly lead to discontinuance of deliveries under the instant producer contracts. PSC notes that under the recent decision of the Court of Appeals for the Fifth Circuit in *H. L. Hunt* v. *F.P.C., supra,* if certificates were here reissued rate-conditioning the contract prices down to the approved "in line" price level, the instant producer applicants could promptly file for their higher initial contract prices under Section 4 and could thereafter resume collection of such higher prices, subject to refund, following the statutory suspension period. PSC urges that any such result would undermine the entire point and purpose of the instant proceeding, and would frustrate the Commission's effort to achieve price stability. In order to avoid this, PSC proposes that after determining the proper "in line" initial price level for the instant sales and prescribing refund obligations on that basis, the instant applications should be denied—but without

[20] The point made here is that if a natural gas company files for a Section 4 rate increase, which is later rejected by the Commission, the company would not have the option, merely because of dissatisfaction with the Commission holding, to discontinue service under such rate schedules.

prejudice to the filing of new applications *based upon amended contracts*, in which the contract price should be fixed at the approved "in line" price level, and permitting no price changes until July 1, 1967 or until the determination of the applicable price for these sales in the AR61-2 Southern Louisiana Area Rate proceeding, whichever may occur first. As its rationale in support of this proposal, PSC suggests that the crucial factor which must now be critically reappraised in the light of the *present* and *future* public convenience and necessity is whether permanent certificates should now be reissued for the instant sales *at all*, at any initial price level. It contends that in connection with any such reappraisal the Commission should take cognizance of the fact that, as a result of settlements approved since the March 7, 1962 order, permanent certificates have now already been reissued for most of the sales and most of the gas originally involved in this remanded proceeding; and that there has been no showing that the purchasers have present or future needs for the *additional* volumes represented by the instant remaining applications.

This PSC proposal, of course, is completely inconsistent with the scope of the instant proceeding as clearly defined by the Commission in its order of March 7, 1962, as follows: "(B) The proceedings * * * are consolidated for the limited purpose of determining the public interest initial price or prices applicable to these proceedings." [P. 486.]

Furthermore, the PSC proposal represents a patent effort to avoid the holding of the Fifth Circuit in the *Hunt* case, *supra*. The proper course for dealing with any problems raised by the *Hunt* decision lies in a review of the decision itself, which the Commission is now pursuing, and not in attempts to accomplish by indirection what that decision prohibits.

FINDINGS AND CONCLUSIONS

Upon consideration of the entire record in this proceeding, the evidence adduced and the briefs filed, the Presiding Examiner finds and concludes, in addition to the findings and conclusions hereinbefore stated, that

(1) Placid Oil Company, Berkshire Oil Company (formerly J. R. Frankel and R. R. Frankel), Hassie Hunt Trust, Phillips Petroleum Company, The Superior Oil Company, J. Ray McDermott and Company, Inc., Kilroy Properties, Inc., *et al.*, Callery Properties, Inc., Ocean Drilling and Exploration Company, Caroline Hunt Sands, *et al.*, Sid W. Richardson d/b/a Richardson & Bass, Operator, *et al.*, and Shell Oil Company, independent producers of natural gas, are engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and each is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The sales of natural gas hereinbefore described, as more fully described in the applications, are made in interstate commerce, subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The independent producers referred to in the above paragraph (1) are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(4) The sales of natural gas by the independent producers referred to in the above paragraph (1), together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity, and certificates therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in the administration of the Natural Gas Act that the initial price charged by the independent producers referred to in the above paragraph (1) for the sales proposed in their certificate applications in this proceeding be not greater than a base price of 18.5 cents per Mcf at 15.025 psia, adjusted to 20 cents per Mcf where tax reimbursements are applicable; and that the take-or-pay requirement in their contracts be revised in accordance with the final order of the Commission to be issued in Docket No. R–199, commenced by Notice of Proposed Rule Making dated May 22, 1961.

ORDER

Wherefore, it is ordered, subject to review by the Commission on appeal, or upon its own motion as provided in the Commission's Rules of Practice and Procedure, that:

(A) Permanent certificates of public convenience and necessity are hereby issued to each of the applicants referred to in finding (1) for the sale of natural gas in interstate commerce for resale as proposed in their applications, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, upon the terms and conditions of this order.

(B) The certificates issued to each of such producer applicants are hereby conditioned so that the base price effective under each of the contracts involved in such applications, from the date of initial service thereunder, shall be, until lawfully changed in the manner provided by the Natural Gas Act, 18.5 cents per Mcf at 15.025 psia, except that the applicants may collect an additional 1.5 cents per Mcf for gas produced in any area subject to the taxing authority of the State of Louisiana, subject to refund to the pipeline buyer with interest at 7 percent per annum if it is finally adjudicated that such area is not subject to the taxing authority of the State of Louisiana.

(C) The certificates of such producer applicants shall be conditioned so that the take-or-pay requirement in each contract is subject to the provisions of the Commission's final order in Docket No. R–199 as of the effective date of that order.

(D) Each of such producer applicants shall, within 60 days of the date upon which this order shall become effective, refund to the pipeline buyers with 7 percent interest a sum equal to the difference between the price charged to and collected from such purchasers and the base price set forth in (B) above, applied to all volumes delivered to such purchasers under the contracts which form the subject matter of this proceeding from the date of initial delivery until the effective date of this order.

(E) Within 10 days of the date of refund provided in Paragraph (D), above, each of the producer applicants shall file with the Commission an officially certified statement showing the amount of the refund, its manner of computation, and the interest payments related thereto, and a statement from the purchaser acknowledging the receipt.

(F) The certificates of such producer applicants are not transferable and shall be effective only so long as each of said applicants continues the acts and operations herein authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(G) The grant of the certificates to the producer applicants herein is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the applicants.

JOSEPH ZWERDLING,
Presiding Examiner.

APPENDIX A

PLACID OIL CO., ET AL., G–13183, ET AL.

SUMMARY OF REMANDED PROCEEDINGS

A. *The Transco-Seaboard case:* Sales to Transcontinental Gas Pipe Line Corporation.

Docket No. G–	Applicant	Contract date	Field	Rate schedule No.	Total price, ¢/Mcf at 15.025 psia
13183	Placid Oil Co	Aug. 13, 1957	Thibodaux	19	23.55 (base price of 21.5¢ plus tax reimbursement).
13184	do	Aug. 13, 1957	Raceland	18	23.55 (base price of 21.5¢ plus tax reimbursement).
13197	Berkshire Oil Co[1]	Aug. 12, 1957	N. Thibodaux	2	23.55 (base price of 21.5¢ plus tax reimbursement).
13710	Sun Oil Co	Oct. 7, 1957	Pointe au Fer	92	23.55 (base price of 21.5¢ plus tax reimbursement).
14254	do	Dec. 31, 1957	Vermilion Blk. 76	101	25.55 (base price of 21.5¢ plus tax reimbursement).
14109	Hassie Hunt Trust	Nov. 1, 1957	Rousseau	19	22.2625.
14244	Phillips Petroleum Co.	Dec. 23, 1957	W. Cameron: Blks. 39 and 40. Eugene Is.: Blks. 129A, 172 and 184.	350	21.40.
14351	The Pure Oil Co	Jan. 16, 1958	Vermilion Blk. 76	39	21.40.

Examiner's decision: *Seaboard Oil Co.*, 20 FPC 330 (June 17, 1958).
Commission order: *Transcontinental*, 20 FPC 264 (September 4, 1958).
Rehearing denied: *Transcontinental*, 20 FPC 571 (October 31, 1958).
Affirmed: *United Gas Improvement Co.* v. *F.P.C.*, 269 F. 2d 865 (CA3, August 4, 1959).
Cert. granted and judgment reversed: *Public Service Commission* v. *F.P.C.*, 361 U.S. 195 (December 14, 1959).

[1] Formerly Frankel.

B. *The Hope (or Bayou Pigeon) case:* Sales to Hope Natural Gas Company.

Docket No. G–	Applicant	Contract date	Field	Rate schedule No.	Total price, ¢/Mcf at 15.025 psia
17337	J. Ray McDermott & Co., Inc.	Nov. 14, 1958	W. Cameron Blk. 33	12	23.55 (base price of 21.5¢ plus tax reimbursement).
17338	Kilroy Properties, Inc.	Dec. 8, 1958	Bayou Pigeon	3	23.55 (base price of 21.5¢ plus tax reimbursement).
17340	Callery Properties, Inc.	Dec. 10, 1958	Little Bayou Pigeon	2	23.55 (base price of 21.5¢ plus tax reimbursement).
17341	do	Dec. 16, 1958	W. Rayne	(1)	(1).
17342	Ocean Drilling & Exploration Company.	Oct. 23, 1958	E. Cameron Blk. 4	1	23.55 (base price of 21.5¢ plus tax reimbursement).
17343	do	Dec. 13, 1958	Bayou Pigeon	2	23.55 (base price of 21.5¢ plus tax reimbursement).
17398	Caroline Hunt Sands	Aug. 13, 1958	So. Thornwell	5	23.55 (base price of 21.5¢ plus tax reimbursement).
17399	Sid W. Richardson	Oct. 17, 1958	S. Rayne, Maxie, Woodlawn Abbeville & Jefferson Is.	2	23.05 (base price of 21.5¢ plus tax reimbursement).
17413	Mississippi River Fuel Corp.	Oct. 27, 1958	E. Cameron Blk. 4	14	23.55 (base price of 21.5¢ plus tax reimbursement).
17560	Shell Oil Company	Nov. 25, 1958	Bayou Pigeon	215	23.55 (base price of 21.5¢ plus tax reimbursement).

Examiner's decision: Waived.
Commission order: *Texas Gas Transmission Corp.*, 22 FPC 378 (August 10, 1959).
Rehearing denied: *Texas Gas Transmission Corp.*, 22 FPC 657 (October 7, 1959).
Reversed: *Public Service Commission* v. *F.P.C.*, 287 F. 2d 146 (CADC, December 8, 1960).
Cert. denied: *Hope Natural Gas Co.* v. *P.S.C.*, 365 U.S. 880 (April 17, 1961); *Shell Oil Co.* v. *P.S.C.*, 365 U.S. 882 (April 17, 1961).

[1] None filed.

C. *Bayou Penchant, Four Isle Dome and Palmetto Bayou fields:* Sale to United Gas Pipe Line Company.

Docket No. G-	Applicant	Contract date	Rate sched. No.	Total price, ¢/Mcf at 15.025 psia
16388	The Superior Oil Co	Sept 8, 1958	89	23.8 (base price of 21.5¢ plus tax reimbursement).

Examiner's decision: *The California Co.*, 22 FPC 256 (April 16, 1959).
Commission order: *The California Co.*, 22 FPC 252 (August 10, 1959).
Rehearing denied: *The California Co.*, 22 FPC 653 (October 7, 1959).
Vacated: *United Gas Improvement Co.* v. F.P.C., 283 F. 2d 817 (CA9, October 31, 1960).
Cert. denied: *Superior Oil Co.* v. *U.G.I.*, 365 U.S. 879 (April 17, 1961); *The California Co.* v. *U.G.I.*, 365 U.S. 881 (April 17, 1961).

D. *Vermilion Block 71 and 76 fields:* Sale to Transcontinental Gas Pipe Line Corporation.

Docket No. G-	Applicant	Contract date	Rate sched. No.	Total price, ¢/Mcf at 15.025 psia
16380	The Superior Oil Co	Sept. 17, 1958	78	21.4.

Examiner's decision: *Superior Oil Co.*, 22 FPC 372 (February 19, 1959).
Commission order: *Superior Oil Co.*, 22 FPC 369 (August 10, 1959).
Rehearing denied: *Superior Oil Co.*, 22 FPC 655 (October 7, 1959).
Vacated: *United Gas Improvement Co.* v. *F.P.C.*, 290 F. 2d 147 (CA5, February 22, 1961).
Cert. denied: *Superior Oil Co.* v. *U.G.I.*, 366 U.S. 965 (June 19, 1961).

E. *Belle Isle field:* Sale to United Gas Pipe Line Company.

Docket No. G-	Applicant	Contract Date	Rate schedule No.	Total price, ¢/Mcf at 15.025 psia
15122	Sun Oil Company	May 1, 1958	114	23.8 (base price of 21.5¢ plus tax reimbursement).

Examiner's decision: *Sun Oil Co.*, 22 FPC 355 (March 3, 1959).
Commission order: *Sun Oil Co.*, 22 FPC 351 (August 10, 1959).
Rehearing denied: *Sun Oil Co.*, 22 FPC 654 (October 7, 1959).
Vacated: *United Gas Improvement Co.* v. *F.P.C.*, 290 F. 2d 133 (CA5, February 22, 1961).
Cert. denied: *Sun Oil Co.* v. *U.G.I.*, 368 U.S. 823 (October 9, 1961).

Before Commissioners: Charles R. Ross, Acting Chairman; Howard Morgan, and L. J. O'Connor, Jr.

SIERRA PACIFIC POWER COMPANY, DOCKET NO. E-7100

SUPPLEMENTAL ORDER AUTHORIZING ISSUANCE OF DEBENTURES

(Issued July 17, 1963)

By order issued July 5, 1963, *supra*, p. 46, in the above-entitled matter, the Commission authorized Sierra Pacific Power Company (Applicant) to issue and sell at competitive bidding $8,000,000, principal amount of Debentures subject to the provisions, among others, set forth in Paragraph (B) of that order, as follows:

(B) The proposed issuance and sale of Debentures at competitive bidding in the manner set forth in the application shall not be consummated until:

(i) Applicant shall have amended its application pursuant to the require-

ments of Section 34.2(k)(3) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(k)(4) of those Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.

(ii) The Commission, by further order, shall have approved the price to be received by Applicant for the proposed issuance of Debentures and the interest rate thereof.

Applicant, on July 17, 1963, filed an amendment, pursuant to the requirements of the aforementioned Commission order, in which it states, among other things, (1) that it proposes to accept, as representing the lowest annual cost of money to it, the bid of Francis I. duPont & Company to purchase the proposed issuance of $8,000,000, principal amount of Debentures, at the price of 101.5771% of principal amount, with an interest rate of 5% per annum.

The Commission finds:

(1) Applicant has satisfactorily complied with the requirements contained in Paragraph (B) of the Commission's order issued July 5, 1963, in the above-entitled docket; and under the bid it proposes to accept for the issuance of Debentures, the price to be received by Applicant for the Debentures and the interest rate thereof are reasonable.

(2) The proposed issuance and sale of Debentures, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

The Commission orders:

(A) The price to be received by Applicant for the proposed Debentures and the interest rate thereof under the bid referred to above, are approved as reasonable.

(B) The proposed issuance and sale of Debentures referred to above, upon the terms and conditions, and for the purposes specified in the application, as supplemented by the amendment referred to above, are hereby authorized, subject only to the provisions of Paragraphs (C), (E) and (F) of the Commission's order issued July 5, 1963, in the above docket.

OPINION NO. 399

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP60-36; GULF OIL CORPORATION, CI60-43; TIDEWATER OIL COMPANY, CI60-142

OPINION AND ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 17, 1963)*

Syllabus

1. Record amply supports in-line price of 18.5 cents per Mcf, plus 1.5 cents tax reimbursement for total initial price of 20 cents. P. 332.

*Initial decision appears on p. 337. Order issued August 29, 1963 staying effectiveness, etc., 30 FPC 626. Order issued September 12, 1963, denying appeal from Secretary's action, 30 FPC 691. Settlement offer rejected; rehearing denied and stay granted, 30 FPC 1209. Respondent's motion to dismiss for want of venue granted March 9, 1964, in *Gulf Oil Co.* v. *F.P.C.*, 330 F. 2d 824 (CA5-1964).

2. Cost and financial requirements evidence has no utility in determination of initial price question and is in fact irrelevant in producer certificate cases. P. 332.
3. Commission *directs* refunds of all charges collected under temporary authorizations down to refund floor of 20 cents. P. 333.
4. Producer certificates conditioned to include a moratorium on all price increases in excess of 23.55 cents, inclusive of tax reimbursement, pending first decision in Southern Louisiana area proceeding or July 1, 1967, whichever is earlier. Pp. 334–335.
5. Commission *issues* certificates of public convenience and necessity under Section 7 of the Natural Gas Act. Pp. 335–336.

Commissioners Ross and Morgan *concurring* to the extent consistent with Commissioner Ross' statement accompanying Opinion No. 398.

Wilbert O. Crain, Vernon W. Woods, C. Huffman Lewis, Willis L. Meadows, and *John M. Madison* for United Gas Pipe Line Company

Jesse P. Luton, Jr., John E. Thomason, A. G. Riddlesperger, and *M. E. Minks* for Gulf Oil Corporation

Jack D. Jones, J. Evans Attwell, and *Clyde E. Willbern* for Tidewater Oil Company

J. David Mann, Jr. and *John E. Holtzinger, Jr.* for the United Gas Improvement Company

Joseph I. Lewis, Herbert E. Squires, and *Martin Toscan Bennett Associates* for Pennsylvania Public Utilities Commission

Barbara M. Suchow, Kent H. Brown, Martin L. Barr, and *Charles J. Cox* for New York Public Service Commission

Reuben Goldberg, George Spiegel, and *George E. Morrow* for Memphis Light, Gas and Water Division

David K. Kadane, Edward M. Barrett, and *Bertram B. Moll* for Long Island Lighting Company

Edwin F. Russell and *Harry G. Hill, Jr.* for Brooklyn Union Gas Company

Reuben Goldberg and *George Spiegel* for Mississippi Valley Gas Company

Vincent P. McDevitt, Samuel G. Miller, and *Henry P. Sullivan* for Philadelphia Electric Company

James O'Malley, Jr., Halcyon G. Skinner, and *John A. Lodge* for Consolidated Edison Company of New York, Inc.

Orson L. Huntsman for the Staff of the Federal Power Commission

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

WOODWARD, *Commissioner:*

This consolidated proceeding involves interrelated applications for certificates of public convenience and necessity authorizing (1) the sale of gas by Tidewater Oil Company (Tidewater) and Gulf Oil Corporation (Gulf) from jointly-owned leases in the Bastian Bay Field in on-shore Southern Louisiana to United Gas Pipe Line Company (United), and (2) the construction and operation of 59.4 miles of 36-inch pipeline and appurtenant facilities by United to enable receipt of the gas into its system. The cost of the requisite facilities was estimated at $16,917,010. Gulf's sale under the terms of a 20-year contract dated December 22, 1959, and Tidewater's under a similar contract dated December 28, 1959. The contracts provide for an initial price of 22.5 cents per Mcf[1] plus 2.3 cents per Mcf tax reimbursement, a total of 24.8 cents per Mcf; they also provide for a

[1] All prices are at 15.025 psia.

fixed escalation of 2.5 cents per Mcf on July 1, 1962, which has not been made effective, and for further price adjustments on July 1, 1967, and July 1, 1972.

On May 3, 1961, the Commission issued a temporary authorization to United to construct and operate the facilities proposed in Docket No. CP60–36, and also granted temporary authority to Gulf and Tidewater to commence the sale of gas to United at an initial price of 23.25 cents inclusive of tax reimbursement on condition that they agree to refund to United any amounts collected in excess of the price determined proper in this proceeding down to a refund floor of 20 cents per Mcf inclusive of tax reimbursement. The temporary authorizations were accepted by Gulf and Tidewater by notice filed May 22, 1961;[2] United's construction commenced August 14, 1961. Delivery of the gas began on June 22, 1962, and has continued to this date.

The only issue of substance raised in the proceeding was the initial price question.[3] Gulf and Tidewater maintain that certificates without price condition should be issued. Staff seeks a base price of 18.5 cents plus 1.5 cents tax reimbursement. The Eastern Seaboard intervenors[4] contend that permanent certificates should be issued only if conditioned on amendment of the sales contracts to provide for an initial price of 18.5 cents inclusive of tax reimbursement. Philadelphia Electric Company, which otherwise supports the position of the Eastern Seaboard intervenors, suggests that the Commission could properly conclude that the sales should be conditioned at a tax inclusive price of 17 cents on the ground that this was the predominant price in South Louisiana at the time the *CATCO*[5] contracts were executed. The New York Public Service Commission asks that a price condition of 18 cents inclusive of tax be imposed, the Pennsylvania Public Utility Commission urges an allowance of 13 cents, presumably plus tax reimbursement, and the Southern intervenors[6] submit that permanent certificates should not be issued at any price in excess of 12.3 cents per Mcf including tax reimbursement.

The examiner determined that the "in-line" price applicable to these sales, as revealed by the evidence, was not in excess of 20 cents per Mcf inclusive of an allowance for reimbursement of taxes and that the certificates issued to Gulf and Tidewater should be conditioned to that price. This, plus a finding that a certificate should be issued to United without qualification, was the only major conclusion reached by him, and is the only condition imposed in the initial decision on the producers' certificates. Exceptions have been filed by Gulf and Tidewater on the basis that a higher price is warranted by the evidence submitted in the proceeding, and by the Pennsylvania Public Utility Commission, Philadelphia Electric Company, and the Southern intervenors that the same evidence requires a price lower than the in-line level found by the examiner. Additional exceptions by the intervenors relate to the failure to order refund of a portion of the charges collected under the temporary authorizations, the lack

---

[2] The contracts are on file as Gulf's FPC Gas Rate Schedule No. 214, Supplements Nos. 1, 2 and 3, and Tidewater's FPC Gas Rate Schedule No. 108, Supplements Nos. 1, 2 and 3.

[3] Philadelphia Electric Company, in contending that the price should be conditioned at 17 or 17.5 cents inclusive of tax reimbursement, argues that the issue of United's need for the Bastian Bay gas cannot be divorced from the initial price issue, price mirroring the degree of urgency of the need. Its position, in essence, is that the system requirements of United are such that United does not "need" this gas at a price in excess of that recommended by it. The argument is basically one of price and does not go to the merits of the certification of United's proposal.

[4] Brooklyn Union Gas Co., Long Island Lighting Co., and United Gas Improvement Co.

[5] *Continental Oil Co., et al.*, Docket No. G–11024, *et al.*, Opinion No. 351, issued January 22, 1962, 27 FPC 96.

[6] Memphis Light, Gas and Water Division of Memphis, Tennessee and Mississippi Valley Gas Company.

of any condition to preclude a price escalation under the contracts, and to the allowance without modification of the take-or-pay provisions.

We conclude that the record amply supports an in-line price of 18.5 cents per Mcf plus 1.5 cents tax reimbursement, for a total initial price of 20 cents per Mcf. We also argee with the position of the interveners that the examiner erred in failing to direct refunds and not conditioning the take-or-pay provisions of the contracts upon our ultimate disposition of the rule-making proceeding in Docket No. R–199. We further agree that the price escalation provisions of the contracts, and the present ability of Gulf and Tidewater to file thereunder for an increase above the initial contract price, does not afford the necessary interim protection of the public interest which it is our duty to insure pending the determination of the just and reasonable price or prices for this gas. Accordingly, we shall condition the certificates issued to these producers in a manner believed by us to be required by the public convenience and necessity to hold in abeyance the price escalations provided in the contracts.

The gas production here involved is from the same geographical area, albeit several parishes removed, as concerned us in our determination in *Placid Oil Company, et al.*,[7] where a price of 20 cents per Mcf including tax reimbursement was fixed for initial service. Unlike the restriction applied in that proceeding on the material allowed into evidence, the record in this case is replete with voluminous cost, economic and financial requirements evidence prepared by the parties and accepted by the examiner. Thus both Gulf and Tidewater introduced detailed cost-of-service studies, system-wide as well as area-wide, some utilizing their own principles of allocation and others purporting to follow the methods set out in the *Phillips*[8] opinion. In addition, the producer applicants submitted evidence on industry demand-supply and cost trends, value considerations peculiar to their sales, area cost-revenue trends, comparative well-cost data, Bastian Bay Field and comparative data, current market prices and market price trends. System-wide cost studies of the producers also were presented by the Eastern Seaboard and Southern intervenors, as well as a composite Bastian Bay cost-of-service. As noted in the examiner's decision, the cost-of-service studies prepared by the intervenors indicate an average unit cost of 11.67 to 12.61 cents per Mcf at 14.65 psia; the same studies prepared by the producers range from a low of 14.88 cents for Gulf with the use of the allocation methods specified in Opinion No. 338, to 20.17 cents for Tidewater, and to a high of 27.4 cents for Gulf using methods recommended by it, including a 22 percent rate of return. The Bastian Bay cost-of-service introduced by the Southern intervenors indicated an area cost of approximately 10 cents per Mcf.

In our *Placid Oil* opinion we stated our conclusion that cost and financial requirements evidence has no utility in the determination of an initial price question and is in fact, irrelevant as a consideration in independent producer certificate cases. The various court and Commission decisions which have served to bring us to that determination are listed in the *Placid* opinion. The sterility and inappositeness of cost evidence in certificate proceedings has now been proven to our complete satisfaction, and, we believe, with a certainty beyond reasonable dispute. Just as a cost-of-service presentation limited to a single field has been found to be of no value in fixing the public convenience and ne-

[7] *Placid Oil Company, et al.*, Docket No. G–13183, *et al.*, Opinion No. 398, issued concurrently with this decision, *supra*, p. 283.

[8] *Phillips Petroleum Company*, Docket No. G–1148, *et al.*, Opinion No. 338, issued September 28, 1960, 24 FPC 537.

cessity initial price for gas produced from that field,[9] so can there be no value in the utilization of system-wide studies to determine the public convenience and necessity initial price for gas produced from a single field. Such studies, being addressed only to the alleged adequacy or inadequacy of the general level of revenues, cannot conceivably demonstrate the proper level of the initial price required by the public interest for only one of the producers many sales and, carried to their conclusion, would inevitably lead to the fixing of a price for the gas produced from the one field sufficient to take care of whatever deficiencies or excesses in revenue might have resulted from gas produced from other fields. As stated by staff counsel, this result would be illogical and absurd. We agree with this conclusion and take no cognizance of the cost, financial and related evidence submitted in this proceeding.

While our determination does not involve much of the material apparently considered by the examiner, our ultimate conclusion is the same, namely that the permanent certificates issued to Gulf and Tidewater should be conditioned to a base initial price of 18.5 cents per Mcf. Exhibit No. 19, and the testimony of the introducing witness clearly and convincingly establishes that the contract "in-line" price during 1958 and 1959 in the Southern Louisiana area, considering all applicable contracts not containing suspect prices within the criterion initially spelled out in *U.G.I.* v. *F.P.C.*, 283 F. 2d 817, 824 and implemented by us in our *Skelly* and *Placid* decisions, was 18.5 cents per Mcf exclusive of tax reimbursement. We shall, therefore, require that the rate schedules filed by Gulf and Tidewater be amended to substitute this price in place of the 22.5-cent price provided in the contracts. In conformity with our decisions in *CATCO* and *Placid*, we shall permit Gulf and Tidewater to collect an additional 1.5 cents per Mcf for partial reimbursement of the Louisiana severance tax.

Philadelphia Electric Co., The Southern intervenors, and U.G.I. excepted to the examiner's failure to order refund of all charges collected under the temporary authorizations down to the refund floor of 20 cents per Mcf. There can be no doubt as to our authority to direct refunds, since applicants expressly agreed to the condition in accepting the temporary authorities, nor are we able to envision any reason why the refunds should not be ordered. As noted by U.G.I., "* * * the error is so patent that we suspect it may have been inadvertent rather than a deliberate decision not to require refunds." The order appended hereto will direct that the refunds be made as requested in the exceptions.

Inasmuch as the minimum take-or-pay provisions to be allowed in producer contracts filed as rate schedules will be determined as a matter of general policy in Docket No. R–199, we shall condition our allowance of the provisions in the instant proceeding so as to make them subject to our determination in the rule-making proceeding, with the proviso that in no event shall we require Gulf and Tidewater to accept provisions for less than 80 percent of the annual contract quantities.

U.G.I. has pointed out that conditioning the base initial price to 20 cents per Mcf would leave in effect the outstanding provision in applicants' contracts authorizing them to file for a price increase immediately on certification to the level of 27.3 cents per Mcf. Establishment of this price, it alleges, even subject to refund, would have a widespread triggering effect in Southern Louisiana. It asks, therefore, that applicants be required to file substitute contracts providing

---

[9] *Socony-Mobil Oil Company, Inc.*, Docket No. G–13780, order issued February 9, 1962, 27 FPC 347.

for a 20-cent price for the life of the contracts with perhaps a 1-cent "cost of living" escalation each five years.[10]

U.G.I. recognizes that in the recent *Hunt*[11] case the court held that the Commission cannot condition the granting of a temporary certificate on a requirement that the producer not file for a contractually authorized price increase under Section 4, but has only the option of denying a certificate if it considers the price inconsistent with the public convenience and necessity. It attempts to distinguish *Hunt* on the ground that while there was no record underlying that action, the cost-of-service evidence in this case shows that a price higher than 20 cents per Mcf not only would be inconsistent with the public convenience and necessity, but also unjust and unreasonable. However, in view of the irrelevancy of the cost evidence in the determination of the initial price required for certification of these sales, it would seem at least questionable whether the same evidence could thereafter be relied upon in this certificate proceeding to preclude the escalation.

U.G.I. also suggests that if the Commission concludes that it cannot require the applicants to file substitute contracts as a condition to granting certificates, it could, as an alternative, deny certificates without prejudice to refiling their applications on a basis consistent with the Commission's findings. The denial could be grounded, it contends, on a finding that it would not be consistent with the public interest or the public convenience and necessity to authorize service at a price which could immediately escalate to a level unprecedented in Southern Louisiana.

This question of the price escalation is the same problem which concerned us in the *Placid* opinion, where we have ordered a temporary prohibition on the effectiveness of increases beyond a specified level. Although the collection by Gulf and Tidewater of the increased rate, assuming filings therefor were made, would not have an actual "triggering" effect since United's purchase contracts do not themselves contain favored-nation provisions and those of other Southern Louisiana buyers include only two-party clauses, the rates could be used in the redetermination of prices in other contracts, leading thereby to the establishment of a new price plateau in the area far in excess of any existing rate. The recent proceedings under Sections 4 and 5 of the Act with respect to both Gulf and Tidewater[12] and the settlements approved in those proceedings in April 1963 and June 1962 leads us to believe that any rate higher than the conditioned initial price herein determined could not be found just and reasonable. Moreover, as brought out in our opinion in the companion *Placid* proceedings, the fact that the increase would be collected under a refund obligation would not necessarily provide adequate protection to the public interest.[13] For these reasons, both as herein stated and as more fully set out in the opinion in *Placid Oil Company, et al.*, we shall order that the certificates issued to Gulf and Tidewater include

---

[10] The exceptions were filed prior to the issuance on March 15, 1963, of the *Shell Oil* Opinion No. 382. Therefore, U.G.I. did not have occasion to consider the effect on its position, if any, of the Commission's ruling that a favored-nation increase which is triggered by a rate later rejected loses its contractual basis for filing and must also be rejected.

[11] *H. L. Hunt* v. *F.P.C., et al.*, 306 F. 2d 334, No. 19065, *et al.*, CA5, July 19, 1962, petition for rehearing *en banc* denied April 16, 1963. On behalf of the Commission, the Solicitor General recently has petitioned the Supreme Court for certiorari. [Granted, 375 U.S. 810 (1963), CA5 reversed, 376 U.S. 515.]

[12] Examiner's decisions in *Gulf Oil Company*, Docket No. G–9520, *et al.*, issued September 24, 1962, and *Tidewater Oil Company*, Docket No. G–13310, *et al.*, issued September 14, 1961. [*Tidewater* and *Gulf* settlement orders printed at 27 FPC 1267 and 29 FPC 837, respectively.]

[13] The total annual sales volume in these dockets has been estimated at 33,000,000 Mcf. On this basis alone, an increase of 2.5 cents per Mcf would involve the collection of an additional $825,000 in one year's time subject to refund.

a moratorium on all price increases in excess of 23.55 cents per Mcf, inclusive of tax reimbursement, pending our final decision in the Docket No. AR61–2 area rate proceeding or until July 1, 1967, whichever is earlier.

We find that no useful or constructive purpose would be served by granting the opportunity to present oral argument as requested by the Southern intervenors. The motion will therefore be denied.

The Commission further finds:

(1) United is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission.

(2) United's proposed facilities hereinabove referred to, and more fully described in its application, will be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and such facilities, together with the construction and operation thereof, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Gulf and Tidewater, independent producers of natural gas, are engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and each is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(4) The sales of natural gas proposed by each of the producer applicants, as more fully described in their applications, are subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) Subject to the requirements of our order herein and the conditions of the certificates herein issued, United, and each of the producer applicants, are able and willing to properly do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(6) The construction and operation of the facilities proposed by United, and the sales proposed by each of the producer applicants, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity, and certificates should be issued to each of them as hereinafter ordered and conditioned.

(7) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

The Commission orders:

(A) Certificates of public convenience and necessity are hereby issued to United Gas Pipe Line Company, for the construction and operation of the facilities proposed, as more fully described above and in its application; and, upon the conditions hereinafter set forth, to Gulf Oil Corporation and Tidewater Oil Company for the sale of natural gas in interstate commerce as proposed, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described above and in their applications.

(B) The certificates herein issued to Gulf and Tidewater are granted upon the express condition that the base initial price for the proposed sales of gas to United from the effective date of the contracts and until lawfully changed in the manner provided by the Natural Gas Act shall be 18.5 cents per Mcf at 15.025 psia plus 1.5 cents per Mcf for tax reimbursement. Within 30 days from the

date of issuance of this order, said producer applicants shall file supplement to their presently filed rate schedules reflecting the conditioned price as their initial price in lieu of the initial price provided in their contracts; provided that the notice provisions of Section 154.94(b) and the detailed submittal provisions of Section 154.94(f) of the Commission's Regulations under the Natural Gas Act are waived insofar as they apply to the reduction in rate hereby ordered.

(C) Within 60 days of the date upon which this order shall become effective, Gulf and Tidewater shall refund to United, with interest, a sum equal to the difference between the price charged to and collected from United and the price set forth in paragraph (B) above, applied to all volumes paid for by United under the contracts which form the subject matter of this proceeding from the date of the contracts until the effective date of this order. The interest charge specified herein shall be calculated at the rate of 7 percent per annum, and shall be applied until full refund has been made.

(D) The certificates herein issued to Gulf and Tidewater are further conditioned to privide for a moratorium on the filing of all price increases in excess of 23.55 cents per Mcf, inclusive of tax reimbursement, pending the issuance of a final decision in the area rate proceeding in Docket No. AR61–2 or until July 1, 1967, whichever is earlier.

(E) The certificates herein issued are granted upon the further express condition that the allowance of the take-or-pay for provisions in the applicants' contracts is subject to our ultimate disposition with respect to such provisions in the rule-making proceeding in Docket No. R–199. Upon the establishment, by regulation or policy statement, of a general policy governing such provisions in producer contracts, the applicants shall within 30 days file amended rate schedules in conformity therewith, acceptable to the Commission. The producers shall not be required to file take-or-pay provisions for less than 80 percent of the annual contract quantities. Any changes or modifications to be made in accordance with this paragraph shall be prospective only.

(F) Within 10 days of the date of the refund provided in paragraph (C) above, each of the producers shall file with the Commission an officially certified statement showing the amount of the refund, its manner of computation, the interest payments related thereto, and a statement from United acknowledging receipt thereof.

(G) The certificates herein issued are not transferable and shall be effective only so long as each of the applicants continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(H) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or of Part 154 of the Regulations thereunder. Such grant is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the applicants. Further, the action in this proceeding shall not foreclose nor prejudice any further proceedings or objection relating to the operation of any price or related provision in the gas purchase contracts here involved.

(I) The motion for opportunity to present oral argument before the Commission is denied.

(J) Except as herein granted, the exceptions to the examiner's decision are hereby denied.

Commissioners Ross and Morgan *concurring* in this opinion and order to the extent consistent with the statement by Commissioner Ross accompanying Opinion No. 398, Docket No. G–13183, *et al.*, Placid Oil Company, *et al.*, *supra*, p. 283.

INITIAL DECISION
UPON APPLICATIONS FOR CERTIFICATES OF CONVENIENCE AND NECESSITY

(Issued October 18, 1962)

TABLE OF CONTENTS

		Page
I.	Preliminary statement	337
II.	Procedural background	337
III.	United's project	339
IV.	The initial price	341
	A. Position of Parties	341
	B. The Evidence	343
	C. Price Compatible with Public Interest	345
V.	Additional findings and conclusions	347
VI.	Order	348

I. Preliminary Statement

FREER, *Presiding Examiner:* Involved herein are three related matters heard before this Examiner on a consolidated record. These proceedings encompass the following applications: (1) United Gas Pipe Line Company (United) filed an application and supplement on February 15 and March 31, 1960, respectively, pursuant to Section 7(c) of the Natural Gas Act, for a certificate of convenience and necessity authorizing it to construct and operate approximately 59.4 miles of 36-inch pipeline and appurtenant facilities, connecting with its existing Lirette-Mobile transmission pipeline, to enable it to transport natural gas to be purchased from Gulf Oil Corporation (Gulf) and Tidewater Oil Company (Tidewater) in interstate commerce for resale; (2) Gulf filed application on January 15, 1960, pursuant to Section 7 of the Natural Gas Act, for a certificate authorizing the sale of natural gas to United under terms of a gas sales contract dated December 22, 1959, providing for an initial price of 24.8 cents per Mcf, including tax reimbursement, 2.5 cents escalation on July 1, 1962, and subsequent price adjustments to be made on July 1, 1967, and 1972; and (3) Tidewater filed application on February 4, 1960, also pursuant to Section 7, for a certificate authorizing the sale of gas to United under terms of a gas sales contract dated December 28, 1959, containing similar initial price and 1962 escalation provisions to those in the United-Gulf contract.

II. Procedural Background

The separate applications herein were consolidated and set for hearing on January 4, 1961, by the Commission's order issued November 30, 1960. Also, on January 4, 1961, the Commission issued an order permitting the intervention in these proceedings of The Pennsylvania Public Utility Commission, New York Public Service Commission, United Gas Improvement Company, Memphis Light, Gas and Water Division of Memphis, Tennessee, Mississippi Valley Gas Company, Long Island Lighting Company, and Brooklyn Union Gas Company. By further order issued April 10, 1961, it permitted the intervention of Philadelphia Electric Company. The Pennsylvania Commission did not actively participate in these proceedings. An attorney for the New York Commission participated in cross-examination of part of applicants' witnesses, but that Commission presented no evidence in this case.

These proceedings convened on January 4, 1961, at which time the applicants' direct cases were presented (Tr. 46–492). United presented the witnesses

C. C. Barnett, L. C. Poindexter and W. G. Meece who testified about United's need for the Bastian Bay gas and the engineering, financial and economic feasibility of the facilities which they proposed to construct to take the gas. Gulf presented witnesses K. H. McLaughlin, B. L. Choate, D. L. Henry, Walter A. Morton, and John S. Trail. With Tidewater they also sponsored the testimony of J. Rhoads Foster and John P. Furman.

After cross-examination of applicants' witnesses was completed, Long Island Lighting Company (Long Island), Brooklyn Union Gas Company (Brooklyn) and United Gas Improvement Company (UGI) presented witness Charles H. Frazier. Joined by Philadelphia Electric Company (PEC), they also sponsored the testimony of the witness Charles A. Larson and incorporated into the record the testimony of E. S. Pettyjohn (Item F) and Holbrook G. Botset (Item H). These companies are hereafter referred to as the "Eastern distributors." Memphis Light, Gas and Water Division (Memphis) and Mississippi Valley Gas Company (Valley), hereafter referred to as the "Southern distributors," presented witness Melwood W. Van Scoyoc (Tr. 2713). The Commission Staff (Staff) offered two witnesses, Victor M. Hodge and Walter H. Beidatsch. In rebuttal, Gulf presented the testimony of Trail, Paul R. Keene and, with Tidewater, also sponsored Foster, Furman, and Herman H. Kaveler. Hearings were concluded on October 19, 1961 (Tr. 3499).

Before that, however, two significant events occurred. First, Pan-American Petroleum Corporation (Pan-American), a large interest owner in the Bastian Bay Field, sold its previously uncommitted interests in leases therein, and a pipeline company other than United commenced taking large volumes of gas from the field. To minimize possible serious drainage losses, at the request of the applicants pursuant to Sections 157.28 and 157.17 of the Commission's Regulations under the Natural Gas Act, the Commission on May 3, 1961, issued to United temporary authority to construct the facilities covered by its application herein. It also issued to Tidewater and Gulf temporary authority to commence the sale of gas to United herein proposed on condition that such temporary sales be at an initial rate of 23.25 cents per Mcf at 15.025 psia (inclusive of tax reimbursement) and that the producers agree to refund to United any amounts in excess of the initial price finally determined to be required by the public convenience and necessity in these proceedings down to 20 cents per Mcf at 15.025 psia (inclusive of tax reimbursement.)

Gulf accepted these conditions under protest. Its contract with United is now on file with the Commission as Gulf's Rate Schedule No. 214. Tidewater also similarly accepted its temporary authorization. United commenced the construction of its pipeline facilities to take the gas and they were scheduled to be completed and ready for operation as of December 31, 1961 (Tr. 3485).

Opportunity to file briefs was afforded to all parties. Initial briefs were filed by United, Gulf, and Tidewater. Interveners in the proceedings who have filed briefs are Public Service Commission of New York, Brooklyn Union Gas Company, Philadelphia Electric Company, Long Island Lighting Company, the United Gas Improvement Company, Memphis Light, Gas and Water Division, and Mississippi Valley Gas Company; briefs in response thereto were filed by United, Gulf and Tidewater. In response to the Presiding Examiner's further order issued April 6, 1962, directing the Commission Staff counsel to file a brief in these proceedings, the Commission Staff on May 14, 1962, has filed its "Statement of Position." Applicants replied thereto on or about May 26, 1962, as of which date the case was considered submitted for decision.

III. United's Project

United Gas Pipe Line Company is a Delaware corporation with its principal place of business in Shreveport, Louisiana. It is a wholly owned subsidiary of United Gas Corporation.

United is engaged in the business of purchasing gas from producers, transporting it through pipelines and selling it to distributors and other pipeline companies for resale, and directly to industries for their use. Its facilities are located in the States of Texas, Louisiana, Mississippi, Alabama and Florida and it transports and sells gas in both intrastate and interstate commerce. As a consequence, it is a natural gas company within the definition contained in the Natural Gas Act.

United was granted a so-called grandfather certificate of public convenience and necessity at Docket No. G–232, and it has since then obtained numerous certificates from this Commission under which it has enlarged its facilities and increased its sales substantially.

United introduced evidence showing the location of the proposed facilities and presented testimony thereon. The pipeline will originate at a point in Bastian Bay Field in Plaquemines Parish, Louisiana, and extend westerly, inside the Louisiana coast line, across Jefferson and LaFourche Parishes to a point of tie in to the company's existing pipeline system at Bayou Terrebonne Junction in Terrebonne Parish. The facilities will consist of approximately 59.4 miles of 36-inch O.D. pipeline and appurtenant facilities, a purchase meter station and a check meter station.

The Bastian Bay Field is located approximately seventy miles southeast of New Orleans, Louisiana, in Plaquemines Parish, and covers a geologic structure approximately eight miles long and two to three miles wide. Originally, it was believed that this tremendous gas reservoir was two separate fields. Accordingly nine square miles on the east side were designated the Cyprien Bay or East Bastian Bay Field, while the remaining portion was called the West Bastian Bay Field. However, in light of subsequent drilling, the Louisiana Conservation Commissioner now considers the entire area to be a single gas-condensate field.

The discovery well in the Bastian Bay Field was drilled in April 1956 by Pan-American. The Bastian Bay Field is one of the largest fields discovered in South Louisiana in recent years. Total natural gas reserves are estimated to exceed two trillion cubic feet.

The terrain in the Bastian Bay Field area consists of swampy marshlands and shallow water bottoms. Exploratory and development operations in such tidal, marsh country are difficult and expensive.

United estimated that, out of the Bastian Bay Field reserves currently committed to it, it would withdraw 29 billion cubic feet annually (Tr. 539). The contracts with the producers provide they shall have available to United delivery capacity from the field equal to 150 percent of the average daily quantity required to be taken under the contracts.

United estimated the cost of this project to be $16,917,010 of which approximately 57 percent is cost of materials, approximately 28 percent is the contractor's installation cost and the balance consists of other costs necessary for construction. The cost per mile of this line is higher than would be experienced in ordinary cross-country construction. This is because of the terrain where this line is located and the resulting necessity of having to dredge a canal through the marsh and a ditch within the canal, before laying the concrete covered pipeline from barges.

Construction of this pipeline and acquisition of the Bastian Bay Field reserves was not done to meet specific new and increased market requirements.

C. C. Barnett, L. C. Poindexter and W. G. Meece who testified about United's need for the Bastian Bay gas and the engineering, financial and economic feasibility of the facilities which they proposed to construct to take the gas. Gulf presented witnesses K. H. McLaughlin, B. L. Choate, D. L. Henry, Walter A. Morton, and John S. Trail. With Tidewater they also sponsored the testimony of J. Rhoads Foster and John P. Furman.

After cross-examination of applicants' witnesses was completed, Long Island Lighting Company (Long Island), Brooklyn Union Gas Company (Brooklyn) and United Gas Improvement Company (UGI) presented witness Charles H. Frazier. Joined by Philadelphia Electric Company (PEC), they also sponsored the testimony of the witness Charles A. Larson and incorporated into the record the testimony of E. S. Pettyjohn (Item F) and Holbrook G. Botset (Item H). These companies are hereafter referred to as the "Eastern distributors." Memphis Light, Gas and Water Division (Memphis) and Mississippi Valley Gas Company (Valley), hereafter referred to as the "Southern distributors," presented witness Melwood W. Van Scoyoc (Tr. 2713). The Commission Staff (Staff) offered two witnesses, Victor M. Hodge and Walter H. Beidatsch. In rebuttal, Gulf presented the testimony of Trail, Paul R. Keene and, with Tidewater, also sponsored Foster, Furman, and Herman H. Kaveler. Hearings were concluded on October 19, 1961 (Tr. 3499).

Before that, however, two significant events occurred. First, Pan-American Petroleum Corporation (Pan-American), a large interest owner in the Bastian Bay Field, sold its previously uncommitted interests in leases therein, and a pipeline company other than United commenced taking large volumes of gas from the field. To minimize possible serious drainage losses, at the request of the applicants pursuant to Sections 157.28 and 157.17 of the Commission's Regulations under the Natural Gas Act, the Commission on May 3, 1961, issued to United temporary authority to construct the facilities covered by its application herein. It also issued to Tidewater and Gulf temporary authority to commence the sale of gas to United herein proposed on condition that such temporary sales be at an initial rate of 23.25 cents per Mcf at 15.025 psia (inclusive of tax reimbursement) and that the producers agree to refund to United any amounts in excess of the initial price finally determined to be required by the public convenience and necessity in these proceedings down to 20 cents per Mcf at 15.025 psia (inclusive of tax reimbursement.)

Gulf accepted these conditions under protest. Its contract with United is now on file with the Commission as Gulf's Rate Schedule No. 214. Tidewater also similarly accepted its temporary authorization. United commenced the construction of its pipeline facilities to take the gas and they were scheduled to be completed and ready for operation as of December 31, 1961 (Tr. 3485).

Opportunity to file briefs was afforded to all parties. Initial briefs were filed by United, Gulf, and Tidewater. Interveners in the proceedings who have filed briefs are Public Service Commission of New York, Brooklyn Union Gas Company, Philadelphia Electric Company, Long Island Lighting Company, the United Gas Improvement Company, Memphis Light, Gas and Water Division, and Mississippi Valley Gas Company; briefs in response thereto were filed by United, Gulf and Tidewater. In response to the Presiding Examiner's further order issued April 6, 1962, directing the Commission Staff counsel to file a brief in these proceedings, the Commission Staff on May 14, 1962, has filed its "Statement of Position." Applicants replied thereto on or about May 26, 1962, as of which date the case was considered submitted for decision.

III. United's Project

United Gas Pipe Line Company is a Delaware corporation with its principal place of business in Shreveport, Louisiana. It is a wholly owned subsidiary of United Gas Corporation.

United is engaged in the business of purchasing gas from producers, transporting it through pipelines and selling it to distributors and other pipeline companies for resale, and directly to industries for their use. Its facilities are located in the States of Texas, Louisiana, Mississippi, Alabama and Florida and it transports and sells gas in both intrastate and interstate commerce. As a consequence, it is a natural gas company within the definition contained in the Natural Gas Act.

United was granted a so-called grandfather certificate of public convenience and necessity at Docket No. G–232, and it has since then obtained numerous certificates from this Commission under which it has enlarged its facilities and increased its sales substantially.

United introduced evidence showing the location of the proposed facilities and presented testimony thereon. The pipeline will originate at a point in Bastian Bay Field in Plaquemines Parish, Louisiana, and extend westerly, inside the Louisiana coast line, across Jefferson and LaFourche Parishes to a point of tie in to the company's existing pipeline system at Bayou Terrebonne Junction in Terrebonne Parish. The facilities will consist of approximately 59.4 miles of 36-inch O.D. pipeline and appurtenant facilities, a purchase meter station and a check meter station.

The Bastian Bay Field is located approximately seventy miles southeast of New Orleans, Louisiana, in Plaquemines Parish, and covers a geologic structure approximately eight miles long and two to three miles wide. Originally, it was believed that this tremendous gas reservoir was two separate fields. Accordingly nine square miles on the east side were designated the Cyprien Bay or East Bastian Bay Field, while the remaining portion was called the West Bastian Bay Field. However, in light of subsequent drilling, the Louisiana Conservation Commissioner now considers the entire area to be a single gas-condensate field.

The discovery well in the Bastian Bay Field was drilled in April 1956 by Pan-American. The Bastian Bay Field is one of the largest fields discovered in South Louisiana in recent years. Total natural gas reserves are estimated to exceed two trillion cubic feet.

The terrain in the Bastian Bay Field area consists of swampy marshlands and shallow water bottoms. Exploratory and development operations in such tidal, marsh country are difficult and expensive.

United estimated that, out of the Bastian Bay Field reserves currently committed to it, it would withdraw 29 billion cubic feet annually (Tr. 539). The contracts with the producers provide they shall have available to United delivery capacity from the field equal to 150 percent of the average daily quantity required to be taken under the contracts.

United estimated the cost of this project to be $16,917,010 of which approximately 57 percent is cost of materials, approximately 28 percent is the contractor's installation cost and the balance consists of other costs necessary for construction. The cost per mile of this line is higher than would be experienced in ordinary cross-country construction. This is because of the terrain where this line is located and the resulting necessity of having to dredge a canal through the marsh and a ditch within the canal, before laying the concrete covered pipeline from barges.

Construction of this pipeline and acquisition of the Bastian Bay Field reserves was not done to meet specific new and increased market requirements.

As stated at the outset of this proceeding, these facilities and reserves will be used to serve United's existing customers and existing market requirements together with the anticipated growth in customers and market requirements.

The evidence shows the past growth in market requirements and their anticipated growth through 1964. These requirements have grown from 263 billion cubic feet in 1937 to an estimated 1.537 trillion cubic feet in 1964 (Tr. 55–66).

As indicated above the Bastian Bay line will interconnect with United's existing facilities at Bayou Terrebonne Junction. Interconnection at this junction will permit gas from the Bastian Bay line to be moved north and eastward toward Mobile, Alabama, through United's 30-inch southeast Louisiana to Mobile system and north and westward to the Napoleonville Compressor Station and thence into Mississippi through United's 30-inch South Louisiana to Kosciusko, Mississippi, system. These two systems comprise United's principal transmission facilities for moving gas out of South Louisiana for resale in interstate commerce (Exhibit No. 1).

United's evidence shows that it planned to finance this construction by the issuance during construction of $10,000,000 of 4½ percent notes, to be refinanced with 5⅛ percent First Mortgage Bonds in 1963 and by the use of cash from its existing working capital. United Gas Pipe Line Company is a wholly owned subsidiary of United Gas Corporation. United Gas Corporation's securities are held by the public and that company in turn owns all the securities of United Gas Pipe Line Company. United introduced in evidence a statement of anticipated cash flow, a balance sheet and statement of income. In addition, it introduced pro forma balance sheets and a statement of income, adjusted for this construction, all showing United's ability to adequately finance this construction (Exhibit No. 4).

Because specific and identifiable new revenues will not be produced as a result of this construction, United did not show revenues to be derived from the facilities as contemplated by Section 157.14(14) of the Commission's Regulations. It did show the estimated annual cost of operating the new facilities (Exhibit No. 5).

No interveners in this proceeding has seriously questioned the public convenience and necessity aspect of United's project to construct and operate facilities to enable it to take natural gas from Gulf and Tidewater. The Eastern distributors obliquely criticize the immediate need for the project. They point out that according to applicant's own presentation if United buys no gas reserves whatsoever between now and the end of 1964, its reserves would equal 20 times the 1964 deliveries. The Eastern distributors specifically contend that while they "* * * do not challenge United's right to purchase gas at reasonable prices * * * United's 'need' certainly cannot justify prices in excess of the proper cost-of-service-determined producer prices for the Bastian Bay gas" (Brief, p. 7).

United argues that the reserves cited by the interveners are "in place" as distinguished from "recoverable," and that ability to meet annual sales requirement in the future is a vastly different thing from simply dividing reserves by sales.

None of the briefs filed herein expressed any true opposition to the construction and operation of the pipeline facilities for which United here asks a permanent certificate. No issue of any description was raised in the briefs concerning the permanent certificate United seeks. No one argued or even suggested that United's evidence did not fully support the public need and necessity for the construction and operation of the pipeline facilities. All parties to this proceeding, including the Staff of the Federal Power Commission, are thus in agreement that a permanent certificate of public convenience and necessity should

issue, authorizing construction and operation of the pipeline facilities as requested by United.

The principal remaining issues raised in these proceedings relate to the price at which Gulf and Tidewater should be permitted to sell natural gas to United. In other words, the question presented is: "Does the public convenience and necessity require that any certificate issued to Gulf and Tidewater be conditioned as to initial price?" If so: "What initial price should be allowed by the Commission?"

IV. The Initial Price

A. *Position of Parties*

There is presented for resolution here the question of what initial price should be approved for the sale of gas from West Bastian Bay by Gulf Oil Corporation and Tidewater Oil Company to United Gas Pipe Line Company. The price proposed in the contract is 24.8 cents per Mcf, tax inclusive. The area ceiling price for South Louisiana is 21.25 cents per Mcf, tax inclusive, as set forth in the Fourth Amendment to the Statement of General Policy 61–1, issued October 31, 1961, 26 FPC 661. The Commission's order of May 3, 1961, issuing to United a temporary certificate, specifically places in issue a price in excess of 20 cents per Mcf, inclusive of tax reimbursement.

Gulf submits that the present and future public convenience and necessity requires the issuance of a certificate to it without condition as to price. Allegedly there is no judicial precedent which precludes such action. Gulf argues that the interveners herein have neither established any adverse effect upon them or their consumers which such certification as here proposed might have, nor have they rebutted by competent evidence Gulf's affirmative showing of entitlement. Gulf contends that should it be concluded that a price condition is necessary in these proceedings as to Gulf's sale, then such conditioned price should be no less than 21.5 cents per Mcf plus applicable tax reimbursement. Such a level is allegedly supported by Gulf's complete evidence, and there allegedly is no judicial precedent which precludes such action. Gulf further submits that a condition reducing its initial price below the 22.0 cents per Mcf total price (20.25 cents plus 1.75 cents tax reimbursement) at which unchallenged permanently certificated sales of smaller volumes of gas from the Bastian Bay Field are presently being made in interstate commerce, under authorizations issued more than four years ago, would be highly discriminatory. Gulf alleges that interveners failed to establish by the required compelling evidence that a condition below the present 21.25 cents per Mcf tax inclusive area price level of the Policy Statement, as amended, should be imposed.

Tidewater contends that the proposed initial contract price of 22.5 cents per Mcf, plus tax reimbursement of 2.3 cents per Mcf "is or will be required by the present or future public convenience and necessity." It encompasses the value considerations involved in the proposed sale to United, industry demand-supply-cost trends, area reserve-cost-revenue trends, comparative well cost data, current market prices, and cost of service evidence. These evidentiary standards, considered separately or conjunctively, allegedly demonstrate that permanent certification of Tidewater's proposed initial contract price is in keeping with the present or future public convenience and necessity. Tidewater argues that its evidence constitutes "compelling" and "conclusive" proof justifying an exception to the Commission's 21.25 cents per Mcf area price for initial sales in Southern Louisiana.

The Eastern distributors submit that the proposed sales should be permanently certificated by the Commission only on the condition that the parties modify their contracts to adopt an initial price *not greater* than 18.5 cents per Mcf

737-370—66——25

inclusive of tax. (The Philadelphia Electric Company urges that such sales be conditioned at the 17 cent per Mcf level.)

The Eastern distributors allege that the Commission determined on rehearing the *CATCO* case (Opinion 351, *Continental Oil Company, et al.*, issued January 22, 1962, 27 FPC 96) that the field prices in South Louisiana at the time of the *CATCO* contracts ranged between 16 and 18 cents per Mcf, and that the pre-*CATCO* "in line" price to be applied there was 18.5 cents per Mcf. The cost of service studies presented by the Eastern distributors' witness Larson (based upon similar studies introduced by Gulf and Tidewater) show company-wide costs of these two companies for the test year 1959 to be in the 11–13 cent range, and the unit cost for the Bastian Bay area, computed according to Opinion 351 methods, is approximately 12 cents per Mcf. Data underlying the exhibit of the applicants' witness, Foster, demonstrate that there was no appreciable increase in drilling costs per unit of reserves found during the 1956–1959 period. Circumstances peculiar to the Bastian Bay sale also do not support a price greater than the "in line" price as determined in Opinion No. 351. Accordingly, the Commission would not be justified in certificating the sales at a rate exceeding the 18.5 cent per Mcf "in line" price, which exceeds both company-wide and area costs by 5 to 6 cents per Mcf.

The Southern distributors submit that the certificates in this case should be issued only if conditioned upon the reduction of the initial price to 12.3 cents per Mcf, on a tax inclusive basis. This result is required because the evidence establishes that the West Bastian Bay gas to be sold by Gulf and Tidewater to United is, at the most, 12.3 cents per Mcf, for either producer. Moreover, the system-wide average unit cost for each producer is likewise less than 12.3 cents per Mcf. Both figures include an 11 percent rate of return, and over 3 cents per Mcf. for system-wide exploration and development costs computed in the manner adopted by the Commission in Opinions No. 338, *Phillips*, and No. 351, *CATCO*. No other result is required even though the South Louisiana area ceiling price is 21.25 cents per Mcf under the Commission's 1961 Statement of General Policy, as modified. Since the record allegedly establishes a cost of service of approximately 12 cents per Mcf, no justification has been established for going higher. To allow a higher initial price would give the producers a "windfall," until such time as a just and reasonable rate is established under Sections 4 or 5 of the Act.

The Public Service Commission of the State of New York submits that the field price evidence in this record establishes that the "in line" initial price level for these sales is no more than 18 cents per Mcf in total. There is no evidence in the record that could properly be viewed as support or justification for certification of the instant sales at an initial price in excess of that "in line" level. In fact, since the applicants' costs of service, properly computed, are substantially below the "in line" initial price level, there is no evidence in this record, other than the proof of "in lineness" itself, which would support or corroborate the propriety of certification at a figure that high. Accordingly, the Public Service Commission submits that the proposed sales may be certificated, if at all, only upon the condition that the initial prices are reduced to no more than 18 cents per Mcf in total. In the alternative, permanent certificates of public convenience and necessity should be denied and the temporary certificates heretofore issued to the producer-applicants should be cancelled or terminated.

It is the position of the Commission Staff that permanent certificates issued to Gulf and Tidewater should be conditioned so as to require the charging of an initial base price of not more than 18.5 cents per Mcf, at 15.025 psia, plus 1.5 cents per Mcf tax reimbursement.

The Staff contends that a cost-of-service presentation limited to a single field is of no value in fixing the public convenience and necessity initial price. See *Socony-Mobil Oil Co., Inc.*, Docket No. G–17930, order issued February 9, 1962, 27 FPC 347. Conversely, system-wide cost-of-service studies cannot properly be used to determine the public convenience and necessity initial price for gas produced from a single field. Such procedure would inevitably lead to the fixing of a price for gas produced from a single field sufficiently high so as to take care of deficiencies in revenues from gas produced from other fields—an illogical and absurd result. The testimony of Staff witnesses allegedly indicate that the contract "in line" price during the year 1958 and early 1959 was 18.5 cents per Mcf, at 15.025 psia. This determination of the contract "in line" price is fully supported by the number of sales permanently certificated under sales contracts negotiated during 1958 and 1959.

The Staff submits that under the Commission's Opinion No. 351, issued January 22, 1962, and the Commission's order issued February 9, 1962, in *Socony Mobil Oil Co., Inc.*, Docket No. G–17930, the approach taken by Staff witness was proper.

In Opinion No. 351, the *CATCO* case, the Commission held that the "in line" price should be determined as of the *date of the contract* and not as of a subsequent date. It is true that the Staff in arriving at its determination of the "in line" price did not consider all contracts negotiated during the 1958–1959 period, but the contracts ignored by the Staff were those which might be considered to be in the "suspect" category. The prices specified in the "suspect" class of contracts were as high, and even higher, than the prices held to be out of line by the courts in the numerous cases remanded to the Commission after judicial review of Commission orders.

To the Staff's proposed initial base price of 18.5 cents per Mcf there should be added 1.5 cents per Mcf as allowance for tax reimbursement. This would accord Gulf and Tidewater the same tax reimbursement as would be given the *CATCO* companies by Opinion No. 351.

B. *The Evidence*

The present record is unusual in that, unlike other initial price cases considered by the Commission, this proceeding contains detailed cost-of-service evidence on both an area and individual company-wide basis. Both producer applicants submit detailed cost-of-service studies, and the Eastern distributors submit their own exhibits containing Gulf and Tidewater costs-of-service for the test year 1959 allegedly determined according to the Commission's methods in Opinion No. 338, the *Phillips* opinion.

In the instant proceeding, cost of service testimony was presented by Gulf through its witness Mr. Trail, who made four studies for 1959 on the basis of system-wide costs; two of which used principles which he recommended, and two purported to follow the Commission's *Phillips* method. Tidewater presented one study of 1959 system-wide costs, through its witness Mr. Powell, purportedly following the *Phillips* method.

Mr. Larson, on behalf of the Eastern distributors, presented system-wide cost studies for each producer, following the *Phillips* method.

Mr. Van Scoyoc, on behalf of Southern distributors, presented a modified cost study of Gulf, separating out with reference to West Bastian Bay the gas and liquid production, and the rate base investment and direct expenses related thereto.

The basis and results of these eight studies can be summarized as follows:

Exhibit number	Witness	Companies studied	Stated method	Rate of return	Including West Bastian Bay	Average unit cost (14.65 psia)
				Percent		*Cents*
10	Trail	Gulf	Gulf	22	No	27.40
11	do	do	*Phillips*	11.24	No	15.37
12	do	do	Gulf	22	Yes	25.93
13	do	do	*Phillips*	11.24	Yes	14.88
17	Powell	Tidewater	do	11.0	No	20.17
20	Larson	Gulf	do	11.0	Yes	11.67
33	do	Tidewater	do	11.0	No	12.61
31	Van Scoyoc	Gulf	do	11.24	Yes	12.06

The Southern distributors sponsored Bastian Bay costs of service showing area costs for the Bastian Bay Field of approximately 10 cents per Mcf. While the Eastern distributors have taken the position that complete cost-of-service evidence is not a necessary evidentiary basis for a lawful initial price, they submit that the Commission would be fully justified in considering such evidence to ascertain whether or not the applicants in this particular case would be entitled to a lesser or greater price.

The Commission in its recent Opinion 350 (*Panhandle Eastern Pipe Line Co., et al.*, Docket No. CP60–103, *et al.*, 27 FPC 35, 39) has stated that, apart from field price data, evidence in initial price cases "should not merely consist of comparative evidence peculiar to any given area, but evidence specifically related to the operations of each applicant * * *." Eastern distributors allege that the applicants' 1959 costs both on a company-wide and area basis are approximately 12 cents for the test year 1959. The Commission in Opinion No. 351, the *CATCO* decision, has determined that the predominant price for the South Louisiana area, as of the time of the *CATCO* sale, was in the 16 to 18 cent range, with an upper limit of 18.5 cents per Mcf. Eastern distributors contend that if this figure is applied to the present sales, there is a "spread" of roughly 6½ cents between the financial requirements of the applicants and such an upper limit to the "in line" price. Although the present contracts were entered into in December 1959, there is no justification for adjusting the 18.5 cent *CATCO*-determined price upward to account for the later date of these contracts, or to provide additional tax reimbursement, since the spread between costs and price is more than sufficient to compensate the applicants for any such additional costs. Accordingly, the present sale should be conditioned at a price no greater than 18.5 cents per Mcf inclusive of all cost factors, including tax reimbursement.

The testimony of Staff witness (Exhibit No. 19) indicates that the contract "in line" price was 18.5 cents per Mcf at 15.025 psia.

The Staff submits that the Commission recognized that the *CATCO* companies might be liable for 2.3 cents per Mcf representing the full Louisiana state severance tax, yet permitted the *CATCO* companies to collect only 1.5 cents per Mcf as tax reimbursement. Accordingly, the Staff proposes that to the initial base price of 18.5 cents per Mcf there should be added 1.5 cents per Mcf as allowance for tax reimbursement.

The producers contend that pursuant to the Commission's Statement of General Policy No. 61–1, as amended, the minimum price level announced for initial South Louisiana gas sales is 21.25 cents per Mcf, and that the proper tax reimbursement is 1.875 cents per Mcf.

Gulf went to great lengths to justify the proposed initial prices, submitting evidence on: (a) industry demand-supply and cost trends, (b) market prices, (c) Bastian Bay Field and comparative data, and (d) company cost of service.

Tidewater's evidence pertains to: (a) value consideration inherent in the sale to United, (b) industry demand supply cost trends, (c) area reserve-cost-revenue trends, (d) comparative well-cost data, (e) current market prices, and (f) cost of service evidence.

The Public Service Commission of the State of New York submitted that cost trend or individual-company cost-of-service evidence is particularly inappropriate and unnecessary in the context of the present area rate concept of producer regulation, and at a time when (1) not only has the general area rate proceeding for this district already been instituted, but (2) individual-company Section 5 rate proceedings involving many producers, including each of the producer-applicants in this proceeding have actually been concluded.[1]

Gulf submitted that a rate of return of 22 percent is required to meet the standards established in *Bluefield Waterworks & Improvement Co.* v. *Public Service Commission*, 262 U.S. 679; *F.P.C.* v. *Hope Natural Gas Co.*, 320 U.S. 591. The recommended 22 percent rate was developed principally on the basis of average comparative earnings for the years 1947–1959 of electric, gas and telephone utilities, motor carriers, railroads, airlines, pipeline companies, oil and gas producers, and industrial corporations. Moreover, the 22 percent rate of return includes an inflation factor.

The record contains the testimony of Dr. Beidatsch of the Commission's staff. While Dr. Beidatsch did not make a specific rate of return recommendation for Gulf, it was his opinion that with respect to integrated companies, while there are elements of risk, investors do not regard the large integrated companies as being in the same category as the small straight producing companies.

The distributors argue that, in light of the financial data in the record showing the investors' appraisal of the risks of the oil and gas producing business and the resulting cost of capital, a rate of return in the vicinity of 11 percent is more appropriate.

C. *Price Compatible with Public Interest*

On several occasions the courts have held that the Commission has the power to find that the public convenience and necessity does not warrant the granting of a certificate at an initial price higher than what the Commission deems compatible with the public convenience and necessity.[2] The crucial question is how to ascertain the "fair and reasonable" price to be paid by United to the producers, Gulf and Tidewater. In a comprehensive rate proceeding it is difficult to arrive at the ideal price that is "reasonable" within the overriding intent of Congress to give full protective coverage to the consumer,[3] and at the same time is "fair" to the producers, and meets the standards established in the *Bluefield* and *Hope* cases, *supra*. The problem becomes even more acute in a certificate case.

The Examiner spent considerable time studying all the widely divergent theories, evidence, and contentions of the producers, distributors, and the other parties in this proceeding. The briefs and the sundry pleadings emphasize different sections of earlier opinions, some of which have since been clarified by the Commission. The presentations therein are quite effective when pointing out infirmities in the contentions of the opposing side. However, they

[1] *Cf.* Examiner's decisions in *Tidewater Oil Co.*, Docket No. G–13310, *et al.*, issued September 14, 1961, and *Gulf Oil Corporation*, Docket No. G–9520, *et al.*, issued September 24, 1962. Neither decision indicates a rate in excess of the level set in the Commission's Statement of General Policy No. 61–1, as amended. [*Gulf* decision unreported; *Tidewater* decision reported at 27 FPC 1276.]

[2] *Atlantic Refining Co.* v. *Public Service Commission of New York*, 360 U.S. 378; *Texaco Inc.* v. *F.P.C.*, 290 F. 2d 149; *Public Service Commission of New York* v. *F.P.C.*, D.C. Cir., 1960, 287 F. 2d 146; *United Gas Improvement Co.* v. *F.P.C.*, 9 Cir., 1960, 283 F. 2d 817; and *United Gas Improvement Co.* v. *F.P.C.*, 10 Cir., 1961, 287 F. 2d 159.

[3] *Atlantic Refining Co.* v. *Public Service Commission of New York*, 360 U.S. 378 at 389.

are less persuasive when proposing "fair and reasonable" prices for gas. The selection of samples, the tabulation of statistics, or the allocation of various expenses and investment bring about precariously different results. The proposed rate of return herein ranges between 11 and 22 percent. The average unit cost of gas ranges between 11.7 cents and 27.4 cents per Mcf.

The testimony of Staff witness Hodge indicates that the contract "in line" price, excluding tax, is 18.5 cents per Mcf, at 15.025 psia. This determination of the contract "in line" price is supported by the number of sales permanently certificated under sales contracts negotiated during 1958 and 1959.

In finding as to what the "in line" price is,[4] it is necessary to exclude, as having little or no relevance, all instances where the determinations were reached on bases which the Courts of Appeals in decisions issued subsequent to the issuance of such orders have considered to be erroneous. Prices in outstanding certificate cases coming within the latter category are considered to be "suspect" and not to be employed as guidelines in coming to a conclusion as to the appropriate public convenience and necessity initial price. Nor can prices in Section 7 certificate orders which are the subject of Commission or judicial review be employed as guidelines in the determination of "in line" prices.

The *CATCO* decision on remand notes many of the limitations of cost-of-service evidence in Section 7 proceedings. However, it does suggest that where cost-of-service evidence has been presented, it may, if properly adjusted to conform to the *Phillips'* standards, be used, at least, as a basis of comparison with the "in line" price, which has been determined by reference to appropriate field prices. In *CATCO* the price found by the Commission to be "in line" for the sales exceeded the applicants' properly computed cost of service by approximately one cent per Mcf. However, the Commission stated that the "in line" figure would allow a "margin for error" in its computation of the applicants' cost of service and concluded that the "in line" price was not in excess of an initial rate that would satisfy the requirements of public convenience and necessity for the *CATCO* sales.

Various matters which were argued at length in the course of the hearings and during the exchange of the initial briefs have since been dealt with in other regulatory proceedings. It is quite likely that if the parties had the foresight to anticipate more recent Commission holdings on many of the crucial points, their presentation in the instant proceeding would have been different and certainly much more streamlined. It is difficult indeed to come up with a comprehensive "fair and reasonable" price of gas on the basis of the evidence thus far submitted in this proceeding. However, there is sufficient evidence in the record to establish a line of demarcation and, allowing for a "margin for error," we can approach an upper level of the price of gas which is consistent with the presently prevailing policy determinations of the Commission and is still compatible with cost levels ascertained in recent *Gulf* and *Tidewater* proceedings under Sections 4(e) and 5(a) of the Natural Gas Act.

Several of the specific arguments made by the producers in their reply briefs filed on or before March 9, 1962, have since been discussed by the Commission in an order dated March 22, 1962. The order was issued in the *CATCO* case, Docket No. G–11024, and is entitled Order Denying Rehearing and Clarifying Opinion. On page 594 of that order the Commission stated that:

---

[4] See *U.G.I.* v. *F.P.C.*, 283 F. 2d 817, 824–5, cert. den. 365 U.S. 879, 881, and *P.S.C.* v. *F.P.C.*, 287 F. 2d 146, 149 fn. 3, cert. den. 365 U.S. 880, 882 in particular. See also *P.S.C.* v. *F.P.C.* 287 F. 2d 143; *U.G.I. & P.S.C.* v. *F.P.C.*, 290 F. 2d 133, cert. den. 368 U.S. 823; *ibid.*, 290 F. 2d 147, cert. den. 366 U.S. 965, and *ibid.*, 287 F. 2d 159.

* * * We did not intend the 1.5 cent tax reimbursement as an in-line tax provision as of the time of the contract, but because Louisiana taxes, if applicable, were increased on December 1, 1958, we are of the opinion that the partial tax reimbursement of the tax increases provided in the contract were in the public interest and required by the public convenience and necessity.

Coming to the cost of service, CATCO objects to our finding that the cost of service presentation is limited and falls short of that usually found requisite in a rate case. The cost of service presentation here has been valuable to us and, we do not say that it was inappropriate for the purposes of this proceeding. Nevertheless it is not a complete cost of service and the results must be considered indicative only and not decisive either as showing confiscation or showing that CATCO will make an excessive return. * * *

On August 30, 1962, the Commission issued its Opinion No. 362 in *Skelly Oil Company, et al.*, Docket No. G–18638, *et al.*, 28 FPC 401. At pp. 410–411, the Commission specifically said that the principal criterion that shall be employed is whether the proposed prices are "in line" at the time of contract execution as required by the Supreme Court's *CATCO* opinion. However, the Commission does not deem it necessary or appropriate in a certificate proceeding to consider evidence of area costs or financial requirements, or of individual company costs or financial requirements. Any such approach is of limited utility and leads to complicated, long-drawn-out proceedings, detrimental to the public. Obviously, we cannot permit every individual certificate case to be converted into a full-blown rate case. The proof in this proceeding demonstrates the ineffectiveness of a limited cost of service presentation.

The data presented by Gulf and Tidewater in this case[5] failed to demonstrate by a preponderance of evidence that contract prices for gas in excess of 20 cents per Mcf are compatible with present or future public convenience and necessity.

On consideration of all the material and relevant facts and circumstances by which the "in line" prices for natural gas involved in these proceedings should be determined, including all the other evidence adduced, the arguments of all counsel, and all the briefs filed herein, the Examiner concludes that there is no valid reason why Gulf and Tidewater's proposed sales herein to United should be authorized at any higher price than 20 cents per Mcf, and accordingly the certificates to be issued to Gulf and Tidewater will be conditioned to a public convenience and necessity initial price of 20 cents per Mcf, at 15.025 psia.

V. Additional Findings and Conclusions

Upon consideration of the record in these proceedings, it is specifically found and concluded, in addition to the findings and conclusions heretofore stated that:

(1) United is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission.

---

[5] *Cf.* Hearing Examiner's decision of September 24, 1962, filed in *Gulf Oil Corporation*, Docket No. G–9520, *et al.* In that decision the Examiner found that the total system-wide jurisdictional cost of service determined for Gulf, based upon the test year 1957, is 12.598 cents per Mcf. Similarly, in *Tidewater Oil Company*, Docket No. G–13310, *et al.*, the Hearing Examiner found that the jurisdictional unit cost of service determined for Tidewater, based upon the test year 1957, is 11.45 cents per Mcf. This case was later settled. Neither the evidence nor the findings in these two Sections 4 and 5 cases are directly applicable herein. However, these cases do lend some *prima facie* credence to the holding herein that an initial price of 20 cents per Mcf is neither "unfair" nor "unjust" to either Gulf or Tidewater. [*Gulf* decision unreported; *Tidewater* decision reported at 27 FPC 1276.]

(2) United's proposed facilities hereinabove referred to, and more fully described in its application, will be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and such facilities, together with the construction and operation thereof, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Gulf and Tidewater are engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and each is a "natural-gas company" within the meaning of the Natural Gas Act.

(4) The sales of natural gas proposed by each of the producer applicants, as more fully described in their applications, are subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) Subject to the requirements of our order herein and the conditions of the certificates herein issued, United, and each of the producer applicants, are able and willing to properly do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(6) The construction and operation of the facilities proposed by United, and the sales proposed by each of the producer applicants, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity, and certificates should be issued to each of them as hereinafter ordered and conditioned.

(7) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

VI. Order

Wherefore, it is ordered, subject to review by the Commission, that:

(A) Certificates of public convenience and necessity are hereby issued upon the conditions hereinafter set forth: to United Gas Pipe Line Company for the construction and operation of the facilities proposed, as more fully described above and in its application; and to Gulf Oil Corporation and Tidewater Oil Company for the sale of natural gas in interstate commerce for resale as proposed, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described above in their applications, and upon the terms and conditions of this order.

(B) The certificates issued to Gulf Oil Corporation and Tidewater Oil Company granted upon the express condition that they shall file a rate schedule with the Commission within 30 days from the date of the issuance of this order providing for a base initial price, replacing the initial contract price as proposed, not in excess of 20 cents per Mcf, at 15.025 psia, including tax reimbursement.

(C) The certificates herein issued to the producer applicants shall be accepted in writing and under oath within 30 days from the date of the issuance of this order.

(D) The certificates issued herein are not transferable and shall be effective only so long as each of said applicants continues the acts and operations herein authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(E) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 of the

Commission's Regulations under said Act requiring the filing of rate schedules for the service herein authorized and is without prejudice to any findings or orders which may have been or hereafter may be made by the Commission in any proceeding now pending or hereinafter instituted by or against the applicants. Further, the action taken in these proceedings shall not foreclose nor prejudice any further proceeding or objection relating to the operation of any price or related provisions in the gas contracts here involved.

ROBERT E. FREER,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

VALLEY GAS TRANSMISSION, INC., DOCKET NO. CP63-270

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 17, 1963)

On April 4, 1963, as supplemented on April 25, 1963, Valley Gas Transmission, Inc. (Applicant) filed in Docket No. CP63-270 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale, on a firm basis, of an average daily quantity of 25,000 Mcf of natural gas to Iroquois Gas Corporation (Iroquois) and the construction and operation of certain facilities necessary for such sale and necessary to attach additional new sources of gas supply from acreage located in the Luby, Petronilla and Yeary Fields, Nueces and Kleberg Counties, Texas, all as more fully set forth in the application, as supplemented.

Applicant proposes to construct and operate a total of 61.72 miles of 2- to 8-inch pipeline, and appurtenant facilities, connecting some 8 gas supply areas[1] to the existing facilities of Tennessee Gas Transmission Company (Tennessee). The application indicates that the gas to be sold to Iroquois will be transported by Tennessee to a point in Erie County, New York, where Tennessee's system interconnects with that of Iroquois.

The application shows the total estimated cost of the subject project is $1,518,520, which cost will be financed by a long term loan and temporary borrowings from Applicant's parent, Valley Gas Production, Inc.

The sale to Iroquois is to be made pursuant to a contract, dated March 27, 1963, between Applicant and Iroquois. Said contract provides for an initial price of 18.3 cents per Mcf at 14.65 psia.

Pursuant to due notice, a public hearing was held in Washington, D.C., on June 26, 1963, respecting the matters involved in and the issues presented by the application, as supplemented, herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Valley Gas Transmission, Inc., a Texas corporation having its principal place of business in Houston, Texas, is a "natural-gas company"

---

[1] Seven of the areas are dedicated to sales to Iroquois. These include the Hackberry area, Cameron Parish, Louisiana, and the Spanish Camp, Koopman-Mopp, Coleto Creek, South Lissie, Luby and Petronilla areas, Nueces, Kleberg, Jim Wells, Victoria and Wharton Counties, Texas. The eighth area is dedicated to existing service to Tennessee; said area being the Luby-Yeary area, Nueces County, Texas.

within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Valley Gas Transmission, Inc., to construct and operate the proposed facilities and to sell natural gas as hereinbefore described, all as more fully described in the application, as supplemented, herein upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the sale of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 6 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

ANADARKO PRODUCTION COMPANY, DOCKET NOS. CI62-1307, CI63-86, CI63-94, CI63-288 AND CI63-264

MEMORANDUM ORDER GRANTING TEMPORARY CERTIFICATES

(Issued July 18, 1963)

In the above-entitled proceedings, Anadarko Production Company (Anadarko) is seeking temporary certificates of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act (Act) authorizing it to sell natural gas from

various fields in the Anadarko Basin [1] to its corporate parent, Panhandle Eastern Pipe Line Company (Panhandle)[2]. In support of its request for temporary certificates Andarko alleges in each of its applications that its leases are "subject to drainage" which may cause it and the royalty owners to "suffer permanent economic injury and hardship."

Based upon these circumstances we find that an emergency exists within the meaning of the Act, and that temporary certificates should issue authorizing the proposed sales. To avoid any misunderstanding of the extent to which our action can or should be construed as approving the filed rate as it affects Panhandle's purchased gas costs we are including in this order the following statement.

The certificates being issued here and those which have been previously issued to Anadarko (both permanent and temporary),[3] while authorizing the sale and delivery of natural gas to Panhandle in accordance with Anadarko's rate schedules, necessarily determine only the payments which may legally be made by the buyer (Panhandle) to the seller (Anadarko) and do not and cannot estop the Commission from considering the appropriate cost to be attributed to these sales should Panhandle's purchased gas costs be in issue in a future rate proceeding under either Sections 4(e) or 5(a) of the Act. The basic rationale for this has already been elucidated by the Commission in our recent order denying the motion to vacate in *Northern Natural Gas Company, et al.*, 29 FPC 689, Docket No. G–12153, *et al.*, issued April 2, 1963. See also the "Order Remanding Proceedings, etc." in the same docket issued July 2, 1962, 28 FPC 4. While we thus think it is not necessary to do so, we have placed an express reservation to this effect in the order here being issued.

The Commission orders:

(A) Temporary certificates of public convenience and necessity are hereby issued to Anadarko Production Company for the sales proposed in its application filed in Docket Nos. CI62–1307, CI63–86, CI63–94, CI63–288 and CI63–264, subject to the following conditions.

(i) The initial rates provided for in the gas purchase contracts set out in Appendix A hereto for the gas sold shall remain in effect until changed by the Commission in an order issued in these proceedings.

(ii) The allowance for the take-or-pay provisions and the upward Btu adjustment provisions in the related rate schedules is subject to the ultimate disposition, with respect to such provisions, of the rule-making proceedings in Docket Nos. R–199 and R–200; however, Anadarko Production Company will not be required to file take-or-pay provisions for less than 80 percent of the annual contract quantity.

(iii) The temporary certificates with the conditions attached shall be accepted as issued, within 30 days herefrom by written acceptance (original and five copies) made by a responsible official of the company. If reconsideration of such temporary certificate is sought, service hereunder shall not be started. If service is commenced under this temporary certificate, the conditions attached shall be effective and the service may not be discontinued without permission of the Commission issued pursuant to the provisions of the Natural Gas Act.

[1] Pertinent data from the applications are set out in Appendix A attached hereto.

[2] Panhandle owns 100% of the common stock of Anadarko. See Moody's Public Utility Manual, 1962, pp. 1699–1701.

[3] Permanent certificates have issued in Docket Nos. G–19282, CI60–820, CI60–821, CI60–822, CI61–249, CI61–507, CI61–742, CI61–1679, CI61–1803, CI62–89, and CI62–257. Temporary certificates have issued in Docket Nos. CI60–486, CI60–699, CI60–765, CI60–823, CI61–61, CI61–78, CI61–542, CI61–543, CI61–684, CI61–700, CI61–872, CI61–873, CI61–893, CI61–964, CI61–1565, CI61–1617, CI61–1618, CI61–1755, CI62–431, CI62–827, CI62–834, CI62–846, CI62–928, CI62–1535 and CI62–1546.

(B) The related proposed rate schedules will be considered accepted for filing upon acceptance with the temporary certificate, as conditioned above, to be effective on the date of initial delivery subject to the provisions of Sections 154.94(c) and 154.101 of the Commission's regulations under the Natural Gas Act.

(C) Anadarko Production Company shall advise the Commission of the date of commencement of deliveries under its rate schedules by making reference in its communication to the rate schedules as designated in the Appendix hereto.

(D) If service is not commenced within 90 days from the date of this temporary certificate, then such temporary certificate shall be void and of no effect.

(E) The issuance of this temporary certificate and the acceptance of the rate schedules are without prejudice to such final disposition of the applications for permanent certificates as the record in the hearing on such applications may require, or to any action which the Commission might take in any subsequent proceeding involving either Anadarko or Panhandle under Sections 4 or 5 of the Natural Gas Act.

APPENDIX A

DESCRIPTIVE LIST OF ANADARKO'S APPLICATIONS FOR TEMPORARY CERTIFICATES

(1) Docket No.	(2) Designation: Rate schedule No.	(2) Designation: Supplement No.	Description and date of instrument	(3) Producing Area	(4) Price, cents per Mcf	(5) Area ceiling price, cents per Mcf
CI62-1307	61	----------	Ratification agreement, Mar. 28, 1962; contract,[1] [5] [6] Feb. 7, 1962.	Mocane Field, Beaver County, Okla.—Panhandle.	17	17
	61	1				
CI63-86	67	----------	Contract,[4] [6] June 15, 1962.	Carthage Reiss and Boaldin Fields, Texas County, Okla.—Panhandle.	16	17
CI63-94	65	----------	Ratification agreement, June 14, 1962; contract,[2] [3] [6] Jan. 18, 1957.	Richfield Field, Morton County, Kans.	16	16
	65	1				
CI63-288	69	----------	Ratification agreement, Aug. 9, 1962; contract,[1] [3] [6] Feb. 7, 1962.	Light Field, Beaver County, Okla.—Panhandle.	17	17
	69	1				
CI63-264	70	----------	Ratification agreement, July 27, 1962; contract,[4] [6] May 4, 1961.	Carthage Field, Texas County, Okla.—Panhandle.	[7] 16	17
	70	1				

[1] Texaco Inc.—Panhandle contract, covered by temporary certificate in Docket No. CI62-1018.
[2] Pan American Petroleum Corporation-Panhandle contract, covered by certificate authorization in Docket No. G-12106.
[3] Price escalates 1.0 ¢/Mcf on Jan. 1, 1963 under R.S. No. 65, on Apr. 2, 1967 under R.S. No. 69 and on Mar. 28, 1967 under R.S. No. 70, and at each of each of next two 5-yr. periods thereafter in each case.
[4] Contract is between Texaco Inc. and Panhandle; Texaco was granted a temporary certificate covering sales under the contract in Docket No. CI62-38.
[5] Price escalates 1.0¢/Mcf after first 5 years from date of initial delivery and at end of each of next two 5-year periods.
[6] Contracts contain 100 % min. take-or-pay provisions. R.S. Nos. 65 and 70 provide for 2-year make-up periods. R.S. Nos. 61, 67 and 69 provide for make-up over life of contract. No make-up for cancelled allowables.
[7] Price subject to upward and downward Btu adjustment.

Before Commissioners: Joseph C. Swidler, Chairman, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP63-289

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 18, 1963)

On April 24, 1963, Michigan Wisconsin Pipe Line Company (Applicant) filed in Docket No. CP63-289 an application pursuant to Section 7(c) of the

Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the 12-month period commencing July 13, 1963, and the operation of field facilities to enable Applicant to take into its certificated main pipeline system natural gas which may be purchased from producers in the general area of its existing transmission system, all as more fully set forth in the application.

The purpose of this proposal is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its existing pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

The total cost of the proposed facilities will not exceed a maximum of $3,000,000 and no single project will exceed a cost of $500,000, said costs to be financed from current working funds.

Pursuant to due notice, a public hearing was held in Washington, D.C., on July 2, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Michigan Wisconsin Pipe Line Company, a Delaware corporation having its principal place of business in Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order dated November 30, 1946, in Docket No. G–669 (5 FPC 953).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit, pursuant to Section 2.58(c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization granted hereinafter, a statement showing by projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects constructed pursuant to the authorization hereinafter granted, (d) the location of said project or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing, metering, and appurtenant facilities, and (f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate authorizations.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act

and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the 12-month period commencing on July 13, 1963, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $3,000,000, with no single project to exceed a cost of $500,000.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Michigan Wisconsin Pipe Line Company, to construct during the 12-month period commencing on July 13, 1963, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit pursuant to Section 2.58 (c) of the Commission's General Policy Interpretations, within 60 days after the expiration of the authorization herein granted, a statement showing by projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects that have been constructed pursuant to the authorization herein granted, (d) the location of said project or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing, metering and appurtenant facilities, and (f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate authorizations.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the 12-month period commencing on July 13, 1963, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $3,000,000, with no single project to exceed a cost of $500,000.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP63-255

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND APPROVING ABANDONMENT OF STORAGE SERVICE GAS

(Issued July 18, 1963)

On March 14, 1963, as supplemented on April 18, 1963, Natural Gas Pipeline Company of America, (Applicant) filed an application in Docket No. CP63-255 pursuant to Sections 7(c) and 7(b) of the Natural Gas Act for (1) a certificate of public convenience and necessity authorizing the sale and delivery of an addi-

tional daily contract quantity of 2,160 Mcf of gas to the Monarch Gas Company (Monarch), an existing customer of Applicant, and (2) for permission and approval to abandon storage service now being rendered by Applicant to Monarch, all as more fully set forth in said application which is on file with the Commission and open to public inspection.

The application states that Monarch which now receives gas from Applicant under Applicant's Rate Schedules CD–1 and S–1 has requested an increase of 2,160 Mcf in its daily contract quantity to a total of 4,600 Mcf and that storage service to Monarch be discontinued. Total deliveries of gas by Applicant to Monarch will be purchased from Applicant by Monarch under Applicant's G–1 Rate Schedule instead of the service presently being rendered under Rate Schedules CD–1 and S–1.

Monarch estimates that the change in schedules will reduce its costs by $7,300 in 1963.

Monarch's 2,160 Mcf increase in daily contract quantity is to replace 946 Mcf per day of withdrawal quantity available under the storage schedule proposed to be abandoned and to supply growth requirements.

No additional facilities are proposed by Natural. The additional daily contract quantity will be supplied from Natural's presently unallocated capacity.

Pursuant to due notice a public hearing was held in Washington, D.C., on July 2, 1963, respecting the matters involved in and the issues presented by the application. No petition to intervene in opposition or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Natural Gas Pipeline Company of America is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in Docket No. G–235, (3 FPC 830).

(2) The subject transportation and sale of natural gas by Applicant hereinbefore described, as more fully described in the application, is subject to the jurisdiction of the Commission and such transportation and sale as aforesaid are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

(5) The service to be abandoned by Applicant in Docket No. CP63–255 as hereinbefore described and as more fully described in the application is involved in the sale of natural gas in interstate commerce, subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act. The proposed abandonment of the aforesaid service is permitted by the public convenience and necessity and permission and approval therefor should be granted as hereinafter ordered.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any part of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant to transport and sell an additional volume of 2,160 Mcf of natural gas per day to Monarch Gas Company thus bringing the amount of daily delivery up to 4,600 Mcf, all as more fully described in the application as supplemented, herein upon the terms and conditions of this order.

(B) The certificate issued herein and the rights granted hereunder are conditioned upon Applicant's compliance with all applicable rules and regulations of the Commission under the Natural Gas Act and particularly the terms and conditions set forth in Section 157.20 of such Regulations.

(C) Applicant be and is hereby permitted to abandon storage service to Monarch Gas Company as requested by the said Monarch Gas Company.

(D) Applicant shall advise the Commission in writing of the date when such storage service is ended.

(E) The abandonment of storage service and increase in daily contract demand to 4,600 Mcf per day shall take effect simultaneously on December 1, 1963.

Before Commissioners: Charles R. Ross, Acting Chairman; Howard Morgan, and L. J. O'Connor, Jr.

COLORADO INTERSTATE GAS COMPANY, DOCKET NO. CP63-344 (PHASE ONE); KANSAS-NEBRASKA NATURAL GAS COMPANY, INC., DOCKET NO. CP63-340; RATON NATURAL GAS COMPANY, DOCKET NO. CP62-131

FINDINGS AND ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY PERMITTING AND APPROVING ABANDONMENT OF FACILITIES DISMISSING APPLICATION IN PART AND REJECTING INTERVENTION

(Issued July 19, 1963)

On June 14, 1963, Colorado Interstate Gas Company (Colorado Interstate) filed in Docket No. CP63-344 an application pursuant to Sections 7(c) and 7(b) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities for the sale and transportation of natural gas in interstate commerce and the abandonment of certain existing transmission facilities as hereinafter described, and as more fully described in the application.

Colorado Interstate proposes to construct and operate certain facilities to increase the peak day delivery capacity of its existing pipeline system in the Rocky Mountain area by approximately 133,000 Mcf of natural gas per day in order (1) to meet additional requirements of its existing customers, estimated to be approximately 76,000 Mcf of gas per day through the 1965-1966 winter; (2) to sell to Colorado Fuel and Iron Corporation (CF&I) an additional firm volume of 35,000 Mcf per day; (3) to sell Raton Natural Gas Company (Raton) a firm volume of 2,100 Mcf of gas per day; and (4) to sell to Kansas-Nebraska Natural Gas Company, Inc. (Kansas-Nebraska), at a point near the intersection of the Colorado-Wyoming-Nebraska border, a firm volume of 20,000 Mcf of gas per day. It also proposes to construct and operate a 275-mile pipeline to sell to Cities Service Gas Company at a point near Blackwell, Oklahoma, a volume of 100,000 Mcf of gas per day during 1964 and 1965 and a volume of 200,000 Mcf of gas per day from and after January 1, 1966. The estimated cost of the proposed facilities is $48,020,370. Colorado Interstate also seeks authorization

to retire the major portion of its existing Bivins-Denver transmission line constructed in 1927 and 1928, together with certain other related facilities.

Colorado Interstate requests that the application be considered and disposed of in two phases.

In Phase One, in order to render adequate service to Kansas-Nebraska, Raton, and CF&I, and to meet additional 1963–1964 peak day requirements in the Rocky Mountain area, Colorado Interstate proposes to construct and operate 7.1 miles of 20-inch pipeline between its Bivins and Fourway Compressor Stations in the Panhandle Field of Texas; 130.4 miles of 24-inch pipeline through the Arkansas Valley from the Morton Junction to Pueblo, all in the State of Colorado; 49.5 miles of 20-inch pipeline from Pueblo to North Colorado Springs, Colorado; 40.1 miles of 12¾-inch pipeline from the Cheyenne Meter Station in Weld County, Colorado, to a point of connection with Kansas-Nebraska's proposed facilities near the Wyoming-Nebraska state line; various sales meter stations and other miscellaneous transmission facilities.

Upon commencement of operation of the Phase One facilities, Colorado Interstate plans to retire approximately 166.6 miles of its Bivins-Denver transmission line together with certain related lateral facilities and compressor stations. Service to all present customers will be continued through the new facilities.

Colorado Interstate proposes to serve Kansas-Nebraska under its Rate Schedules P–2 and IS–2, which would represent a change in Tariff, and would require a filing pursuant to Section 154.63 of the Commission's Regulations under the Natural Gas Act.

On June 10, 1963, Kansas-Nebraska filed in Docket No. CP63–340 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of approximately 59 miles of 12-inch pipeline in order to receive the volumes of gas from Colorado Interstate and to acquire, convert, develop, and operate as a gas storage field the Third Dakota Formation of the Huntsman Field, Cheyenne County, Nebraska, all as more fully set forth in the application.

Kansas-Nebraska is presently purchasing and selling in intrastate commerce gas produced from the Third Dakota Formation in the Huntsman Field. The application indicates that in order to convert said formation into a storage reservoir for storage of natural gas being transported in interstate commerce including gas to be purchased from Colorado Interstate, it will be necessary for Kansas-Nebraska to purchase in place the remaining gas (cushion gas) and any liquids contained therein together with the production, gathering, and plant facilities presently being operated in connection with the production of said gas. Under Kansas-Nebraska's proposed plan for storage, the remaining recoverable gas will stay in the formation as a part of the cushion gas, although Kansas-Nebraska plans to recycle said gas to recover any products contained therein. Kansas-Nebraska plans to rework existing producing and plugged wells as required to insure against migration from the Third Dakota Formation to other porous zones and to drill additional wells as required by the storage project.

It is proposed to modify the gathering system by the addition of 3,000 feet of 12¾-inch pipe, 3,500 feet of 10¾-inch pipe and 5,000 feet of 6⅝-inch pipe and to install a compressor station of approximately 2,000 horsepower which will be used for the purposes of delivering gas purchased from Colorado Interstate into Kansas-Nebraska's main transmission facilities and injecting gas from Colorado Interstate or Kansas-Nebraska's other sources of supply into storage. The estimated cost of the proposed project is $4,185,893.

On November 27, 1961, Raton Natural Gas Company filed in Docket No. CP62–131 an application pursuant to Section 7(a) of the Natural Gas Act for

an order of the Commission directing Colorado Interstate to establish physical connection of its transmission facilities at a point near Trinidad, Colorado, with facilities to be constructed by Raton and to sell and deliver to Raton natural gas for resale and distribution in the City of Raton, New Mexico. In the same application Raton seeks a certificate authorizing the construction and operation of approximately 20.5 miles of 6-inch transmission line which, together with the construction of a distribution system in the City of Raton, will involve an initial capital investment of approximately $826,750.

Raton has received a franchise for the proposed distribution system from the City of Raton and has received a certificate of public convenience and necessity from the New Mexico Public Service Commission authorizing the sale and distribution of natural gas in the City of Raton.

The estimated annual and peak day natural gas requirements for the City of Raton for the third year of operation of the proposed distribution system are 248,648 Mcf and 2,614 Mcf at 14.73 psia, respectively.

Colorado Interstate has proposed in its application in Docket No. CP63-344 (Phase One) to serve the City of Raton. Therefore, the application of Raton Natural Gas Company will be dismissed as moot insofar as it requests an order of the Commission pursuant to Section 7(a) of the Natural Gas Act.

Pursuant to due notice, a public hearing was held in Washington, D.C., on July 16, 1963, respecting the matters involved in and the issues presented by the applications in Docket Nos. CP63-344 (Phase One), CP63-340, and CP62-131. No protests to the granting of these applications have been received. However, on July 11, 1963, Transwestern Pipeline Company filed a petition to intervene and stated that while it does not oppose additional capacity for the Rocky Mountain area, there are issues of cost allocation, gas supply, markets, abandonment of existing facilities, and design of new facilities which will directly affect Transwestern as a competitor for the sales to Cities Service Gas Company with relation to Phase Two of the application filed in Docket No. CP63-344.

In short, Transwestern's intervention in Phase One is predicated on the assumption that the Phase One facilities are interdependent with CIG's proposed Phase Two facilities and CIG's ability to make its competitive proposal for a sale to Cities Service Gas Company at Blackwell, Oklahoma.

On July 12, 1963, Colorado Interstate filed an answer to Transwestern's petition to intervene in which it asserts that no aspects of pipeline design and no part of the sales and facilities involved in Phase One are affected in any manner by CIG's proposal in Phase Two. Colorado maintains that all of the rights and interest which Transwestern asserts would be adequately protected by its intervention in Phase Two. On July 15, 1963, Transwestern withdrew its opposition to an abridged hearing insofar as it pertains to the issues presented by Phase One but specifically reserved the right by stipulation with Colorado to explore the aforementioned issues in the Phase Two proceedings.

The following petitions to intervene in support of Phase One (CP63-344) were filed on the dates indicated below:

Pueblo Gas and Fuel Company	July 5, 1963
Public Service Company of Colorado	July 5, 1963
Colorado-Wyoming Gas Company	July 5, 1963
City and County of Denver (Supplement to petition)	July 8, 1963
	July 11, 1963
City of Colorado Springs	July 8, 1963
City of Trinidad (Supplement to petition)	July 10, 1963
	July 11, 1963
Public Utilities Commission of Colorado	July 11, 1963

The Gas Service Company	July 12, 1963
Greeley Gas Company	July 12, 1963
Natural Gas Pipeline Company of America	July 12, 1963
Cities Service Gas Company	July 12, 1963

The Citizens Utilities Company by its intervention dated July 12, 1963, seeks a supply of gas for the City of Walsenburg, Colorado. Citizens Utilities seeks an order directing Colorado Interstate to furnish a specified supply of natural gas to Citizens together with appropriate construction by Colorado Interstate of the lateral facilities necessary to deliver said supply of gas to the city gate. Citizens interest in Phase One is predicated on its request that any certificate issued in that proceeding be conditioned upon the supply by Colorado Interstate to Citizens of a volume of natural gas sufficient to meet the third year estimated requirements of the City of Walsenburg.

Section 1.8 of the Commission's Rules of Practice and Procedure provides that where the purpose of the proposed intervention is to obtain an allocation of natural gas for sale and distribution by a person or municipality engaged or legally authorized to engage in the local distribution of natural gas to the public, the petition shall comply with the requirements of Part 156 (i.e., Regulations under the Natural Gas Act). It appears that the petition to intervene of Citizens Utilities fails to comply with the above requirement of the Commission's Rules and Regulations, in that essential exhibits specified in Part 156 of the Regulations are lacking, and consequently the petition of Citizens Utilities to intervene should be rejected.

Staff Counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c) (1) of the Commission's Rules of Practice and Procedure. Therefore, no further action need be taken on the petitions to intervene or notices of intervention.

The Commission finds:

(1) Applicant, Colorado Interstate Gas Company, a Delaware corporation having its principal place of business in Colorado Springs, Colorado, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of June 5, 1945, in Docket No. G–294 (4 FPC 936).

(2) Applicant, Kansas-Nebraska Natural Gas Company, Inc., a Kansas corporation having its principal place of business in Phillipsburg, Kansas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G–259 (3 FPC 966).

(3) Applicant, Raton Natural Gas Company, a New Mexico corporation having its principal place of business in Raton, New Mexico, will be engaged in the transportation and sale of natural gas in interstate commerce for resale for ultimate public consumption and upon commencement of service will be a "natural-gas company" within the meaning of the Natural Gas Act.

(4) The facilities hereinbefore described, as more fully described in the applications in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction, operation, and acquisition thereof by Applicants and the sale of natural gas by Colorado Interstate are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(6) The construction, operation, and acquisition of facilities by Applicants and the sale of natural gas as proposed by Colorado are required by the public convenience and necessity, and certificates therefor should be issued as hereinafter ordered and conditioned.

(7) Public convenience and necessity require that the certificates issued hereinafter and the rights granted thereunder be conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), (d) (Docket No. CP63–340 only), and (e) of Section 157.20 of such Regulations.

(8) The facilities proposed to be abandoned as hereinbefore described, all as more fully described in the application in Docket No. CP63–344 (Phase One), are subject to the jurisdiction of the Commission, and the abandonment of said facilities by Colorado Interstate Gas Company is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(9) The abandonment by Applicant in Docket No. CP63–344 (Phase One) is permitted by the public convenience and necessity and should be approved as hereinafter ordered and conditioned.

(10) The application filed by Raton Natural Gas Company in Docket No. CP62–131 should be dismissed as moot insofar as it requests an order of the Commission pursuant to Section 7(a) of the Natural Gas Act.

(11) The petition to intervene of the Citizens Utilities Company fails to comply with the requirements of Section 1.8(c) of the Commission's Rules of Practice and Procedure which sets forth the requirements which must be complied by an intervener seeking to obtain an allocation of natural gas.

(12) A request during the public hearing by staff counsel for omission of the intermediate decision and procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Certificates of public convenience and necessity be and the same are hereby issued authorizing Applicants to construct, operate and acquire the facilities and to sell natural gas as hereinbefore described, all as more fully described in the applications herein, upon the terms and conditions of this order.

(B) The certificates issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), (d) (Docket No. CP63–340 only), and (e) of Section 157.20 of such Regulations.

(C) The construction and acquisition authorized by paragraph (A) above shall be completed and the facilities placed in actual operation, as required by Section 157.20(b) of the Commission's Regulations under the Natural Gas Act, within 6 months from the date on which this order is issued.

(D) Permission for and approval of the abandonment of facilities by Colorado Interstate Gas Company as hereinbefore described, all as more fully described in the application in Docket No. CP63–344 (Phase One), be and the same are hereby granted.

(E) Colorado Interstate Gas Company shall advise the Commission of the date of the abandonment authorized in paragraph (D) above with 10 days of the date thereof.

(F) In Docket No. CP63–340 the maximum top storage pressure of 568 psia at the wellhead (shut-in) shall not be exceeded without further authorization from the Commission.

(G) Kansas-Nebraska shall submit to the Commission semi-annual reports on the proposed storage project, coinciding with the termination of two injection and withdrawal cycles, containing the following information:

(1) The total volume of gas in the reservoir.

(2) The volumes of gas injected or withdrawn by months.

(3) The maximum daily injection and withdrawal volumes experienced during the reporting interval.

(4) The suit-in wellhead pressure for each well.

(5) The top storage pressure (wellhead and reservoir experienced during the reporting interval.

(6) Structure maps of the reservoir (when revised).

(7) Subsea elevation of the water table in each well.

(8) A brief discussion of current operations with specific mention given to water production or flooding.

(H) The grant of the certificate herein to Colorado Interstate with respect to its sale to Kansas-Nebraska shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or of Part 154 of the Commission's Regulations under the Natural Gas Act, requiring the filing of rate schedules for the service herein authorized, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted against Colorado Interstate.

(I) The petition to intervene of the Citizens Utilities Company be and the same is hereby rejected for the reasons sets forth above.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

THE FO CORPORATION, DOCKET NO. RI62-214[1]

ORDER ACCEPTING NOTICE OF RATE DECREASE FOR FILING AND TERMINATING PROCEEDING IN PART

(Issued July 19, 1963)

The above-designated rate suspension proceeding relates to the jurisdictional sale of natural gas by the FO Corporation (FO) under its FPC Gas Rate Schedule No. 1 to Texas Gas Transmission Corporation (Texas Gas) from the North Elton Field, Allen Parish, Louisiana (South Louisiana).

The increased rate involved here was suspended because FO's interpretation of the tax reimbursement provision contained in the related gas sales contract was questionable. The increased rate became effective subject to refund on January 2, 1962.

Singer-Fleischaker Oil Company (Singer) succeeded to the interests of FO effective as of March 1, 1963. By letter order of May 1, 1963, in Docket No. CI63-1217, Singer was granted temporary authorization to continue the sale formerly made by FO, and FO's FPC Gas Rate Schedule No. 1 was redesignated as Singer's FPC Gas Rate Schedule No. 1.

On June 10, 1963, Singer tendered for filing a notice of change in its aforementioned rate schedule proposing a decrease in rate from 12.6714¢ to 12.5464¢ per Mcf which would eliminate the questionable tax reimbursement portion of the proposed rate tendered by FO. Singer requests that the decreased rate be

[1] Consolidated with the *Area Rate Proceeding, et al.*, Docket No. AR61-2, *et al.*, by order issued May 15, 1962, 27 FPC 952.

made effective as of March 1, 1963, the date Singer succeeded to FO's interests.[2]

Under these circumstances, this proceeding should be terminated insofar as it relates to Singer. However, sinces FO had been collecting the questionable tax reimbursement amount subject to refund prior to March 1, 1963, the proceeding should remain in full force and effect as to FO.

The Commission finds:

(1) The notice of change in rate tendered for filing by Singer on June 10, 1963, designated as Supplement No. 11 to Singer's FPC Gas Rate Schedule No. 1, should be accepted for filing, effective as of March 1, 1963.

(2) The proceeding in Docket No. RI62–214, insofar as it relates to Singer should be terminated, but should remain in full force and effect insofar as it relates to FO.

The Commission orders:

(A) The notice of change in rate tendered for filing by Singer on June 10, 1963, designated as Supplement No. 11 to Singer's FPC Gas Rate Schedule No. 1, is hereby accepted for filing, effective as of March 1, 1963.

(B) The proceeding in Docket No. RI62–214, insofar as it relates to Singer, is hereby terminated, but in all other respects it shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

YADKIN, INC., PROJECT NO. 2197

ORDER WAIVING PENALTY FOR DELINQUENCY IN PAYMENT OF ANNUAL CHARGES

(Issued July 19, 1963)

On January 28, 1963, a statement of the annual charges for the calendar year 1962 under the license for Project No. 2197 was mailed to Yadkin, Inc., licensee for the project. It was noted on the statement that the charges should be paid "within 30 days of rendition of a bill therefor."

The Licensee's check for such charges, in the amount billed was mailed on March 1, 1963. Thus, under the Commission Regulations a penalty attached by virtue of the one-day delay in payment.

By letter dated March 19, 1963, the licensee requested a waiver of the penalty, stating that although the person responsible for approving payment had noted the statement for special treatment and early payment, through an oversight, the license payment was not recognized by the personnel who prepare the checks as requiring special treatment and was treated in the routine manner.

Our records show that the licensee had made timely payment in prior years.

The Commission finds:

In the circumstances, it will not be inconsistent with the public interest to waive the penalty which attached by reason of the licensee's delay in payment of the annual charges.

The Commission orders:

The above-mentioned penalty by reason of the delay of the licensee in the payment of the annual charges under the license for Project No. 2197 for the calendar year 1962 is hereby waived.

---

[2] No refunds are required, since Singer has not collected any monies relating to the questionable reimbursement.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

AMERICAN LOUISIANA PIPE LINE COMPANY, DOCKET NO. G-2306;
MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. G-2327;
AMERICAN LOUISIANA PIPE LINE COMPANY, DOCKET NO. G-10396;
PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. G-11061;
TRUNKLINE GAS COMPANY, DOCKET NO. CP60-22 (PHASE TWO);
PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP60-40;
PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP60-60;
PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP61-36;
PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP61-136

ORDER DENYING MOTION TO REOPEN PROCEEDINGS

(Issued July 22, 1963)

On June 12, 1963, Central Illinois Public Service Company (CIPSCO) filed a motion that the Commission reopen the above-captioned proceedings. Objection to the motion was filed by the Village of Milford, Illinois (Milford) on June 20, 1963.

This motion concerns proceedings which are now pending before us for final decision. CIPSCO points out that since the close of the hearings in this proceeding it has obtained an Order and Certificate of Public Convenience and Necessity from the Illinois Commerce Commission authorizing the construction, operation and maintenance of a gas transmission and distribution system in the Village of Milford.[1] It therefore requests that the Commission reopen these proceedings for the purpose of receiving evidence with respect to the filing of its application with the Illinois Commerce Commission, the issuance of the Order and Certificate and an increase in the supply of natural gas to CIPSCO.[2]

Milford opposes the reopening of the proceedings on the grounds that: (1) the allowance of the motion would cause additional delay in the determination of this matter; (2) the evidence sought to be adduced is immaterial to the decision; (3) the motion is premature.[3]

The issues about which the parties hereto are concerned were heard upon a very extensive record. The presiding examiner's initial decision was issued on January 22, 1963, and the matter is presently before us for decision. The proffered material is not a part of the record now before us. At such time as the Commission does determine the issues involved in the proceedings it will rely upon the evidence of record. We cannot assume, until such time as a decision on the merits is made, that the proposed documents, attached to the filings by both CIPSCO and Milford, are material to the decision. Evidence has been entered into the record upon which the examiner based his decision; exceptions thereto were taken. Our decision will be based upon that record; at such time as our decision is issued, the parties may renew their request to adduce new evidence, if necessary and material. Until it is shown that the proffered new additions of

[1] The Order and Certificate of Public Convenience and Necessity was attached as an Appendix to CIPSCO's motion.

[2] CIPSCO noted that pursuant to order of this Commission in *Panhandle Eastern Pipe Line Company and Trunkline Gas Company*, Docket No. CP63-123, issued April 23, 1963, 29 FPC 824, additional gas had been made available to CIPSCO for service for Hoopeston, Illinois, from which a supply would be available to Milford.

[3] In addition, Milford noted that it was seeking to appeal the order of the Illinois Commerce Commission. A copy of its "Complaint for Injunction and Other Relief" was attached to its objections.

evidence are material to the ultimate decision of the Commission, it would appear that the motion is premature.

The Commission orders:

The motion by Central Illinois Public Service Company that the Commission reopen these proceedings is hereby denied.

Before Commissioners: Charles R. Ross, Acting Chairman; Howard Morgan and L. J. O'Connor, Jr.

ARKANSAS LOUISIANA GAS COMPANY, DOCKET NO. CP61-311

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND ACCEPTING RATE FILING

(Issued July 22, 1963)

On May 6, 1963, Arkansas Louisiana Gas Company (Applicant) filed in Docket No. CP61-311 an application to amend further the Commission's order, issued November 21, 1961, 26 FPC 749, as amended, in said docket to extend until July 22, 1964, the term of sale of natural gas to Texas Eastern Transmission Corporation (Texas Eastern) authorized by said order, as amended, all as more fully set forth in the application to amend.

The subject order, among other things, authorized Applicant to sell a maximum annual volume of 8,125,000 Mcf (14.65 psia) of natural gas to Texas Eastern for a period of one year from the date of initial delivery, which date was July 22, 1961. By subsequent order, the authorization was extended for one year to July 22, 1963. The purpose of the sale was to enable Applicant to dispose of a temporary over-supply of gas due to take-or-pay purchase obligations which exceed Applicant's system requirements for the immediate future.

The subject application indicates that the short-term over-supply still maintains and that an extension of the subject sale would be mutually beneficial to both Applicant and Texas Eastern.

On May 6, 1963, Applicant tendered for filing its proposed Second Revised Sheet No. 263 to its FPC Gas Rate Schedule XFS-19, providing for the herein proposed extension.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on June 19, 1963, (28 F.R. 6307). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order, issued November 21, 1961, as amended, in Docket No. CP61-311 be further amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order, issued November 21, 1961, in Docket No. CP61-311 be and the same is hereby amended to extend to July 22, 1964, the term of the sale of natural gas by Applicant to Texas Eastern authorized by said order. The maximum annual volume of natural gas sold during the extended term of July 22, 1963, to July 22, 1964, shall be 8,125,000 Mcf at 14.65 psia.

(B) In all other respects, said order, as amended, shall remain in full force and effect.

(C) Applicant's proposed Second Revised Sheet No. 263 to its FPC Gas Rate Schedule XFS–19 is hereby accepted for filing to become effective July 22, 1963.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

DAIRYLAND POWER COOPERATIVE, MINNKOTA POWER COOPERATIVE, INC., SOUTH CENTRAL RURAL ELECTRIC COOPERATIVE, INC., DOCKET NO. E–7113

ORDER TO SHOW CAUSE WHY RESPONDENTS SHOULD NOT BE REQUIRED TO COMPLY WITH REQUIREMENTS OF THE FEDERAL POWER ACT

(Issued July 22, 1963)*

This is an order directing Dairyland Power Cooperative, La Crosse, Wisconsin, Minnkota Power Cooperative, Inc., Grand Forks, North Dakota, and South Central Rural Electric Cooperative, Inc., Lancaster, Ohio, to show cause why they should not be required to comply with this Commission's reporting, accounting and rate schedule filing requirements by filing, variously, annual financial and statistical report forms, original cost statements, accounting entries and rate schedules for wholesale electric services. Each of the aforementioned cooperatives owns or operates facilities for the transmission or sale of electric energy at wholesale for resale which is generated in one state and consumed in another, and therefore may be a public utility within the meaning of the Federal Power Act, Section 201(e), and, for reasons set forth below, the proper administration of the Act and exercise of our jurisdiction, if any, over those cooperatives requires that:

(1) Dairyland file its original cost statement pursuant to the Commission's Uniform System of Accounts, Electric Plant Instruction No. 1, and Section 120.3 of the Commission's Regulations under the Federal Power Act, and its rate schedules for wholesale electric services to the customers as set forth in Appendix A [1] pursuant to Part 35 of the Commission's Regulations;

(2) Minnkota file its original cost statement and its rate schedules for wholesale electric services to the customers as set forth in Appendix B;[1] and

(3) South Central file its FPC Form No. 1, Annual Report, for 1962, pursuant to Section 141.1 of the Commission's Regulations under the Federal Power Act, its original cost statement, and its accounting entries recording the transfer of facilities among South Central, Ohio-Midland Light & Power Company and Columbus and Southern Ohio Electric Company, pursuant to the Commission's Uniform System of Accounts, Electric Plant Instruction No. 5, and Account 102.

Dairyland, Minnkota and South Central are organized under the laws of the States of Wisconsin, Minnesota and Ohio, respectively, as cooperative corporations. They are financed in part by loans from the Rural Electrification Administration. The contention that any such cooperative corporation is not properly classifiable as a public utility within the meaning of Section 201(e) of the Federal Power Act because it is incorporated as a cooperative has been raised in informal communications to the Commission in response to a finding in *Southwestern Power Administration*, Docket No. E–6975, 27 FPC 895, (1962) that Associated Electric Cooperative, Inc. and several other cooperatives are "public utilities." In our subsequent consideration of this matter we have had

*See order deferring further proceeding issued August 6, 1964, 32 FPC 529. Motion for preliminary injunction denied; motion for dismissal granted, *South Central Rural Electric Cooperative, Inc.* v. *Joseph C. Swidler*, 228 F. Supp. 875 (1963). See also, 228 F. Supp. 968.

[1] Currently Dairyland and Minnkota each have on file with this Commission pursuant to Section 205 of the Act a number of rate schedules for interstate wholesale electric services which each cooperative renders.

the assistance of an opinion of our General Counsel prepared at our request, as well as briefs submitted informally by the Office of General Counsel of the Department of Agriculture and by a Committee of Rural Electric Cooperatives. The Commission, to date, has not yet reached any consensus on these difficult matters.

We believe that the "public utility" status of REA cooperatives should be determined upon a record made in a proceeding in which all interested parties may participate. Accordingly, we are issuing this show cause order, in part, to determine the public utility status of the aforementioned cooperatives and others similarly situated. If those cooperatives are public utilities, the original cost statements, accounting entries and rate schedules (and the original cost statements, accounting entries and rate schedules of other cooperatives owning or operating jurisdictional facilities), are essential to the proper discharge of the Commission's rate-making and accounting responsibilities and will be required to be filed just as we normally secure such statements, entries and rate schedules from all persons who have been classified as public utilities.

Accordingly, the Commission under its authority contained in Sections 203, 205, 206, 208, 301, 304, 307, 308, 309 and 311 of the Federal Power Act and under the Commission's Rules of Practice and Procedure finds it necessary and appropriate for the purposes of that Act that a public hearing be held on this matter in the manner hereafter provided and the Commission directs the aforementioned cooperatives to show cause at that public hearing to be held on October 22, 1963, commencing at 10 a.m. (EDST) in a hearing room of the Federal Power Commission, 441 G Street, NW. Washington 25, D.C., why they should not be required to file, as "public utilities," the aforementioned report form, original cost statements, accounting entries and rate schedules.

The following schedule for the service of testimony, motions to strike prepared testimony, and answers to motions to strike prepared testimony, is ordered:

September 20, 1963	Service of direct testimony by all parties, including the Commission staff.
October 10, 1963	Service of rebuttal testimony by all parties, including the Commission staff.
October 16, 1963	Service of motions to strike testimony by all parties, including the Commission staff.
October 21, 1963	Service of answers to motions to strike by all parties, including the Commission staff.

Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the Commission's Rules of Practice and Procedure (18 C.F.R. 1.8 and 1.37) on or before August 16, 1963.

For the convenience of all parties, copies of the General Counsel's opinion and of the briefs filed by the Department of Agriculture and the Committee of Rural Electric Cooperatives will be made a part of the record in this proceeding and copies thereof are available for distribution at the offices of the Commission.

Commissioner Morgan *dissenting.*

APPENDIX A

Dairyland Power Cooperative

Lake Superior District Power Co.
Ashland, Wis.

Northwestern Wisconsin Electric Co.
Grantsburg, Wis.

City of Rochester, Minn.

City of Platteville, Wis.

Allamakee-Clayton Electric Cooperative, Inc.

APPENDIX A—Continued

DAIRYLAND POWER COOPERATIVE—Continued

Postville, Iowa
Barron County Electric Cooperative
Barron, Wis.
Buffalo Electric Cooperative
Alma, Wis.
Cedar Valley Electric Cooperative
St. Ansgar, Iowa
Chippewa Valley Electric Cooperative
Cornell, Wis.
Clark Electric Cooperative
Greenwood, Wis.
Crawford Electric Cooperative
Gays Mills, Wis.
Dunn County Electric Cooperative
Menomonie, Wis.
Richland Cooperative Electric Association
Richland Center, Wis.
Taylor County Electric Cooperative
Medford, Wis.
Tri-County Electric Cooperative
Rushford, Minn.
Winnebago Rural Electric Cooperative Association
Thompson, Iowa
Eau Claire Electric Cooperative
Eau Claire, Wis.
Freeborn-Mower Cooperative Light & Power Association
Albert Lea, Minn.
Grant Electric Cooperative
Lancaster, Wis.
Hawkeye Tri-County Cooperative
Cresco, Iowa
Jackson Electric Cooperative
Black River Falls, Wis.
Jo-Carroll Electric Cooperative, Inc.
Elizabeth, Ill.
Jump River Electric Cooperative, Inc.
Ladysmith, Wis.
Lafayette Electric Cooperative
Darlington, Wis.
Oakdale Cooperative Electric Association
Oakdale, Wis.
Peoples' Cooperative Power Association, Inc.
Rochester, Minn.
Pierce-Pepin Electric Cooperative
Ellsworth, Wis.
Polk-Burnett Electric Cooperative
Centuria, Wis.
St. Croix County Electric Cooperative
Baldwin, Wis.
Trempealeau Electric Cooperative
Arcadia, Wis.
Vernon Electric Cooperative
Westby, Wis.

APPENDIX B

MINNKOTA POWER COOPERATIVE, INC.

Baudette Village, Minn.
Cass County Electric Cooperative, Inc.
Kindred, N. Dak.
Nodak Rural Electric Cooperative, Inc.
Grand Forks, N. Dak.
Cheyenne Valley Electric Cooperative, Inc.
Finley, N. Dak.
Cheyenne Valley Electric Cooperative, Inc.
Langdon, N. Dak.
Red River Valley Cooperative Power Association
Halstad, Minn.
Red Lake Electric Cooperative, Inc.
Red Lake Falls, Minn.
Wild Rice Electric Cooperative, Inc.
Mahnomen, Minn.
P. K. M. Electric Cooperative, Inc.
Warren, Minn.
Beltrami Electric Cooperative, Inc.
Bemidji, Minn.
Clearwater-Polk Electric Cooperative
Bagley, Minn.
North Star Electric Cooperative, Inc.
Baudette, Minn.
Roseau Electric Cooperative, Inc.
Roseau, Minn.
United States Bureau of Reclamation
City of Grafton, N. Dak.
City of Halstad, Minn.
City of Thief River Falls, Minn.
City of Hope, N. Dak.
City of Sharon, N. Dak.

MORGAN, Commissioner, *dissenting:*

I dissent from the subject order for several reasons.

First, I dissent because I do not believe Congress intended that this Commission should attempt to use the power Congress provided in 1935 for the regulation of privately-financed electric companies to regulate the rural electric cooperative movement Congress established in 1936;

Second, I dissent because I do not believe this Commission should dissipate its limited staff and resources in an attempt to expand its jurisdiction when, by this Commission's own admission, limitations of staff and other resources already prevent it from solving problems in areas where it does have jurisdiction, require it to deny the substantive and procedural rights of parties appearing before it, and prevent it from setting just and reasonable rates:

Third, I dissent because I do not believe this Commission should attempt to regulate rural electric cooperatives absent a showing that abuses exist which require such regulation for the protection of the consuming public;

Fourth, I dissent because I do not wish to be associated with an attempt to expand the jurisdiction of a Federal agency merely for the sake of or the gratification to be obtained by expanding its jurisdiction;

Fifth, I dissent because I do not believe the non-profit endeavors of rural electric cooperatives to provide low-cost power in the sparsely settled regions of this country should be harassed and hampered by the cost of fending off the desire of this agency to expand its jurisdiction at their expense;

Sixth, I dissent because no law—other than Parkinson's—has ever contemplated this expansion of jurisdiction.

* * * * * * *

For more than the past year, a certain segment of this Commission has exhibited a peculiar preoccupation with the question of whether or not rural electric cooperatives could somehow be made subject to FPC jurisdiction. The provisions of Part II of the Federal Power Act, it is said, "* * * apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce";[1] some rural electric cooperatives may transmit or sell electric energy wholesale in interstate commerce; ergo, FPC should extend its jurisdiction over rural electric cooperatives. This was, and remains, the argument. That is all there is to it. It is very tidy. Its simple beauty is unadorned with reasons which might justify it. Why gild this legal lily?

Perhaps for that reason my repeated queries as to *why* this should be attempted have gone, and remain, unanswered. My repeated requests to be informed of the way or ways in which the rural electric cooperative movement of 1936 are frustrating the attainment of the low-cost power supply objective of the Federal Power Act of 1935 have been dismissed as beside the legal point. I do not think they are. But, neither do I think that the decision to embark upon a matter of this consequence should turn upon the interpretation of an unclear and purely legal point.

In any event, the failure of the Commission and its staff to demonstrate that the endeavors of rural electric cooperatives conflict with or otherwise prevent the attainment of the objective of the Federal Power Act has confirmed my previous belief that they do not. For this and for other reasons mentioned below, I therefore believe it is unnecessary for the Commission to engage in this costly legal expedition, and I totally disassociate myself from the majority's obdurate determination to do so.

* * * * * * *

[1] Section 201(b) of the Federal Power Act.

The question presented here is whether, even though rural electric cooperatives organized pursuant to the Rural Electrification Act of 1936 did not exist when Part II of the Federal Power Act was enacted in 1935, we should now interpret that Part of the Federal Power Act to apply to those cooperatives? The nature of the inquiry on which we embark is set forth well in a passage in Justice Cardozo's book, *The Nature of the Judicial Process:*

> [T]he difficulties of so-called interpretation arise when the legislature has had no meaning at all; when the question which is raised on the statute never occurred to it; when what the judges have to do is, not to determine what the legislature did mean on a point which was present to its mind, but to guess what it would have intended on a point not present to its mind, if the point had been present. [p. 15.]

Following this approach, as we must if we are to avoid arrogating to ourselves the functions of Congress to legislate in the first instance on matters of substance, we must determine—

(a) the intended scope and purpose of Part II of the Federal Power Act of 1935;

(b) the nature and character of the rural electric cooperatives Congress provided for in 1936; and

(c) whether Congress would have made these cooperatives subject to Part II of the Federal Power Act, if the question had been presented to it in 1935—or in 1936, for that matter.

* * * * * * *

As introduced, the companion bills[2] that became the "Public Utility Act of 1935" provided, among other things, as follows: "Section 201(b) The provisions of this title [II] shall apply to the transmission and sale of electric energy in interstate commerce * * *"

Naturally, Congress wanted to know just what and whom would be covered by that language; it wanted "a picture of this operating industry." This was provided by one of the spokesmen for the Federal Power Commission. He said:

> There are at present approximately 3,500 electric utilities in the United States, of which 1,900 are municipal and 1,600 are private. The 1,900 municipal utilities produce between 4 and 5 percent, and the 1,600 private utilities produce between 95 and 96 percent of the total power produced.[3]

The municipal systems (or, more accurately, the power systems of any and all Governmental agencies or subdivisions) were not covered or were not meant to be covered by the bill, he continued, for the reasons that they were owned by Government and were not run for profit.

This was the total picture of the operating industry at that time. It was comprised of Government systems and private profit companies. The industry had no other segments. When the Government systems were eliminated, only the private companies remained. The privately-owned and financed segment of the industry was all the bill was aimed at. This was made clear time and time again in both the House and Senate hearings.

This picture and definition of the operating segment of the industry at which the bill was aimed squared with Congress' understanding. The reason why Congress had undertaken to legislate here was to remedy the abuses that had been perpetrated in the electric power field. These abuses had not been per-

[2] S. 1725 and H.R. 5423, amended and reported as (a "clean bill"), S. 2796, 74th Congress.

[3] Senate Commerce Committee hearings on S. 1725, at page 240. Identical expositions of the applicability and purpose of Title II of the bill were made by FPC witnesses in the House Commerce Committee hearing on H.R. 5423.

petrated by Governmental or non-profit systems: they had been perpetrated through and by means of privately-owned and financed electric power companies that controlled them. Congress itself had directed that those abuses be investigated; the abuses had been thoroughly studied for the preceding eight years; the studies had been reported to Congress; and Congress had undertaken to legislate on them.

The bases upon which and the reasons why Congress undertook its consideration of this legislation were set forth in the 83-volume, Federal Trade Commission study of the privately-owned and privately-financed electric utility industry, begun in 1928 at the request of Congress; the separate 4- and 6-volume summarizations and extensions thereof prepared for the House and Senate Commerce Committees; the Federal Power Commission's (interim) National Power Survey report called for by the President in 1933; the 1935 report of the National Power Policy Committee appointed by the President; and the President's March 1935 message to Congress on public utility holding companies. Legal minions of Government agencies and of privately-owned utilities have, for many years, searched through this massive literature and the later Congressional hearings and debates for an indication—any indication—that Congress was aiming at co-operatives. They have come up just as empty-handed as my colleagues of the majority.

The essence of the purpose, scope and intent of Title II of the Public Utility Holding Company Act, which is Part II of the Power Act, was explained at the outset of his testimony by the FPC spokesman before the Senate and House Commerce Committees:

> What I have to say of title I of the bill is simply this: I think you can illustrate a holding company, more or less, as a pasture fence that is built around groups of these utilities, here and yonder, scattered all over the country. Now, title I of the bill proposes to tear down that pasture fence and to turn the stock loose, that stock being the operating companies. * * * Title II provides that as you tear down this fence you shall place in the Federal Power Commission supervision over the integration of these operating companies into strong regional systems.[4]

In sum, the entire legislative foundation of Part II of the Federal Power Act, including the hearings thereon, make it unmistakeably clear that the abuses in the electric power field which that legislation sought to correct were perpetrated solely and exclusively by the privately-owned and financed segment of the industry; that these abuses were the sole reason why Congress undertook to enact the legislation in question; that in enacting that legislaion Congress expressly excluded all other known segments of the industry from its aim; and that by the language it used in Section 201 of the Federal Power Act, Congress intended to regulate only the privately-owned and financed or the profit segment of the electric power industy when it enacted Part II of the Federal Power Act in 1935.

* * * * * * *

Throughout the 1935 House and Senate hearings (totalling 3500 pages) on the bill that became the Public Utility Holding Act, only one reference was made to the Federal Government's rural electrification program. This reference was made on April 11, 1935 during the (earlier) House hearings by a Congressman in an attempt "to find out if both [municipal and privately-financed systems] are going to be treated inpartially and alike and the Government will not be engaging in competition with private industry in carrying out its rural electrification program."[5] The discussion that followed shows that Com-

[4] Senate Commerce Committee hearings on S. 1725, at p. 238.
[5] House Commerce Committee hearings on H.R. 5423, at p. 2163.

mittee members and the witness had only confused ideas about that program, which then was in a very inchoate form; and the discussion sheds no light on the question considered here.

The Rural Electrification Administration and Program was established by Executive Order No. 7037 of May 11, 1935 (promulgated under the Emergency Relief Appropriation Act of April 8, 1935). Subsequently, and until March 13, 1936, the REA entered into contracts for 27 rural electrification projects, including contracts with a few privately-owned profit-making companies.[6]

On January 6, 1936, the Chairmen of the Senate and the House Commerce Committees introduced companion bills to give the REA a separate, statutory foundation. The Senate passed the measure (S. 3483) on March 9, 1936, without hearings, in a form that provided for loans to Governmental units and to non-profit cooperatives only, and not to private, profit-making companies. During the accompanying discussion, it was explained that the Administration and the sponsors of the bill had excluded private profit companies because experience had shown that *non-profit* agencies were the preferred instrumentalities for achieving the purposes sought by the rural electrification program, and that private, profit-making companies were not.[7] This point was expanded upon during the brief hearings that were held in the House[8] and during House consideration of the measure. As passed by the House, however, and as enacted, S. 3483 provided that REA could make loans to private, profit-making companies, but that it had to give loan preference to *non-profit* Governmental agencies and to cooperatives.[9]

In sum, and in marked contrast to the legislative history of Part II of the Federal Power Act, the entire legislative history of the Rural Electrification Act shows that Congress there undertook to assist or bring into being a series of non-profit Governmental and cooperative agencies for the purpose of electrifying rural areas, and that these agencies were essentially different from the private, profit-making companies for which Congress in the preceding year had created a separate and exclusive regulatory pattern.

In general, by the Rural Electrification Act of 1936, Congress established a program whereby specially created cooperatives, exempt from Federal taxes, could borrow money at low interest rates from the Federal Treasury with no collateral, for the construction of facilities for the distribution and sale on a non-profit basis, of power purchased when available at reasonable rates from electric generating plants, in the remote or rural areas of the country which private profit companies had failed or declined to serve.

Naturally, Congress assumed that to carry out this objective, cooperatives located almost exactly on the border between two states (such as the Dairyland and Minnkota cooperatives named in the subject order) would engage in interstate commerce in the course of electrifying or supplying the immediately contiguous rural area in the adjoining state. And naturally, Congress assumed that in purchasing its power supply from a private company, a cooperative (such as the South Central cooperative named in the subject order) might buy from a private profit company subject to regulation under Part II of the Federal Power Act. But there is no evidence that Congress intended that non-profit rural electric cooperatives which found themselves in such positions were to be subject to regulation under Part II of the Federal Power Act.

That Act (enacted in the previous year) is silent on the subject. We must assume that Congress knew this. If Congress, in setting up a new program for

[6] House Commerce Committee hearings of March 12–14, 1936, on S. 3483 in the 74th Congress (the bill that became the Rural Electrification Act of 1936), at pp. 67–68.

[7] 80 Cong. Rec. at 2754–55, 2826–27.

[8] At footnote 6.

[9] 80 Cong. Rec. at 7247–48, 7362.

a new method of rural electrification, intended their new program to be covered by their legislation of 1935, they could have said so in 1936 either by amending the previous Act (The Federal Power Act) or by specific provision in the REA Act. They did neither. They did not even discuss doing either.

In general, by enacting Part II of the Federal Power Act in 1935 Congress established a comprehensive regulatory pattern, tailored, refined, and amended to prevent a recurrence of the abuses perpetrated in the electric power field by and through privately-owned profit-making companies; and to meet problems indigenous to private electric profit companies alone. This is shown unequivocally by the legislative history of that Act; as well as by a mere reading of the sectional headings and the provisions of Part II of that Act.

In conclusion, therefore, it is plain to me that, in addition to the reasons mentioned in the attached briefs of the Department of Agriculture and the Committee of Rural Electric Cooperatives, the language of Section 201(b) of the Federal Power Act (which provides that "the provisions of this Part shall apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce") is not to be literally interpreted to include rural electric cooperatives organized and financed pursuant to the Rural Electrification Act of 1936, because—

(a) the legislative history of Part II of the Federal Power Act shows that Congress intended that Act to apply only to privately owned profit-making electric power companies; and

(b) because the legislative history of Part II of the Federal Power Act of 1935 and of the Rural Electrification Act of 1936; the intent of Congress in enacting Part II of the Federal Power Act; and the past operations and practices of nonprofit rural electric cooperatives show, together and separately, that if the question of making nonprofit rural electric cooperatives subject to Part II of the Federal Power Act had been presented to Congress when it had that measure under consideration in 1935, Congress would have made these nonprofit cooperatives exempt from the regulatory scheme it enacted for privately owned, profit-making companies, exactly as it made all the then-existing nonprofit electric agencies exempt; and

(c) because Congress specifically refrained, when it enacted the REA statute in the following year, from conferring jurisdiction over REA cooperatives on any Federal agency other than the Rural Electrification Administration.

I am not alone in this opinion. It is stoutly held by many others more learned in these technical matters than I. The majority order states that the Commission itself "* * * has not reached any consensus of these difficult matters." Accordingly, I do not feel that this Commission should attempt, by a show cause proceeding, to force the owner-customers of the rural electric systems of this land to shoulder the full burden of proving or disproving the alternative propositions that they are or are not subject to the jurisdiction of this Agency. This Commission may initiate show cause proceedings against parties clearly subject to its full jurisdictional powers, but I do not believe this Commission should employ this harsh technique on the parties here, over whom the Commission itself cannot even agree whether it has jurisdiction.

If the majority of this Commission which is so peculiarly preoccupied with this question really feels that the role played by the rural electric cooperatives of this country requires additional attention, then, rather than lurching into this important policy matter in the anomalous manner described, that majority should follow the procedure which the Act has prescribed for treating questions of this nature, as follows—

> Sec. 307(a). The Commission may investigate any facts, conditions, practices, or matters which it may find necessary or proper in order to determine

whether any person has violated or is about to violate any provision of this Act or any rule, regulation, or order thereunder, or to aid in the enforcement of the provisions of this Act or in prescribing rules or regulations thereunder, or in obtaining information to serve as a basis for recommending further legislation concerning the matters to which this Act relates * * * [and]

Sec. 311. In order to secure information necessary or appropriate as a basis for recommending legislation, the Commission is authorized and directed to conduct investigations regarding the generation, transmission, distribution, and sale of electric energy, however produced, throughout the United States and its possessions, whether or not otherwise subject to the jurisdiction of the Commission, * * * The Commission shall report to Congress the results of investigations made under authority of this section.

If the majority will follow that procedure, it will get a clear and unmistakable set of directions from the Congress regarding this matter, and in very short order!

I am perfectly willing for this Commission, with my active participation and support, to proceed with the regulation of any electric agency, whether publicly or privately owned and financed, provided only that theretofore:

(a) the regulation of such agency has been found genuinely necessary for the protection of the public interest; and

(b) the necessity for that regulation has been spelled out clearly and convincingly and has been transmitted to the Congress for its consideration; and

(c) the Congress has issued a clear and unmistakable directive to the Commission to proceed with such regulation.

I am convinced that those conditions do not exist here. And I am equally convinced that an attempt to proceed, as the majority does, in the absence of those conditions is a wrongful attempt to arrogate to this Commission jurisdiction and powers not conferred upon it by the Congress.

The plain fact is that this Commission never asked Congress to confer this particular jurisdiction on it; Congress never even discussed this particular grant of jurisdiction at the time our enabling legislation was enacted, and nowhere in any law—again excepting Parkinson's—is this particular expansion of jurisdiction even so much as hinted at.

Before Commissioners: Charles R. Ross, Acting Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

LAKE SHORE PIPE LINE COMPANY, DOCKET NO. CP63-243

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 22, 1963)

On February 27, 1963, as modified by letter of April 4, 1963, Lake Shore Pipe Line Company (Applicant) filed in Docket No. CP63-243 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the 12-month period following the date of certification and the operation of lateral and field facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application, as modified.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its

pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

The total cost of the facilities proposed hereunder will not exceed a maximum of $100,000, with no single project to exceed a cost of $25,000.

Pursuant to due notice, a public hearing was held in Washington, D.C., on July 11, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30 (c) (1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Lake Shore Pipe Line Company, an Ohio corporation having its principal place of business in Cleveland, Ohio, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order accompanying Opinion No. 205 issued February 15, 1951, in Docket No. G–1210, *et al.* (10 FPC 22, 32.)

(2) The facilities hereinbefore described, as more fully described in the application, as amended, in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit, pursuant to Section 2.58 (c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization granted hereinafter, a statement showing by projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects constructed pursuant to the authorization hereinafter granted, (d) the location of said project or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing, metering, and appurtenant facilities, and (f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate authorizations.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Sections 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the 12-month period commencing on the date of issuance of this order and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $100,000, with no single project to exceed a cost of $25,000.

(8) A request during the public hearing by staff counsel or omission of the intermediate decision procedure herein was unopposed by any party of record

and, not having been denied by the Commission, is granted pursuant to Section 1.30 (c) (1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Lake Shore Pipe Line Company, to construct during the 12-month period commencing on the date of issuance of this order, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit pursuant to Section 2.58(c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization herein granted, a statement showing by projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects that have been constructed pursuant to the authorization herein granted, (d) the location of said project or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing, metering and appurtenant facilities, and (f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate authorizations.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the 12-month period commencing on the date of issuance of this order, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $100,000, with no single project to exceed a cost of $25,000.

Before Commissioners: Charles R. Ross, Acting Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

MICHIGAN GAS STORAGE COMPANY, DOCKET NOS. CP63-217, CP63-237; PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP63-259

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 22, 1963)

On January 31, 1963, and on February 25, 1963, Michigan Gas Storage Company (Michigan) filed respectively in Docket Nos. CP63-217 and CP63-237 applications pursuant to Section 7(c) of the Natural Gas Act for certificates of public convenience and necessity seeking, collectively, authorization to establish three new delivery points; sell and deliver natural gas to a local distributor; transport natural gas for the account of a distributor; establish a new interchange or a delivery point; and construct and operate certain metering and regulating facilities, additional horsepower compressor capacity, and a length of new pipeline. On March 18, 1963, Panhandle Eastern Pipe Line Company (Panhandle) filed in Docket No. CP63-259 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity seeking

authorization for the construction and operation of two delivery taps and a certain interchange. The authorizations sought by both Applicants are more fully set forth in the applications on file with the Commission, and open to public inspection.

Michigan proposes specifically in Docket No. CP63–217 to (1) establish three new delivery points for the delivery of natural gas to the Consumers Power Company (Consumers), (2) construct and operate the necessary metering and regulating facilities at the proposed new delivery points, (3) deliver gas to Consumers at two existing delivery points for three new communities to be served by Consumers, and (4) deliver gas to Consumers at any existing delivery point for service to new communities, provided such service does not require the construction of facilities by anyone other than Consumers and does not result in any increase in total annual or peak day deliveries of natural gas by Michigan to Consumers. The purpose of the proposed new delivery points is to permit Consumers to serve the Village of Climax and adjoining areas in the Township of Climax, Kalamazoo County, Michigan; to serve the community of New Hudson and adjoining areas, in the Township of Lyon, Oakland County, Michigan; and the areas surrounding Pleasant Lake in the Township of Freedom, Washtenaw County, Michigan. The delivery taps proposed for service to the Village of Climax and the community of New Hudson are to be constructed by Panhandle for which authorization is sought in Docket No. CP63–259. The proposed deliveries at the two existing delivery points will permit Consumers to serve the cities of Beaverton and Gladwin and adjoining areas, both located in Gladwin County, Michigan, and the community of Gregory and adjoining areas in Livingston County, Michigan. The total cost of the proposed facilities to be constructed in this docket is estimated to be $56,400 to be financed from funds on hand.

For the six communities to be served, the total estimated annual and peak day requirements are 297,724 Mcf and 1,892 Mcf of natural gas respectively, for the first year, and 340,029 Mcf and 2,174 Mcf of natural gas respectively, for the third year. The proposed natural gas deliveries to Consumers would not result in any increase on Michigan's present annual or peak day deliveries nor would it have any effect on Consumer's present customers since Michigan would adjust its pattern of deliveries at other delivery points on its system, and Consumers has adequate gas supplies available to it and sufficient operating flexibility on its system to offset the effect of the changes in Michigan's adjusted pattern of deliveries.

In Docket No. CP63–237, Michigan seeks authorization to construct and operate (1) an additional 1600 horsepower of compressor capacity by turbocharging four compressors in its Muskegon River Compressor Station in Clare County, Michigan, (2) a 26-inch pipeline approximately 40 miles in length extending easterly from Ovid Junction in Ovid Township, Clinton County, Michigan, to a proposed point of interchange (to be known as "Flint Junction") with the so-called "North Line" of Panhandle in Section 8 of Grand Blanc Township, Genesee County, Michigan, (3) establish a new interchange or delivery point with Panhandle at the eastern end of the proposed 26-inch pipeline at Flint Junction, and (4) use its facilities to transport natural gas for the account of Consumers. The increased compressor capacity and the 26-inch pipeline would enable Michigan to increase its 1963–64 peak day deliverability to Consumers from 558,500 Mcf to 598,500 Mcf of natural gas, increasing its system capacity by 40,000 Mcf and allowing it to meet its peak day requirement in serving Consumers. In addition, the new pipeline would provide greater flexibility in Michigan's existing transmission system.

Michigan would transport natural gas for the account of Consumers in order to reduce certain plant expenditures otherwise needed by Consumers to trans-

port and market natural gas it now produces in the Falmouth and Forward Fields located in Missaukee County, Michigan. Michigan would not be required to construct any new facilities for this transportation since the gas produced in the two above-mentioned fields, approximately 1,500 Mcf per day, would be transported to Michigan's gathering system in the Riverside Field by pipelines to be constructed by Consumers.

The total cost of turbocharging the four compressor units is estimated to be $275,000, while the estimated cost of the construction of the 26-inch pipeline is $4,406,000, both projects to be financed from bank loans and funds on hand.

Panhandle, in Docket No. CP63–259 requests authority to construct and operate (1) a delivery tap on its "West Line" for deliveries to Michigan in connection with service to the Village of Climax, (2) a delivery tap on its "North Line" for deliveries to Michigan in connection with service to the community of New Hudson, and (3) an interchange at Flint Junction, Michigan, between its "North Line" and the proposed 26-inch pipeline to be constructed by Michigan. This interchange will be used by both Panhandle and Michigan on an emergency basis and to provide flexibility on the two respective systems. No increase in present contract quantities for Michigan is involved in this application. Panhandle states that Michigan will purchase volumes of natural gas at the proposed points, within the existing quantities available to it pursuant to the gas sales contract presently on file with the Commission.

The estimated cost of the tap on Panhandle's "West Line" is $1,300, while the same cost is estimated in order to tap its "North Line". The interchange at Flint Junction is estimated to cost $3,900. The financing of these proposed facilities by Panhandle will be made through the use of funds on hand.

Pursuant to due notice, a public hearing was held in Washington, D.C., on July 10, 1963, respecting the matters involved in and the issues presented by the applications consolidated herein. No petition to intervene or protest to the granting of the applications have been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicants, Michigan Gas Storage Company, a Michigan corporation having its principal place of business in Jackson, Michigan, and Panhandle Eastern Pipe Line Company, a Delaware corporation having a principal place of business in Kansas City, Missouri, are both "natural-gas companies" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the applications in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sale of natural gas by Applicants are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and sale of natural gas by Applicant, Michigan Gas Storage Company, are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) The construction and operation of the proposed facilities by Applicant, Panhandle Eastern Pipe Line Company, are required by the public convenience

and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) The deliveries of natural gas, to consumers for resale to the communities, as described herein should be limited to the estimated third year annual and peak requirements of 340,029 Mcf and 2,174 Mcf respectively.

(7) Michigan should limit the transportation of natural gas authorized herein for the account of Consumers to 1,500 Mcf per day.

(8) Michigan should submit a statement of any adjustments made in its pattern of deliveries authorized herein, and in addition should submit a statement showing the total cost of its installed facilities within 90 days after completion thereof.

(9) Panhandle should submit a statement showing the total cost of its installed facilities within 90 days after their completion.

(10) Public convenience and necessity require that the certificate issued hereinafter regarding the authorization sought in Docket No. CP63–217 and the rights granted thereunder be conditioned upon Michigan's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), and (e) of Section 157.20 of such Regulations. In addition, public convenience and necessity require that the certificate issued hereinafter regarding the authorization sought in Docket No. CP63–237 and the rights granted thereunder be conditioned upon Michigan's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(3), and (e) of Section 157.20 of such Regulations.

(11) Public convenience and necessity require that the certificate issued hereinafter regarding the authorization sought in Docket No. CP63–259 and the rights granted thereunder be conditioned upon Panhandle's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(3), and (e) of Section 157.20 of such Regulations.

(12) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Michigan Gas Storage Company, to construct and operate the proposed facilities, and to sell and transport natural gas as hereinbefore described, and likewise authorizes Applicant, Panhandle Eastern Pipe Line Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the applications herein, upon the terms and conditions of this order.

(B) The authorization granted by this order for the delivery of natural gas to Consumers Power Company for resale to the Communities specified herein is limited to the estimated third year annual and peak day requirements of 340,029 Mcf and 2,174 Mcf respectively.

(C) Michigan Gas Storage Company shall limit the transportation of natural gas authorized herein for the account of Consumers Power Company to 1,500 Mcf per day.

(D) Michigan Gas Storage Company shall submit a statement of any adjustments made in its pattern of deliveries authorized herein, and in addition shall submit a statement showing the total cost of its installed facilities within 90 days after completion thereof.

(E) Panhandle Eastern Pipe Line Company shall submit a statement showing the total cost of its installed facilities within 90 days after their completion.

(F) The certificate issued by paragraph (A) above and the rights granted thereunder regarding the authorization sought in Docket No. CP63–217 are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), and (e) of Section 157.20 of such Regulations.

(G) The certificate issued by paragraph (A) above and the rights granted thereunder regarding the authorizations sought in Docket Nos. CP63–237 and CP63–259 are conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(3), and (e) of Section 157.20 of such Regulations.

(H) The facilities hereby authorized shall be constructed and placed in actual operation, and the sale and transportation of natural gas hereby authorized shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date on which this order issues.

Before Commissioners: Charles R. Ross, Acting Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP63–245

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 22, 1963)

On February 28, 1963, Panhandle Eastern Pipe Line Company (Applicant) filed in Docket No. CP63–245 an application which it supplemented on March 14, 1963, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas to Northern Indiana Fuel and Light Company, Inc. (Northern Indiana) for its resale for domestic and commercial uses in the Town of Monroeville, Indiana, and for authorization to construct line taps and metering facilities upon its line 100 and 200 to effectuate the sale of natural gas, all as more fully described in the application as supplemented.

The estimated third year peak day and annual requirements are 481 Mcf daily and 57,500 Mcf annually, which volumes Northern Indiana can supply under its presently authorized contract demand; it being a customer of Applicant under FPC Gas Rate Schedule G–1.

The estimated total cost of the proposed facilities is $16,000, to be financed from funds on hand.

Pursuant to due notice, a public hearing was held in Washington, D.C., on July 9, 1963, respecting the matters involved in and the issues presented by the application herein. No protest to the granting of the application or petition to intervene in opposition has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-

gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 17, 1945, in Docket No. G–254 (4 FPC 1081).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30 (c) (1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Panhandle Eastern Pipe Line Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

Before Commissioners: Charles R. Ross, Acting Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP63–246

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 22, 1963)

On March 1, 1963, Southern Natural Gas Company, filed in Docket No. CP63–246 an application pursuant to Section 7 (c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of several miles of pipeline and a measuring and receiving station, all as more fully set forth in the application.

Applicant seeks authority specifically to (1) construct and operate approximately 22.4 miles of 16-inch O.D. pipeline extending northwest from the western terminus of its Cranfield Field, Mississippi, supply line to a central point in the Lake St. John Field located in Concordia and Tensas Parishes, Louisiana, but

not including the river crossing; (2) construct and operate two 12¾-inch O.D. and one 10¾-inch O.D. pipeline, each approximately 8,000 feet in length, crossing the Mississippi River approximately 9 miles north of Natchez in Adams County, Mississippi, into Concordia Parish, Louisiana; and (3) construct and operate a measuring and receiving station located in the Lake St. John Field.

Applicant will purchase gas in the Lake St. John Field from the California Company, a Division of California Oil Company (Calco), pursuant to a contract dated October 10, 1958, which covers gas produced in the Lake St. Johns Fields as well as in the Cranfield Field. The latter field was connected in Applicant's pipeline system by a supply line constructed in 1959 pursuant to a certificate of public convenience and necessity issued in Docket No. G–14587 by the Commission in Opinion No. 325 (22 FPC 211).

Applicant desires to extend the Cranfield supply line to the Lake St. John Field during 1963 due to the fact that daily deliverability from the Cranfield Field has recently declined sharply, and Applicant will be able to replace the diminished deliverability with Calco's gas produced from the Lake St. John Field without increasing its minimum take obligations. Applicant is obligated by its contract of October 10, 1958, with Calco to proceed with such extension, having received notice from Calco that the specified contract volume of gas in the amount of 151,000 Mcf per day minimum deliverability from Lake St. John will be available on or about October 15, 1963.

The estimated cost of the project is $1,940,371 to be defrayed from cash on hand or to be available from current operations.

Pursuant to due notice, a public hearing was held in Washington, D.C., on July 10, 1963, respecting the matters involved in and the issues presented by the application herein. On April 22, 1963, Long Island Lighting Company filed a Petition For Leave To Intervene in opposition to the application, however, on May 2, 1963, it withdrew said petition, the withdrawal becoming effective pursuant to Section 1.11(d) of the Commission's Rules of Practice and Procedure. Likewise, on April 24, 1963, Philadelphia Electric Company filed a Petition For Leave To Intervene in opposition to the application, but withdrew such pleading on May 14, 1963, which has also become affective. The Pennsylvania Public Utility Commission filed a Notice of Intervention on April 25, 1963, as supplemented on May 28, 1963, stating that it has no objection to the implementation of the shortened procedure in this proceeding. It made no appearance at the hearing. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Southern Natural Gas Company, a Delaware corporation with its principal place of business in Birmingham, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30 (c) (1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Southern Natural Gas Company, to construct and operate the natural gas facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TAPOCO, INC., PROJECT NO. 2169

ORDER WAIVING PENALTY FOR DELINQUENCY IN PAYMENT OF ANNUAL CHARGES

(Issued July 22, 1963)

On January 28, 1963, a statement of the annual charges for the calendar year 1962 under the license for Project No. 2169 was mailed to Tapoco, Inc., licensee for the project. It was noted on the statement that the charges should be paid "within 30 days of rendition of a bill therefor."

The licensee's check for such charges, in the amount billed was mailed on March 1, 1963. Thus, under the Commission's Regulations, a penalty attached by virtue of the one day delay in payment.

By letter dated March 19, 1963, the licensee requested a waiver of the penalty, stating that although the person responsible for approving payment had noted the statement for special treatment and early payment, through an oversight, the license payment was not recognized by the personnel who prepare the checks as requiring special treatment and was treated in the routine manner.

Our records show that the licensee has made timely payment in prior years.

The Commission finds:

In the circumstances, it will not be inconsistent with the public interest to waive the penalty which attached by reason of the licensee's delay in payment of the annual charges.

The Commission orders:

The above-mentioned penalty by reason of the delay of the licensee in the payment of the annual charges under the license for Project No. 2169 for the calendar year 1962 is hereby waived.

Before Commissioners: Charles R. Ross, Acting Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP63-304

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 23, 1963)

On May 13, 1963, Cities Service Gas Company (Applicant) filed in Docket No. CP63-304 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the installation and construction during the calendar year 1963 and the operation of small field compressor units ranging in size from 200 to 300 horsepower on gathering laterals in various gas producing fields to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application.

It appears that such compressor facilities are required due to the normal decline in wellhead working pressures of the wells in various fields connected to Applicant's gathering systems, requiring Applicant to augment such working pressures to enable it to receive volumes of gas required to be taken from each producing area in order to meet the requirements of Applicant's customers.

Applicant states that the total cost of the proposed compressor facilities will not exceed a maximum of $500,000. In accordance with the 25% limitation in Paragraph 2.58(b) of the Commission's Rules of Practice and Procedure, the cost of compressor units for any single producing area should be limited to a maximum of $125,000. The proposed facilities will be financed from treasury cash.

The term of the authorization granted hereinafter coincides with the term of the authorization granted to Applicant by order issued March 6, 1963, in Docket No. CP63-65 (29 FPC 429) to construct and operate the field facilities to carry the gas which will require the compression facilities contemplated by the present application.

Pursuant to due notice, a public hearing was held in Washington, D.C., on July 11, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G-298 (4 FPC 471).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of

natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the installation, construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The installation, construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit, pursuant to Section 2.58(c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization granted hereinafter, a statement showing by projects: (a) a description of the facilities installed under this authorization, (b) the location of said facilities, and (c) the actual installed cost of said facilities.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to installation and construction during the calendar year 1963, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $500,000, with no single project to exceed a cost of $125,000.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Cities Service Gas Company, to install and construct during the calendar year 1963, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only in connection with the taking of natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit pursuant to Section 2.58(c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization herein granted, a statement showing by projects: (a) a description of the facilities installed under this authorization, (b) the location of said facilities, and (c) the actual installed cost of said facilities.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to installation and construction during the calendar year 1963, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $500,000, with no single project to exceed a cost of $125,000.

Before Commissioners: Charles R. Ross, Acting Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

COMMUNITY PUBLIC SERVICE COMPANY, DOCKET NO. E-7102

SUPPLEMENTAL ORDER AUTHORIZING ISSUANCE OF FIRST MORTGAGE BONDS

(Issued July 23, 1963)

By order issued July 11, 1963, *supra*, p. 71 in the above-entitled matter, the Commission authorized Community Public Service Company (Applicant) to issue and sell at competitive bidding $13,000,000, maximum principal amount of First Mortgage Bonds, Series G, due 1993, subject to the provisions, among others set forth in paragraph (B) of that order, as follows:

(B) The proposed issuance and sale of Bonds at competitive bidding shall not be consummated until:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h) of those Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegram as contemplated by Section 34.9 of the Regulations;

(ii) The Commission shall have approved the price to be received by Applicant for the Bonds and the coupon rate thereof, by a further order.

Applicant, on July 23, 1963, filed an amendment, pursuant to the requirements of the afore-mentioned Commission order, in which it states, among other things, that it proposes to accept, as representing the lowest annual cost of money to it, the bid of Salomon Brothers & Hutzler to purchase all of the proposed issuance of $13,000,000, principal amount of Bonds, at a price of 100.916% of principal amount, with an interest rate of 4½% per annum.

The Commission finds:

(1) Applicant has satisfactorily complied with the requirements contained in paragraph (B) of the Commission's order issued July 11, 1963, in the above-entitled docket; and under the bid it proposes to accept for the issuance of Bonds, the price to be received by Applicant for the Bonds and the interest rate thereof are reasonable.

(2) The proposed issuance of Bonds, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

The Commission orders:

(A) The price to be received by Applicant for the proposed Bonds and the interest rate thereof under the bid referred to above, are approved as reasonable.

(B) The proposed issuance and sale of Bonds referred to above, upon the terms and conditions, and for the purposes specified in the application, as supplemented by the amendment referred to above, are hereby authorized, subject only to the provisions of paragraphs (C), (D) and (E) of the Commission's order issued July 11, 1963, in the above docket.

Before Commissioners: Charles R. Ross, Acting Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

EL PASO NATURAL GAS COMPANY, DOCKET NO. G–20519

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 23, 1963)

On December 24, 1959, as supplemented on December 3, 1962, El Paso Natural Gas Company (Applicant) filed in Docket No. G–20519 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain compressor and metering facilities; necessary general structures and equipment; and a certain gathering system, all as more fully set forth in the application.

Applicant's original application sought authorization to construct and operate certain natural gas pipeline facilities necessary to the acquisition of up to approximately 17,000,000 cubic feet of casinghead gas per day from the Bisti Field area of the San Juan Basin, in New Mexico. This quantity of gas is in addition to the quantity of 25,000,000 cubic feet of casinghead gas per day proposed to be acquired from the Bisti Field area by means of certain of the facilities proposed in the proceeding in Docket No. G–15696.

The proceeding in Docket No. G–15696 was initiated by the filing of an application on July 29, 1958, as supplemented on six occasions, seeking authorization to construct and operate certain natural gas pipeline facilities to be utilized in conjunction with other of Applicant's facilities so as to permit the sale and delivery of up to an additional 100,000,000 cubic feet of natural gas per day to Pacific Gas and Electric Company at a delivery point near Topock, Arizona.

The purpose of filing the first supplement to the original application in Docket No. G–20519 was to consolidate those Bisti Field facilities described in its application in Docket No. G–15696, as supplemented, with those Bisti Field facilities which are the subject of this proceeding in order that all such facilities may be expeditiously certificated. In furtherance of this purpose, Applicant filed concurrently its sixth supplement to the original application in Docket No. G–15696 to withdraw and exclude from the project presented in that proceeding the applicable portion thereof relating to the Bisti Field facilities.

Applicant requested and received temporary authorization to construct and operate the Bisti Field facilities proposed in Docket No. G–20519. Likewise, a request was made for temporary authorization to construct and operate Bisti Field facilities proposed in Docket No. G–15696, but only those facilities necessary to take up to 25,000 Mcf of natural gas per day from the Bisti Field area were authorized. However, Applicant has not undertaken the construction of certain of those facilities temporarily authorized and does not plan to do so. Availability of gas from a certain compressor station in the Bisti Field proved somewhat less than originally anticipated, thus permitting a reduction of some planned horsepower in that area. In addition, Applicant has been able to alter the operating conditions of a gasoline plant from those originally anticipated, thus enabling the acceptance into its transmission system all of the available Bisti Field gas without construction of a portion of the temporarily authorized facilities. As a result, Applicant presently seeks in this proceeding a certificate of public convenience and necessity for the construction and operation of only those facilities which it has undertaken to construct pursuant to the temporary certificates issued. They are as follows: (1) an addition of 1800 horsepower to Applicant's existing Chaco Compressor Station, together with the necessary standard appurtenances for the operation of same; (2) those necessary metering facilities; (3) those necessary general structures and equipment; and (4)

a gathering system consisting of approximately 120.9 miles of natural gas pipelines ranging in size from 4-½" through 16" in diameter and approximately 7,580 horsepower in field compressor units, all located in the Bisti Field area in San Juan County, New Mexico. Applicant has completed the construction of and is presently operating all of the above facilities.

The estimated total cost of the above-described facilities is $6,620,658 to be financed from current working funds or by making short term bank loans.

Pursuant to due notice, a public hearing was held in Washington, D.C., on July 9, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation with its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(4) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, El Paso Natural Gas Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(4) and (e) of Section 157.20 of such Regulations.

Before Commissioners: Charles R. Ross, Acting Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP63-283

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 23, 1963)

On April 11, 1963, El Paso Natural Gas Company (Applicant), filed in Docket No. CP63-283 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing construction and operation of certain facilities and the sale and delivery of natural gas through those facilities to the Village of Corona and its environs in New Mexico. The facilities to be constructed and operated for the purpose just stated are a measuring and regulating station with appurtenances to be located at a point adjacent to Applicant's 30-inch pipeline at the suction side of its Lincoln Compressor Station in Lincoln County, New Mexico, on the Permian-San Juan Crossover Pipeline.

The Village of Corona proposes to construct a distribution system and a pipeline approximately 10 miles long of 2⅜ inch O.D. to connect with Applicant's facilities.

The estimated cost of Applicant's proposed facilities above referred to is $4,200, to be paid out of current working funds.

The estimated third year annual requirement is 19,520 Mcf of natural gas with a peak day volume of 134 Mcf, and the rates to be applied are those contained in Applicant's Rate Schedule A-2 and B-3, FPC Gas Tariff, Original Volume No. 1.

Pursuant to due notice, a public hearing was held in Washington, D.C., on July 9, 1963, respecting the matters involved in and the issues presented by the application herein. No protest to the granting of the application or petition in opposition to intervene have been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, El Paso Natural Gas Company is a natural gas company within the meaning of the Natural Gas Act as found by the Commission in its order of January 11, 1944 in Docket No. G-288 (4 FPC 486).

(2) The facilities hereinbefore described are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant and the proposed transportation, sale for resale of natural gas by Applicant to the Village of Corona are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and sale of natural gas by Applicant to Village of Corona, New Mexico, for distribution and sale to the inhabitants thereof, are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned up Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act

and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30 (c) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and is hereby issued authorizing Applicant, El Paso Natural Gas Company, to construct and operate the proposed facilities and to transport, and sell natural gas to Village of Corona, New Mexico, as hereinbefore described, all as more fully described in the application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the transportation and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within 12 months from the date on which this order issues.

Before Commissioners: Charles R. Ross, Acting Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP63-288

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 23, 1963)

On April 24, 1963, El Paso Natural Gas Company (Applicant) filed in Docket No. CP63-288 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a measuring and regulating station and the delivery of natural gas to Moon Lake Electric Association, Inc. (Moon Lake), at a point adjacent to Applicant's 26-inch O.D. Northwest Division mainline in Rio Blanco County, Colorado, all as more fully set forth in the application.

Applicant proposes to make a direct sale of natural gas on an interruptible basis to Moon Lake pursuant to a gas sales contract dated March 21, 1963. Moon Lake will use the gas in place of diesel fuel in its existing electric generating plant located near Rangely, Colorado. Moon Lake estimates that, by use of natural gas in lieu of diesel fuel, an initial yearly saving of approximately $30,720 (after giving effect to recovery of the investment in natural gas facilities over 5 years) will result and that savings in subsequent years will exceed $80,000 per year.

Applicant will sell gas to Moon Lake at a rate of 3.6 cents per therm. Moon Lake's estimated annual and peak day requirements for the third year are 1,816,276 Mcf and 5,238 Mcf (19,070,898 and 55,000 therms), respectively, at 14.73 psia.

The estimated cost of the proposed facilities is $9,350, which will be financed from current working funds.

737-370—66——28

Applicant received a temporary certificate on June 20, 1963, authorizing the construction and operation of the subject facilities and the delivery of natural gas to Moon Lake.

Pursuant to due notice, a public hearing was held in Washington, D.C., on July 11, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 29, 1942, in Docket Nos. G–242 and G–257 (3 FPC 851).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, El Paso Natural Gas Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The construction authorized by paragraph (A) above shall be completed and the facilities placed in actual operation within six months from the date on which this order issues.

Before Commissioners: Charles R. Ross, Acting Chairman, L. J. O'Connor, Jr. and Harold C. Woodward.

INDIANA & MICHIGAN ELECTRIC COMPANY, DOCKET NO. E-7089

ORDER DENYING APPLICATIONS TO TAKE TESTIMONY BY DEPOSITION AND FOR THE ISSUANCE OF SUBPOENAS

(Issued July 23, 1963)

On July 16, 1963, Indiana & Michigan Electric Company (Indiana-Michigan) filed two applications. The first application requests an order for subpoenas ad testificandum to issue for taking the testimony, by deposition, of Joseph C. Swidler, Chairman of this Commission, Joseph H. Gutride, Commission Secretary, and Harold E. Miller, a Commission staff member. The application requests that the depositions be taken on July 24, 1963 or some other time prior to July 29, 1963. The reasons for the depositions and the subject matter of the requested examinations are set forth in the second application, titled Application for Subpoena Duces Tecum.

The Application for Subpoena Duces Tecum is in the nature of a blanket request for data relating to "the bases, criteria, expert opinion, studies and analyses" underlying the issuance of the Order to Show Cause initiating this proceeding. Particular documents are not requested, identified or specified. It is claimed that the requested data are necessary to prepare for hearing. But the relevancy or materiality of such material to the facts upon which the issue of Commission jurisdiction must be determined is not demonstrated.

To the extent Indiana-Michigan wants to examine staff witnesses who may appear in this case to testify as to material matters, it will have opportunity to do so at the trial. Commission members, however, may not be examined either by deposition or at the hearing. *U.S.* v. *Morgan*, 313 U.S. 409, 421 (1941). Data in the public files and records of the Commission are now and have been available to Indiana-Michigan. See Section 1.36, Commission's Rules of Practice and Procedure.

The particulars and matters inquired into by the Show Cause Order are tentative and for the purpose of framing the issues. What the staff will present at the hearing is for the examiner's initial consideration and thereafter for consideration by the Commission. Currently the staff has presented nothing.

It may be that in the course of the hearing the parties may request certain specified material. Whether such request will or will not be granted is of course a matter to be considered by the hearing examiner in the first instance. Section 1.27, Commission's Rules of Practice and Procedure.

In the present circumstances, the Applications for Subpoena and the requests for depositions should be denied.

The Commission orders:

(A) The application of Indiana-Michigan for issuance of a Subpoena Duces Tecum is denied.

(B) The application for subpoenas ad testificandum to take the testimony by deposition of Joseph C. Swidler, Joseph H. Gutride, and Harold E. Miller is denied.

Before Commissioners: Charles R. Ross, Acting Chairman, L. J. O'Connor, Jr., and Harold C. Woodward.

INDIANA & MICHIGAN ELECTRIC COMPANY, DOCKET NO. E-7089

ORDER FOR PRODUCTION OF DATA PURSUANT TO SUBPOENA DUCES TECUM AND TO REQUIRE THE MAKING OF MINUTES AVAILABLE FOR EXAMINATION

(Issued July 23, 1963)*

By this order, the Commission upon its own motion directs its Secretary to issue forthwith a subpoena duces tecum directed to American Electric Power Company, Inc., American Electric Power Service Corporation, Indiana & Michigan Electric Company, Appalachian Power Company, Kingsport Utilities, Inc., Ohio Power Company, Kentucky Power Company, Wheeling Electric Company and the President of each of those Corporations, Mr. Donald C. Cook.

On April 16, 1963, 29 FPC 746, an order was entered in the above-entitled matter directing Indiana & Michigan Electric Company (Indiana-Michigan) to show cause, through written answer and orally at a public hearing, why the Commission should not find and determine that Indiana-Michigan is a public utility as that term is used in the Federal Power Act; that all of Indiana-Michigan's sales of electric energy at wholesale for resale are sales at wholesale in interstate commerce within the meaning of the Federal Power Act and the Commission's Regulations thereunder; that Indiana-Michigan, at least since January, 1961, has violated, and threatens to continue violating, the provisions of the Federal Power Act and the Commission's Regulations; and that Indiana-Michigan is required to file all rate schedules for its interstate wholesale electric services. That hearing is presently scheduled to commence July 29, 1963, at Washington, D.C., in a hearing room of the Commission.

Commission review of communications between its staff and counsel for Indiana-Michigan indicates that certain data requested by the staff in preparation for the forthcoming hearing in this matter will not be made available without an order of this Commission. The position of Indiana-Michigan is set forth in its Answer to the Commission's Order to Show Cause as filed May 6, 1963, its telegram dated July 2, 1963, and its letters dated July 8, 10 and 15, 1963. The data requested by the Commission's staff for dates in 1962 are identified in a letter of the Commission's Secretary dated June 28, 1963, addressed to counsel for Indiana-Michigan.

The Commission finds:

(1) American Electric Power Company, Inc., controls, directly and indirectly, the other corporations as set forth in the recital above, all within the meaning of Section 301 of the Federal Power Act.

(2) The data as specified hereinafter relating to transactions with and the business of Indiana-Michigan is within the custody of Indiana-Michigan or the other corporations as set forth in the recital above and are subject to examination upon order of the Commission.

(3) For purposes of the public hearing ordered in the above-entitled matter, the data as hereinafter specified is relevant and material to the issues herein raised.

(4) It is necessary and appropriate to carry out the provisions of the Federal Power Act, particularly Sections 201, 205, 206, 301, 307 and 309 thereof, that each of the aforementioned corporations and their President be required, pursuant to subpoena duces tecum, to produce the data as hereinafter specified.

*Motion to dismiss complaint granted, *Indiana & Michigan Electric Co.* v. *F.P.C.*, 224 F. Supp. 166 (1963)

The Commission orders:

(A) The Secretary of the Commission shall issue forthwith a subpoena duces tecum directed to the American Electric Power Company, Inc., the American Electric Power Service Corporation, Indiana & Michigan Electric Company, Appalachian Power Company, Kingsport Utilities, Inc., Ohio Power Company, Kentucky Power Company and Wheeling Electric Company, and to Donald C. Cook, President of aforesaid companies, to produce for inspection and copying before the Presiding Examiner of the Federal Power Commission, 441 G Street, Washington, D.C., on the 29th day of July, 1963, at 10 a.m. EDST or at such reasonable time thereafter as the presiding examiner shall then determine the following documents and records:

(a) The original source documents which include data for the following dates in 1962 on the following forms for American Electric Power Company, Inc.:

(i) Data:

Form	*Description*
C-60	AEP System Hourly Load and Generation Forecast
C-49	AEP System Plant Generation
C-57	AEP System Prescheduled Interconnection Transactions
C-58	AEP System Interconnection Schedules
C-39	AEP System Log of Generation Changes
C-29	AEP Economy Energy Transactions
C-59	AEP System Preliminary Load Data—MWH
C-66	Meter Error
C-35	AEP System Capacity Outages
C-12	AEP System Load and Capacity Forecast

If such data are not kept on the above-designated forms, but are otherwise recorded and retained, such data shall be furnished as otherwise recorded and retained.

(ii) Dates:

January 6, 8, 24	July 8, 10, 12, 14, 17, 30
February 6, 18	August 6, 13, 16, 19, 20, 30
March 19, 25, 26, 29	September 1, 10, 13, 22
April 8, 9, 16, 26, 30	October 13, 14, 20, 21, 25
May 1, 2, 5, 10, 14, 30	November 6, 16, 17, 19
June 2, 7, 11, 18, 20, 24, 27	December 5, 13, 29, 31

(b) The original source documents which include the data set forth in ordering paragraph (A)(a)(i) for the American Electric Power Company, Inc., for each and every day in the year 1963.

(c) The original source documents which include data on the following forms and sheets of Indiana-Michigan for each and every day in the year 1963:

Form	Sheet	Description
2357	37 A, 37 B	Generation—frequency—schedules.
2358	37 C, 37 D	Metered, delivered and received with interconnected companies.
2360	37 E	Interconnections with Ohio Valley Electric Company and Ohio Power Co.—Metered Transactions.
2361	37 F	Interconnecting with Northern Indiana Public Service Company.
2363	37 G	Interconnections with Commonwealth Edison Company.
2364	37 H	Interconnections with Cincinnati Gas & Electric Company.
2365	37 I	Interconnections with Public Service Company of Indiana.
	37 CC	Non-Scheduled Deliveries and Receipts.
S-53-D-558		Interconnection with Commonwealth Edison Company.
SCJ		AEP System Pool.

If such data are not kept on the above-designated forms, but are otherwise recorded and retained, such data shall be furnished as otherwise recorded and retained.

(d) The Indiana-Michigan System Hourly Summary Book and the System Account Book for each month in the year 1963.

(e) All interconnection agreements and agreements for the sale and/or exchange of electric energy between Indiana-Michigan and any other party or parties; and specifically but not in limitation of the foregoing, all contracts for the sale or exchange of electric energy and all rate schedules between Indiana-Michigan and the following purchasers of electric energy: the cities of Albion, Anderson, Auburn, Avilla, Bluffton, Columbia City, Fort Wayne, Frankton, Garrett, Gas City, Mishawaka, New Carlisle, Portland, Richmond and Warren, Indiana; and cities of Niles and Sturgis, Michigan; Allen-Wells County Rural Electric Membership Corporation, Fruit Belt Electric Cooperative, Huntington County REMC, Jay County REMC, Nobel County REMC, Paulding-Putnam Electric Cooperative, Inc., Wayne County REMC, and Whitley County REMC.

(B) American Electric Power Company, Inc., American Electric Power Service Corporation, Indiana & Michigan Electric Company, Appalachian Power Company, Kingsport Utilities, Inc., Ohio Power Company, Kentucky Power Company and Wheeling Electric Company, shall make available at the offices where they are kept in the ordinary course of business the minute books for the meetings of the Boards of Directors and Executive Committees held during the years 1953 to and including 1963 for examination by the Commission's staff on a date to be fixed by the presiding examiner.

(C) Upon production of the foregoing documents the hearing in the above-entitled matter shall be continued for a reasonable time to be determined by the presiding examiner to afford the staff time within which to study said documents, books and records and make necessary copies.

(D) This order is without prejudice to the issuance of any further orders for the production of other data relevant or material to the inquiry in the above-entitled matter.

Before Commissioners: Charles R. Ross, Acting Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

MICHIGAN GAS STORAGE COMPANY, DOCKET NO. CP63-287

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 23, 1963)

On April 22, 1963, Michigan Gas Storage Company (Applicant) filed in Docket No. CP63-287 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of 10,500 horsepower of compressor capacity by the installation of one gas turbine-driven centrifugal compressor at Applicant's Muskegon River Compressor Station in Clare County, Michigan, all as more fully set forth in the application.

The application states that Consumers Power Company (Consumers), which is Applicant's sole customer, has requested greater amounts of gas earlier in the heating season and peak deliverability until March 15th. This combination results in relatively low storage field pressures while still requiring peak deliverability. In order to maintain the peak day deliverability through March 15th, Applicant proposes to install the additional compressor.

The estimated cost of the proposed facilities is $2,000,000, which will be financed from bank loans and funds on hand.

Pursuant to due notice, a public hearing was held in Washington, D.C., on July 10, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff Counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Michigan Gas Storage Company, a Michigan corporation having its principal place of business in Jackson, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of December 3, 1946, in Docket No. G–731 (5 FPC 965).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by Staff Counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Michigan Gas Storage Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The construction authorized in paragraph (A) above shall be completed and the facilities placed in actual operation within three months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NOS. G–18148, G–18149, AND RP60–5

ORDER GRANTING MOTION TO TERMINATE REFUND OBLIGATION

(Issued July 23, 1963)

On May 21, 1963, Natural Gas Pipeline Company of America (Natural) filed a "Motion for Order That Contingent Refund Condition Has Been Satisfied," seeking to terminate the contingent refund condition in Paragraph (E), (III) of the Commission order issued November 24, 1961, in the above-entitled proceedings.

The Commission order issued November 24, 1961 conditionally approved a settlement in the above-captioned proceedings. One of the conditions in that order, as set forth in paragraph (E), (III), provides that final determination of the overall rate of return in these dockets would be made on the basis of the rate of return on Natural's equity and the "overall rate of return" which would be determined in the pending proceeding, Docket No. RP61–8, relating to a further increase in rates proposed by Natural.

By Commission order issued October 25, 1962, 28 FPC 731, approving a settlement agreement, Docket No. RP61–8 was terminated except as to certain issues which are not here pertinent. However, neither the "overall rate of return" nor the "rate of return on Natural's equity" was specifically determined in that proceeding.

Natural states that since the refunds under return Paragraph (E), (III) relate the above-captioned dockets to Docket No. RP61–8 and since, neither the settlement agreement nor the order in that docket sets forth an "overall rate of return" or a "rate of return upon Natural's equity," the condition precedent to effectuating ordering Paragraph (E), (III) of the order of November 24, 1961 aforementioned has not been and cannot be met. Consequently Natural filed the motion aforesaid to terminate its obligation to make the refunds required under Paragraph (E), (III) of said order.

Natural in support of its motion filed studies purporting to show that the actual rate of return for calendar year 1960 was not inconsistent with reasonable Commission standards and precedent in similar cases. The Commission staff has reviewed the studies and other data relating to Natural. Based on that review no further refunds under the provisions of Paragraph (E), (III) of the order of November 24, 1961 are indicated.

Each of Natural's customers and the interveners has agreed in writing (Exhibit I of Natural's motion) that no further refunds under the aforementioned paragraphs of the order aforesaid are indicated and they concur in Natural's motion.

The Commission finds:

Good cause exists for terminating Natural's obligations under ordering Paragraph (E), (III) of the Commission's order of November 24, 1961.

The Commission orders:

Natural's obligations under Paragraph (E), (III) of the Commission's order of November 24, 1961 are hereby terminated.

Before Commissioners: Charles R. Ross, Acting Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

THE NORTHEAST OKLAHOMA GAS AUTHORITY AND THE GROVE MUNICIPAL SERVICES AUTHORITY, DOCKET NO. CP63-249

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued July 23, 1963)

On March 8, 1963, The Northeast Oklahoma Gas Authority and The Grove Municipal Services Authority (sometimes hereinafter referred to jointly as Applicants) filed in Docket No. CP63-249 a joint application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Cities Service Gas Company (Cities Service) to establish physical connection of its transmission facilities with the proposed facilities of and to sell natural gas to Applicants for resale and distribution in the communities of Afton, Fairland and Grove, Oklahoma, all as more fully set forth in the joint application.

Applicants propose to take deliveries of gas from Cities Service for all three communities at one point of interconnection and to transport the gas to the city gates by means of 29.5 miles of 6-inch, 3.5 miles of 4-inch and 3.5 miles of 3-inch proposed lateral pipelines. Applicants will also construct and operate necessary distribution facilities.

Applicants' estimated third year peak day and annual requirements for the three communities are 2,967 Mcf and 180,885 Mcf, respectively.

The application shows the total estimated cost of the proposed project to be $1,161,000, which cost will be financed by a grant in aid from the Housing and Home Finance Agency, under the Public Works Acceleration Act, and by the issuance of First Mortgage Revenue Bonds.

On March 28, 1963, Cities Services filed an answer to the subject application stating therein that it does not object to the granting of the requested order.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on June 15, 1963 (28 F.R. 6201). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

(1) Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G-298 (4 FPC 471).

(2) Applicants, The Northeast Oklahoma Gas Authority and The Grove Municipal Services Authority, are public trusts duly organized and existing under the laws of the State of Oklahoma and authorized to engage in the business of distributing and selling natural gas within said State.

(3) It is necessary and desirable in the public interest that Cities Service be directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicants, as set forth in the application and as hereinafter ordered and conditioned.

(4) Applicants should be prepared to receive natural gas from Cities Service within one year from the date of issuance of this order, and, further, Applicants should execute a service agreement with Cities Service in accordance with the Commission's Regulations under the Natural Gas Act.

(5) The requirement that Cities Service serve Applicants, as proposed, will not place any undue burden upon Cities Service nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Cities Service Gas Company be and is hereby directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicants and to sell and deliver up to 2,967 Mcf of natural gas per day to Applicants, all as hereinbefore described and as more fully set forth in the application.

(B) Applicants shall be prepared to receive natural gas from Cities Service within one year from the date of issuance of this order, and, further, Applicants shall execute a service agreement with Cities Service in accordance with the Commission's Regulations under the Natural Gas Act.

(C) Cities Service shall report to the Commission in writing the date of commencement of service to Applicants within ten days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

UNITED STATES DEPARTMENT OF THE INTERIOR, SOUTHEASTERN POWER ADMINISTRATION, OLD HICKORY AND CHEATHAM PROJECTS, DOCKET NO. E-6999

ORDER CONFIRMING AND APPROVING RATES AND CHARGES

(Issued July 23, 1963)

The Secretary of the Interior (Interior) acting on behalf of the Southeastern Power Administration (SEPA), on April 23, 1963, pursuant to the provisions of the Flood Control Act of 1944 (58 Stat. 887) filed a request for an extension of the Commission's confirmation and approval of Wholesale Power Rate Schedule OHC–1 for a five year period beginning July 1, 1963 and ending June 30, 1968. Wholesale Power Rate Schedule OHC–1 applies to the wholesale sale by SEPA to the Tennessee Valley Authority (TVA) of electric power and energy generated at the Old Hickory and Cheatham Projects.

By order issued December 19, 1961, 26 FPC 889, the Commission confirmed and approved Wholesale Power Rate Schedule OHC–1 for a period ending June 30, 1963 which is the date for the first five-year periodic review of the rates set forth in the agreement between SEPA and TVA.

The Old Hickory and Cheatham Projects are navigation-power projects constructed on the Cumberland River in Tennessee by the Corps of Engineers, Department of the Army. There are four 25,000-kilowatt generating units at the Old Hickory Project and three 12,000-kilowatt generating units at the Cheatham Project. The hydraulic and power operations of these two projects are coordinated and such projects were treated as a unit by the Corps of Engineers for the purpose of making the allocation of costs to navigation and power. Furthermore, the Old Hickory and Cheatham Projects are treated as a unit by SEPA in the marketing of the power output of these projects.

Wholesale Power Rate Schedule of OHC–1, for which the Commission's approval has been requested for a five-year period beginning July 1, 1963, is identical to Schedule OHC–1 approved by the Commission for the period ending June 30, 1963. The schedule applies to the total power and energy generated at the Old Hickory and Cheatham projects less the power and energy required by the Department of the Army for operation of the projects. The rates and charges in Rate Schedule OHC–1 are those contained in a long-term agreement between SEPA and TVA executed May 12, 1958. Annual charges to TVA would range

from $2,100,000 to $2,700,000, depending upon the available streamflow, and would average about $2,400,000.

The initial investment of the projects to be repaid by power revenues was developed by SEPA using cost data furnished by the Corps of Engineers. In making this cost allocation SEPA used the separable costs-remaining benefits method and a 2.5% rate of interest. Only the specific costs of Cheatham were allocated to power, whereas 44.65 percent of Old Hickory construction costs of joint-use facilities, in addition to all specific power costs, were allocated to power. A cost allocation, dated May 1961, made by the Corps of Engineers is in close agreement with that made by SEPA. The Corps' report shows 44.52 percent rather than 44.65 percent of Old Hickory joint-use construction costs allocated to power. The general procedures agreed to by the Interagency Staff Working Group on Financial Practices and Cost Allocation at the Washington level were followed by SEPA in preparing its allocation of costs.

A revised repayment study has been submitted by Interior with the current request for approval of Rate Schedule OHC–1. This study shows annual estimated operation and maintenance expenses of the Corps of Engineers, allocated to power, to be $470,000 and SEPA marketing expenses to be $30,000, whereas the study submitted by SEPA in 1961 gave the sum of these two items as $400,000. Interest on the capital investment, computed at a rate of 2.5%, is reduced by an annual credit of $22,000, which is the saving in interest resulting from revenues received monthly rather than annually. According to the repayment study the capital investment would be amortized in the forty-fourth year of full commercial operation.

The total initial capital investment allocated to power, as shown in SEPA's current repayment study, is $51,213,198. Of this amount, it was estimated that facilities costing $41,560,198 had service lives of 50 years or more, and that capital replacements would be required as follows: $27,800 each 15 years, $2,263,600 in 25 years, $973,700 in 30 years, and $6,387,900 in 40 years. These estimates are based upon a replacement cost study made jointly by SEPA and the South Atlantic Division Office of the Corps of Engineers. The shorter-lived replacement items are principally for accessory electric equipment, miscellaneous power plant equipment, and transmission plant. The assumed replacements in the 40th year cover turbine and generator equipment items. The amounts estimated for replacement costs appear reasonable.

Studies made by the Commission staff indicate that annual revenues of $2,400,000 from the rates and charges in Wholesale Power Rate Schedule OHC–1 will be sufficient to pay all production and marketing expenses, including interest charges on investment allocated to power, amortization of the initial power investment in about 44 years from the beginning of full commercial operation of the projects, and amortization of capital replacement costs over the service lives of the facilities replaced.

Written notice of the request for approval of Wholesale Power Rate Schedule OHC–1 was given to the Public Service Commission of Tennessee and to the Governor of that State and to other interested parties. Notice of the aforementioned request was also published in the Federal Register on May 18, 1963 (28 F.R. 5037), stating that any person desiring to make comments or suggestions for Commission consideration with respect to the proposed rate schedule should submit the same in writing on or before June 1, 1963 to the Federal Power Commission, Washington 25, D.C. No comments or suggestions have been received.

The Commission finds:

The proposed rates and charges for the wholesale sale by SEPA to TVA of electric power and energy from the Old Hickory and Cheatham Projects, as set

forth in Wholesale Power Rate Schedule OHC–1, all as described above, for a period beginning July 1, 1963, and ending June 30, 1968, will not be inconsistent with the provisions of the Food Control Act of 1944.

The Commission orders:

The proposed rates and charges for the wholesale sale by SEPA to TVA of electric power and energy from the Old Hickory and Cheatham Projects, as set forth in Wholesale Power Rate Schedule OHC–1, all as described above, are hereby confirmed and approved for a period beginning July 1, 1963 and ending June 30, 1968.

Chairman Swidler did *not participate* in either the consideration or decision in this matter.

Before Commissioners: Charles R. Ross, Acting Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

AREA RATE PROCEEDING, ET AL., DOCKET NO. AR61–2, ET AL.

ORDER DENYING MOTIONS FOR RECONSIDERATION

(Issued July 24, 1963)

Sohio Petroleum Company (Sohio), Sun Oil Company (Sun), Pan American Petroleum Company (Pan Am), Hassie Hunt Trust, *et al.* (Hunt), and Gulf Oil Corporation (Gulf) [1] and Cities Service Oil Company, *et al.* (Cities Serice) [2] have tendered for filing on June 14, June 14, June 25, June 13, July 8, and July 22, 1963, respectively, motions for reconsideration [3] of the Commission's order of May 16, 1963, 29 FPC 981, which, among other things, established a schedule of hearing and prehearing procedures.

The motions seek clarification with respect to a statement in the aforementioned order that individual company cost presentations would not be permitted in these proceedings, contending that the order is contrary to the Natural Gas Act, the Commission's Rules and Regulations, the Administrative Procedure Act, and the Fifth Amendment to the Constitution. They request certain other changes as hereinafter set forth.

Certain of the movants refer to the language in the order of May 16, 1963, concerning individual company cost presentations, and inquire whether they will thereby be denied the opportunity after the issuance of any final order but prior to the effectiveness of such order, to demonstrate by a separate showing the justness and reasonableness of their rates. These movants suggest that by the order complained of the Commission has overruled its action taken in the proceedings in Docket No. AR61–1, *et al.*, in deferring a ruling on motions urging the adoption of a "savings clause."

Sun seeks rehearing of the order insofar as it deals with group presentations and limitations on cross-examination and further contends that the order does not provide adequate time for the preparation and submission of rebuttal evidence.[4]

---

[1] Gulf adopts Pan Am's reasons, arguments and contentions insofar as they relate to that part of the order concerning individual company cost presentations.

[2] Cities Services joins in and adopts Pan Am's motions.

[3] The motions are styled variously as motions for "reconsideration", for "rehearing", and for "clarification." In view of the fact that the May 16, 1963, order was not a final order no application for rehearing will lie under Section 1.34 of the Rules of Practice and Procedure. However, the motions will be accepted as motions for reconsideration.

[4] Sun also raises an issue concerning the exclusion of individual company cost presentations in certificate proceedings. However, Sun's certificate proceedings previously consolidated herewith have been severed and consolidated with the proceedings in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*

Hunt questions the legality of the area pricing method and claims that the procedure denies it the right to sustain the burden of proof imposed by Section 4 of the Natural Gas Act through individual cost showings.

In the *Phillips* case[5], the Commission determined that individual company costs do not form an appropriate basis for fixing producer rates and that the area basis should be used. The Commission has reiterated on numerous occasions that individual company cost evidence would not be acceptable in these proceedings for the purpose of fixing the proper area price or prices. The movants have failed to demonstrate the invalidity of the area approach or to show why the Commission should now deviate from this course.

In the *Permian* case, Docket No. AR61–1, *et al.*, the Commission has deferred ruling on the inclusion of so-called "savings clauses", since any action taken prior to a final decision in the proceedings necessarily would be premature. Similarly, in the instant proceedings, it is obvious that, prior to the time the Commission has before it the entire record, it would not be in a position to determine the appropriateness of a savings clause. Consequently, we will deny the motions in this regard without prejudice to future consideration by the Commission.

The movants also urge that the alleged limitation on full participation, particularly with regard to the suggested grouping of parties, denies the movants a full hearing as contemplated by the Natural Gas Act and the Administrative Procedure Act. The order embodies no mandatory limitation but is a direction to the presiding examiner and the parties that common interests should be grouped to the extent feasible and the number of attorneys permitted to cross-examine on any issue would be limited "where appropriate to do so and without derogation of the rights of any parties." The limitation is permissive rather than mandatory and the handling of such matters is left to the discretion of the presiding examiner consistent with the general directions contained in the order.

Sun and Hunt claim that the time allowed for the preparation of rebuttal is insufficient. After examining the direct presentations which will be placed in the record on December 3, 1963, the parties, interveners, and staff should be in a position to determine the nature and extent of any rebuttal which is required by such presentations and the two and one-half month period allowed should be ample time for the preparation of such rebuttal. However, if cross-examination develops the need for further rebuttal, the presiding examiner may entertain requests for permission to introduce further evidence in accordance with the subject order where there is a showing that "such evidence was not available at the times set for the introduction of direct and rebuttal evidence and there is a clear and convincing demonstration that the additional evidence would make a material contribution to the record upon which the case is to be decided." (Page 982 of the order.)

With regard to Hunt's contention that it has the right to open and close, it should be pointed out that, as was indicated in the order instituting the proceedings, issued May 10, 1961, 25 FPC 942, the proceedings are brought under other sections of the Act, including Sections 5 and 14, as well as under Section 4. Thus, in addition to encompassing rate increase proceedings, these proceedings include proceedings to fix rates under Section 5 as well as an investigation by the Commission under Section 14. Under these circumstances, the provisions of Section 1.20 of the Commission's Rules of Practice and Procedure relative to opening and closing "in hearings upon suspended rates" are inapplicable and

[5] Opinion No. 338, *Phillips Petroleum Company*, Docket No. G–1148, *et al.*, issued September 28, 1960, 24 FPC 537.

it is appropriate to permit the presiding examiner to determine the order of procedure within the guidelines set by the order of May 16, 1963.

The subject motions set forth no new facts or questions of law which were not considered by the Commission in issuing the order of May 16, 1963, or which, having been considered, require any modification of the order of May 16, 1963, except as hereinafter ordered.

The Commission finds:

(1) The motions filed by Sun, Pan Am, Gulf, and Cities Service for reconsideration of the Commission's order of May 16, 1963, should be denied.

(2) The motions filed by Sohio and Hunt for reconsideration of the Commission's order of May 16, 1963, should be denied except insofar as they request the amendment of the order to include a savings clause, as to which the motions are denied without prejudice to future consideration by the Commission.

The Commission orders:

(A) The motions filed by Sun, Pan Am, Gulf, and Cities Service for reconsideration of the Commission's order of May 16, 1963, are hereby denied.

(B) The motions filed by Sohio and Hunt for reconsideration of the Commission's order of May 16, 1963, are hereby denied except insofar as they request the amendment of the order to include a savings clause as to which the motions are denied without prejudice to future consideration by the Commission.

Before Commissioners: Charles R. Ross, Acting Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

AREA RATE PROCEEDING, DOCKET NO. AR61-2; TEXACO INC., DOCKET NO. G-17613; SUNRAY DX OIL COMPANY, DOCKET NOS. G-17726 AND G-17727; PHILLIPS PETROLEUM COMPANY, DOCKET NO. G-17740; THE ATLANTIC REFINING COMPANY, DOCKET NO. G-17741; AUSTRAL OIL COMPANY, INC., DOCKET NO. G-17797; TEXAS GULF PRODUCING COMPANY, DOCKET NO. G-17925; P. R. RUTHERFORD, DOCKET NO. G-17928; CONTINENTAL OIL COMPANY, DOCKET NO. G-17936; THE SUPERIOR OIL COMPANY (OPERATOR), ET AL., DOCKET NO. G-17989; TED WEINER (OPERATOR), ET AL., DOCKET NO. G-17993; JEFFERSON LAKE SULPHUR COMPANY (OPERATOR), ET AL., DOCKET NO. G-17997; WILLARD E. WALKER, DOCKET NO. G-18099; SOUTHWEST GAS PRODUCING COMPANY, INC., DOCKET NO. G-18100; TRICE PRODUCTION COMPANY, DOCKET NO. G-18516; DAVID CROW, TRUSTEE, DOCKET NO. G-20083; MOUND COMPANY, ET AL., G-20275; J. P. OWEN (OPERATOR) ET AL., DOCKET NO. G-20555; MARACAIBO OIL EXPLORATION CORPORATION (OPERATOR), ET AL., DOCKET NO. RI60-138

ORDER DENYING MOTIONS TO REJECT, CANCEL, AND DISMISS RATE FILINGS

(Issued July 24, 1963)*

The United Gas Improvement Company (UGI) on May 20, 21, 23, and 31, 1963, filed motions to reject, cancel and dismiss the rate filings in each of the above-designated rate suspension proceedings.[1] Philadelphia Electric Company and

*Rehearing granted for purposes of reconsideration, 30 FPC 647. See 30 FPC 1316 and 31 FPC 15. Order issued February 10, 1960, in G-17613, *et al.*, reopening proceedings for further consideration, 31 FPC 402.

[1] All of the proceedings involved herein are consolidated with the South Louisiana Area Rate Proceeding in Docket No. AR61-2.

Long Island Lighting Company have filed separate motions in support of UGI's motions in all of these proceedings. Answers to UGI motions have been filed by many of the respondents herein. All of these suspension proceedings involve increased rates for sales by producers to Transcontinental Gas Pipe Line Corporation (Transco), which are, or at the time of filing were, based on favored-nation provisions in their respective gas sales contracts.

In support of its motions, UGI cites Opinion No. 382, in *Shell Oil Company, et al.*, Docket No. RI61–515, issued March 15, 1963, 29 FPC 498, where it is stated:

> Any producer filing for an increase under a favored-nation clause of necessity has two hurdles to overcome in ultimately justifying the rate increase. First, his increase is dependent upon the validity of the rate which triggered his favored-nation clause. If the triggering rate is later found to be invalid or unreasonable in whole or in part, then any rate filing based on such triggering rate is without contractual justification to the extent the triggering rate is reduced. * * * [p. 504.]

UGI states that the favored-nation increases involved here were allegedly triggered by sales from Oil Participations Inc. (Oil Participations)[2] and Pan American Petroleum Corporation (Pan American) to Transco. UGI also states that the sale by Oil Participations has been found to be invalid,[3] and that the sale by Pan American has never been permanently certificated.[4] UGI claims that the alleged triggering rates represent a price line which is not in the public interest. UGI thus argues that the triggering rates are not valid rates, and therefore could not trigger the instant increases.

The underlying legal question raised by UGI as to the status of a triggered rate when the triggering rate has been found to be out-of-line in a Section 7 certificate case or unreasonably high in a proceeding under Section 4 or 5, is an interesting one, not previously resolved.[5] But we do not think the problem is factually presented here. For even if we assume that the Oil Participations' initial rate filing, having been the subject of a court remand, was always suspect and that the lower settlement figure was the only firm rate which would properly form the basis for triggering the sales here in issue, the same cannot be said for the Pan-American sale. Here an unconditioned temporary was granted at 23.55 cents, and while any triggering based thereon was, under the contracts in issue, subject to termination if the rate was cut back after the

[2] Now Austral Oil Company, Inc.

[3] The sale by Oil Participations was permanently certificated in Docket No. G–14164, by order issued July 30, 1962, 28 FPC 247, in Texaco Inc., *et al.*, Docket No. G–13169, *et al.*, which disposed of a number of certificate proceedings, including Docket No. G–14164. In accordance with the settlement proposal submitted there, a reduced rate of 20.625¢ per Mcf was made effective as of July 1, 1962, for the sale by Oil Participations. In addition, Oil Participations was required to refund two-thirds of the difference between the charges it had collected and those it would have collected at the settlement price. The Commission's original certification of this sale (20 FPC 264) was remanded by The United States Court of Appeals for the Third Circuit, upon direction of the United States Supreme Court (361 U.S. 195), "for reconsideration and redetermination in the light of *Atlantic Refining Company, et al.* v. *Public Service Commission of New York, et al.*, 360 U.S. 378.)"

[4] The sale by Pan American has been temporarily authorized in Docket No. G–16946 and has been consolidated for hearing with the proceedings in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, by order issued December 31, 1962.

[5] As UGI points out, in the original Opinion No. 382 in *Shell* we indicated that if the triggering rate was later found to be "unreasonable in whole or part, then any rate filing based on such triggering rate is without contractual justification." But as we subsequently pointed out on rehearing in Opinon 382A, this language was merely dictum since the holding in *Shell* was grounded on the fact that there was no contractual basis for the triggering rate, not that it was unreasonable.

Section 7 proceeding (or after a Section 4 or 5 proceeding),[6] there is no basis in the producers' contracts for precluding them from filing for the rate received by Pan-American at least during the time the temporary is in effect.[7] Moreover, as a number of the producers have pointed out their triggering rights under their contracts are not dependent upon the two sales mentioned in Transco's letter, and there in fact are other sales being made at 23.55¢ to Transco under Herbert Hunt Trust Estate FPC Gas Rate Schedule No. 3 and Wm. Herbert Hunt Trust Estate FPC Gas Rate Schedule No. 5, effective as of December 28, 1958, without obligation to refund.[8]

The Commission finds:

For the foregoing reasons, the motions filed by UGI in the above-designated proceedings should be denied.

The Commission orders:

The motions filed by UGI in the above-designated proceedings are hereby denied.

Commissioner Ross *dissenting* on the grounds consistent with the separate concurring statement by Commissioner Morgan, in which he joined, accompanying Opinion No. 382, issued March 15, 1963, in Shell Oil Company, *et al.*, Docket No. RI61–515, 29 FPC 498, 506.

Before Commissioners: Charles R. Ross, Acting Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

CITY OF OTTUMWA, IOWA, PROJECT NO. 925

ORDER FURTHER AMENDING LICENSE

(Issued July 24, 1963)

Application was filed on May 31, 1963 by City of Ottumwa, Iowa, licensee for Project No. 925, for amendment of Article 20 of its license for the project so as to include the administrative annual charge formula set forth in the Commission's Order No. 205 issued June 6, 1958 in Docket No. R–129 (19 FPC 907) pertaining to State and municipal licensees, apply to Project No. 925.

The administrative annual charge as presently fixed under Article 20 of the license is based upon the authorized power capacity of the project, in accordance with Regulation 14 of the Commission's rules and regulations in effect when the license was issued. Under the new administrative annual charge formula, the assessment of annual charges is based upon the actual costs of administering Part I of the Federal Power Act.

---

[6] Of course, where, as here, the triggering clauses expressly provide that the higher rate will remain in effect only as long as the purchaser pays the higher rate to another producer in the area, a rate reduction would be called for where the triggering rate or rates are cut back for any reason, even assuming that the higher rate could be collected in the interim.

[7] The Pan-American temporary was issued in 1958 prior to the establishment of our guideline prices which now preclude granting temporaries at rates high enough to involve triggerng. Moreover, where increased rate filings are made at a rate level which would result in triggering, we have set the case for immediate hearing in an effort, so far successful, to preclude any such triggering effect.

[8] In addition, renegotiated increased rates of 23.55¢ are being collected, subject to refund, by producers for sales to Transco from the area involved here in Docket Nos. G–17726, G–17727, G–17740 and G–17936, among others.

The Commission finds:

(1) The license further amended as hereinafter provided is in the public interest.

(2) The installed horsepower capacity of the project for the purpose of computing the capacity component of the annual charge is 4,200 horsepower, and the annual charge for reimbursing the United States for the costs of administration of Part I of the Federal Power Act, based on such capacity, is reasonable.

The Commission orders:

(A) The license for Project No. 925, as amended, is hereby further amended, effective as of January 1, 1963, by changing Article 20 thereof to read as follows: For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge in accordance with the provisions of Part 11 of the Commission's regulations. The authorized installed capacity for such purposes is 4,200 horsepower.

(B) This amendment in the manner set out above shall not operate to alter or amend the license in any other respect, and shall not in any way constitute a waiver of any other part, provision or condition of the license.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgement of the acceptance of this license amendment, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Charles R. Ross, Acting Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

TEXAS GAS PIPE LINE CORPORATION, DOCKET NOS. G–20073 AND G–20315

ORDER APPROVING SETTLEMENT AGREEMENT AND TERMINATING PROCEEDINGS

(Issued July 24, 1963)

On June 14, 1963, Texas Gas Pipe Line Corporation (Pipe Line) filed a proposed "Settlement Agreement" in the above dockets together with a motion requesting approval of that settlement and termination of the proceedings in conformity therewith. These dockets originated from proposed increases in rates and charges tendered for filing by Pipe Line on October 12, 1959 and November 13, 1959 respectively. Under those filings, Pipe Line proposed increases in rates and charges to Transcontinental Gas Pipe Line Corporation (Transco) of approximately $940,000 annually based on sales of 18,420,773 Mcf. The increased rates became effective subject to refund, on November 12, 1959 and on March 22, 1960, respectively.

Union Texas Petroleum, a Division of Allied Chemical Corporation (Union Texas), in December of 1962, acquired the assets of Texas Gas Corporation (Corporation), parent of Pipe Line.[1] Pipe Line operates approximately 15.7 miles of 12" pipeline extending from a connection with its parent, Union Texas, to its delivery point in Cameron Parish, Louisiana, to Transco, its sole purchaser. Pipe Line has contracted with a number of producers for purchase of gas which is dedicated to the sale to Transco. Union Texas will continue to perform the services of gathering, transporting, and processing natural gas which were per-

[1] See order issued June 14, 1963, in *Union Texas*, Docket No. G–2935, *et al.*

formed originally by Corporation for Pipe Line. These transactions are covered by a Gathering Agreement which is on file as Union Texas' FPC Gas Rate Schedule No. 70.

The aforementioned "Settlement Agreement" was concluded after field investigation by the Commission Staff and several conferences attended by the parties and the Commission Staff. The settlement agreement reduces Pipe Line's rates by 1.58¢ per Mcf, amounting to $227,505 [2] annually, effective as of June 1, 1963. Based upon sales volumes used in the settlement cost of service, Transco will pay 20.54¢ per Mcf for future purchases of gas. As refunds are made by the producers of gas, this rate will be further reduced.

The Settlement Agreement provides, *inter alia*, for a two-part rate, effective as of June 1, 1963, (at 15.025 psia) of a Demand Charge of 80¢ per month per Mcf and a commodity charge of 17.2¢ per Mcf of gas delivered.[3] Pipe Line and Transco will execute a new service agreement providing for a daily contract quantity of 50,000 Mcf and a minimum monthly bill based upon 75% use of the daily contract quantity with a 12-month make-up period. Pipe Line will pass on to Transco any refunds it receives from its current suppliers and file reductions in the commodity charge of its rate under conditions provided in the agreement. Pipe Line agrees not to file for any increase in rate to become effective prior to December 1, 1964, except if increased rates by suppliers are equivalent to 0.1¢ per Mcf.

Pipe Line and Union Texas will amend their Gathering Agreement—

(a) To reduce the currently effective gathering charge from 3.3¢ per Mcf to 2.5¢ per Mcf on the first 14,800,000 Mcf delivered at 14.65 psia, and 1.25¢ per Mcf for any additional deliveries;

(b) To change the reimbursement to Pipe Line for shrinkage and fuel loss due to processing operations from a volumetric basis to a BTU reduction basis;

(c) To provide for a yearly minimum annual bill based up on 75% use of the daily delivery obligation.

On June 24, 1963, Philadelphia Electric Company, by telegram, submitted certain comments in regard to the settlement: [4] Philadelphia Electric notes that (1) although the gas involved is produced in Texas, the proposed settlement rate is higher than the South Louisiana "in line" price for new gas; (2) the transportation charge by Texas Gas Corporation (now Union Texas) is unwarrantedly high; (3) the issue of whether the gas is of pipeline quality is unresolved; and (4) no valid reason is indicated why the settlement fails to provide for refunds.

With reference to those comments, the documents before us indicate: (1) the proposed settlement rates are based on a cost of service which has been investigated by Commission Staff, adjusted and finally agreed upon by Pipe Line, Staff and the parties hereto; (2) the transportation charge includes transporting, gathering and processing services by the parent and is consistent with Commission precedent in comparable cases; (3) it has been pointed out that the gas is of "pipeline quality" after processing and that Pipe Line receives compensation for BTU reductions in the purchased gas which Pipe Line passes on to Transco for the benefit of its customers; (4) although Pipe Line did collect a small amount of excess revenues during the locked-in periods, Pipe Line,

[2] This is based on annual sales by Pipe Line of 14,400,000 Mcf. If sales are increased to 18,420,773 Mcf as indicated by Pipe Line in Docket No. G–20315, the savings to Transco will amount to approximately $425,000 annually.

[3] That two-part rate equates to a rate of 20.54¢ per Mcf at 79% load factor. However, if Transco should purchase gas at 100% load factor from Pipe Line, this rate would be 19.8¢ per Mcf.

[4] That telegram does not comply with the requirements for an answer to the motion pursuant to the Commission's Rules nor was it served upon any party to the proceedings.

Staff and the parties deemed a further reduction in the prospective rate in lieu of the small refunds as more desirable. This was reflected in the ultimately agreed upon rate. Transco will pass the reduction in rates to its customers pursuant to the settlement agreement approved by Commission order issued February 2, 1962, in Docket No. RP61–13, 27 FPC 187.

The proposed "Settlement Agreement" is attached hereto [omitted in printing] as Exhibit I, and is made a part hereof. Upon review of that agreement and the data submitted in support thereto, we are of the view that the settlement of these proceedings is in the public interest.

The Commission finds:

(1) The proposed settlement of these proceedings upon the basis set forth in the aforementioned agreement is reasonable, proper, and in the public interest in carrying out the provisions of the Natural Gas Act and should be approved and made effective, subject to the terms and conditions hereinafter provided and ordered.

(2) The Commission's Regulations, particularly Part 154 thereof (18 CFR, Part 154), should be waived to the extent necessary to permit the tariff sheets and service agreement to be filed as hereinafter required to become effective on June 1, 1963.

(3) Good cause exists for terminating these proceedings subject to the conditions hereinafter specified.

The Commission orders:

(A) The settlement of these proceedings upon the basis of the Settlement Agreement (Exhibit I hereto), filed by Pipe Line on June 14, 1963, is approved and made effective, subject to the terms and conditions hereinafter ordered.

(B) Within thirty (30) days from date of issuance of this order, Pipe Line shall file, subject to the approval of the Commission, (1) revised tariff sheets embodying the rates and provisions contained in the Settlement Agreement; and (2) a new service agreement executed between it and Transco in compliance with the implementation of Article 2 of the Settlement Agreement.

(C) Within thirty (30) days from date of issuance of this order, Pipe Line and Union Texas shall amend their Gathering Agreement on file as Union Texas' FPC Gas Rate Schedule No. 70, in accordance with Article 5 of the Settlement Agreement and Pipe Line shall cause such amendment to be filed, subject to approval by the Commission.

(D) Upon acceptance by the Commission and notice to that effect from the Secretary, the tariff sheets, the Service Agreement and the Gathering Agreement referred to above, shall become effective as of June 1, 1963, and the requirements of the Commission's Regulations under the Natural Gas Act, particularly Part 154 thereof (18 CFR, Part 154), are hereby waived for that purpose.

(E) Within fifteen (15) days of receiving refunds from its producer suppliers listed in the Settlement Agreement, Pipe Line shall, in compliance with Article 3 of that Settlement Agreement, make such refunds, including interest received, and report to the Commission, in writing, and under oath, the amount of the refund made to Transco.

(F) Pipe Line shall reduce the commodity component of its DGS–1 rate as contained in the settlement to reflect rate filings by its producer-suppliers resulting in reduction of cost of gas to Pipe Line equivalent to at least one-tenth (1/10th) of one (1) cent per Mcf of sales to Transco.

(G) Subject to the provisions of paragraphs (E) and (F) above, and upon full compliance with paragraphs (B) and (C) above and all of the terms and conditions of this order, and acceptance by the Commission of the filings made pursuant hereto, these proceedings shall be deemed to be terminated.

(H) This order is without prejudice to any findings or orders which have been or may hereafter be made by the Commission Staff, and is without prejudice to any claims or contentions which may be made by the Commission, Pipe Line, or any affected party herein in any proceeding now pending or hereafter instituted by or against Pipe Line or any other company or person.

APPENDIX A

PENDING RATE PROCEEDINGS INVOLVING SUPPLIERS OF TEXAS GAS PIPE LINE CORPORATION

	FPC gas rate schedule	Rate	Effective date	Docket number
Mound Company	1	16.5	Mar. 26, 1960	G-19729.
Pan American Petroleum Corp.	3	16.5	Mar. 9, 1960	G-19579.
Houston Natural Gas Prod. Co.	2	16.5	Mar. 29, 1960	G-19730.
Phillips Petroleum Co.	145	17.25	Apr. 2, 1960	G-19950.
Sun Oil Co.	41	16.25	Apr. 1, 1960	G-19907.
Do.	42	16.25	Jan. 18, 1961	RI61-39.
		15.25	Apr. 1, 1960	G-19944.
Gulf Oil Corp.	41	16.5	May 9, 1960	RI61-259.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

WILLIAM F. JOHNSON AND MADGE G. JOHNSON, AND CHARLES C., CAROLE L. AND CLYDE G. BALDOSSER, PROJECT NO. 433

ORDER APPROVING TRANSFER OF LICENSE (MINOR)

(Issued July 25, 1963)

Joint application was filed on May 3, 1963 by William F. Johnson and Madge G. Johnson, licensees for minor Project No. 433, and Charles C., Carole L. and Clyde G. Baldosser, of Covina, California, for Commission approval of transfer of the license for the project from the former to the latter.

Project No. 433 is located on North Fork of Rush Creek, a tributary to Silver Lake, in Mono County, California, and affects lands of the United States within the Inyo National Forest. The project consists of a concrete diversion dam, an 8-inch diameter steel pipeline 1,578 feet long, and a frame powerhouse having an installed capacity of 67 horsepower.

The outstanding license for the project was issued to the licensees on April 2, 1957, 17 FPC 484, for a period of 10 years effective as of June 14, 1954. Annual charges specified in the license, in the amount of $10.64, have been paid through the calendar year 1962.

According to the certified copy of the Bill of Sale which was filed as part of the joint application, the project properties were sold to the proposed transferees of the license on April 1, 1963.

The Commission finds:

(1) The proposed transferees are citizens of the United States, and have submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary for the operation of the project.

(2) Commission approval of transfer of the license to the proposed transferees will not be inconsistent with the public interest.

The Commission orders:

(A) The transfer of the license for Project No. 433 to Charles C., Carole L. and Clyde G. Baldosser is hereby approved, effective as of April 1, 1963, subject to the provisions of Section 9.3 of the Commission's Regulations and the Federal Power Act; provided that the transferees shall be subject to the conditions and obligations of the license and to all the provisions of the Act to the same extent as though they were the original licensee for the project.

(B) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Federal Power Act, and failure to file such an application shall constitute acceptance of the license for Project No. 433. In acknowledgment of the acceptance of such license, this instrument shall be signed by the new licensees and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

PACIFIC POWER & LIGHT COMPANY, DOCKET NO. E-7108

SUPPLEMENTAL ORDER AUTHORIZING ISSUANCE OF FIRST MORTGAGE BONDS AND PREFERRED STOCK

(Issued July 30, 1963)

By order issued July 17, 1963, 30 FPC 280, in the above-entitled matter, the Commission authorized Pacific Power & Light Company, (Applicant) to issue and sell at competitive bidding $30,000,000, principal amount of First Mortgage Bonds and 100,000 shares of Serial Preferred Stock, par value $100 per share, subject to the provisions, among others set forth in Paragraph (B) of that order as follows:

(B) The proposed issuance and sale of Bonds and Preferred Stock at competitive bidding shall not be consummated until:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h) of those Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations;

(ii) The Commission, by a further order, shall have approved the price to be received by Applicant for the proposed issuance of Bonds and Preferred Stock and the interest rate and dividend rate respectively, thereof.

Applicant, on July 30, 1963, filed an amendment, pursuant to the requirements of the aforementioned Commission order, in which it states, among other things, (1) that it proposes to accept, as representing the lowest annual cost of money to it, the bid of Lehman Brothers, Bear Stearns and Company, Merrill Lynch Pierce Fenner & Smith, Inc., and Salomon Brothers & Hutzler to purchase the proposed issuance of $30,000,000 principal amount of Bonds, at the price of 100.1099% of principal amount, with an interest rate of 4⅝% per annum; and (2) that it proposes to accept, as representing the lowest cost of money, the bid of Kidder, Peabody & Co., Eastman Dillon, Union Securities & Co. to purchase the Preferred Stock, par value $100 per share at a price of 100.21 per share and an annual dividend of 4.72%.

The Commission finds:

(1) Applicant has satisfactorily complied with the requirements contained in Paragraph (B) of the Commission's order issued July 17, 1963, in the above-entitled docket; and under the respective bids it proposes to accept for the issuance of Bonds and Preferred Stock, (a) the price to be received by Applicant for the Bonds and the interest rate thereof are reasonable; and (b) the price per share to be received by Applicant for the Preferred Stock and its dividend rate are reasonable.

(2) The proposed issuance and sale of Bonds and Preferred Stock, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

The Commission orders:

(A) The price to be received by Applicant for the proposed Bonds and the interest rate thereof, and the price per share to be received by Applicant for the proposed issuance of Preferred Stock and the dividend rate thereof, are approved as reasonable.

(B) The proposed issuance and sale of Bonds and Preferred Stock referred to above, upon the terms and conditions, and for the purposes specified in the application, as supplemented by the amendment referred to above, are hereby authorized, subject only to the provisions of Paragraphs (C), (D) and (E) of the Commission's order issued July 17, 1963, in the above docket.

Before Commissioners: Charles R. Ross, Acting Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

COLORADO INTERSTATE GAS COMPANY, DOCKET NO. G–15811; EL PASO NATURAL GAS COMPANY, DOCKET NO. G–16105

FINDINGS AND ORDER DISMISSING APPLICATIONS

(Issued July 31, 1963)

On August 4, 1958, as supplemented on August 20, 1958, November 30, 1959, January 5, 1961, June 13, 1961, and February 11, 1963, Colorado Interstate Gas Company (CIG) filed in Docket No. G–15811 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and the short-term sale of natural gas to El Paso Natural Gas Company (El Paso) in Moore County, Texas, to relieve a temporary oversupply of gas, at a point where CIG's 20-inch line running northwest from its Fourway Station intersects the 30-inch line of Northern Natural Gas Company (Northern) extending from Dumas, Texas, all as more fully set forth in the application as supplemented.

On August 22, 1958, El Paso Natural Gas Company filed in Docket No. G–16105 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the delivery of natural gas to be obtained from CIG under the authorization requested in Docket No. G–15811 to Northern at the aforementioned location, all as more fully set forth in the application.

El Paso originally proposed to take or pay for a minimum daily volume of 125,000 Mcf from the expected date of original certification to May 4, 1959, and

thereafter a minimum daily volume of 175,000 Mcf through December 31, 1959, plus an additional 50,000 Mcf per day on a best-efforts basis. El Paso proposed to use the gas so obtained in substitution for a portion of the quantities of gas which it is delivering to Northern on an exchange basis at El Paso's Dumas Compressor Station. The exchange with Northern has been authorized in Docket Nos. G–2134, G–12135, G–15139, and G–17854. Both CIG and El Paso requested and received temporary authorization for the proposed construction and operation of facilities and the sale and delivery of natural gas on October 1, 1958. Since the granting of the first temporary authorization, the application has been amended and further requests for temporary authorization have been filed. Letter orders granting temporary authorization were issued on February 4, 1960, February 16, 1961, July 6, 1961, and March 6, 1963. The final temporary authorization terminated April 30, 1963, and no request for an extension has been filed. The Applicants have agreed that volumes to be sold and delivered under the final temporary authorization should average 75,000 Mcf per day, and that any gas remaining to be made on May 1, 1963, could be used by El Paso at any time prior to January 1, 1965.

On April 10, 1963, the Commission issued a temporary certificate to El Paso in Docket No. CP63–63 authorizing the transportation and delivery to Northern of 50,000 Mcf of gas in addition to the delivery on an exchange basis previously authorized. The temporary certificate also authorized the construction and operation of facilities looping part of the Plains-Dumas line. Hence, it appears that El Paso will be able to offset the CIG gas stoppage by increasing the capacity of its Plains-Dumas line and that there is no need to take any further action on the pending applications in Docket Nos. G–15811 and G–16105.

In response to letters from the Secretary the Applicants have stated that they have no objection to the dismissal of the subject applications as moot so long as such action will not foreclose or prejudice CIG's ability to meet its obligation to deliver the prepaid volumes through December 31, 1964, and will not foreclose or prejudice El Paso's right to receive such gas through December 31, 1964.

Notice of the filing of the subject applications was issued May 13, 1963, and published in the Federal Register on May 18, 1963 (28 F.R. 5035). No protest, request for hearing, or petition to intervene has been received since the publication of the notice. Several notices of intervention and petitions to intervene were filed prior to the publication of the notice.

The Commission finds:

(1) The pending applications in Docket Nos. G–15811 and G–16105 should be dismissed as moot.

(2) The dismissal of the subject applications should not foreclose or prejudice CIG's ability to meet its obligation to deliver the prepaid volumes through December 31, 1964, and should not foreclose or prejudice El Paso's right to receive such gas through December 31, 1964.

The Commission orders:

(A) The pending applications in Docket Nos. G–15811 and G–16105 be and the same are hereby dismissed as moot.

(B) The dismissal of the subject applications shall not be construed to foreclose or prejudice CIG's ability to meet its obligation to deliver the prepaid volumes through December 31, 1964, or to foreclose or prejudice El Paso's right to receive such gas through December 31, 1964.

Before Commissioners: Charles R. Ross, Acting Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

TOWN OF GATE, OKLAHOMA, DOCKET NO. CP63-280

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued July 31, 1963)

On April 10, 1963, the Town of Gate, Oklahoma, (Applicant) filed in Docket No. CP63-280 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Cities Service Gas Company (Cities) to establish physical connection of its transmission facilities with the proposed facilities of, and to sell natural gas to Applicant for resale and distribution in the Town of Gate, and environs, all as more fully set forth in the application.

Applicant requests that Cities be directed to tap its transmission pipeline at a point approximately 3200 feet north of the town limits and to provide a regulation station at such point where Applicant can connect its proposed transmission line. Applicant proposes to install a 2½" natural gas transmission pipeline extending 3200 feet from the tap on Cities' line to the north town limits. Concurrently, it plans to construct a natural gas distribution system and appurtenances in the town and serve businesses and homes located therein. The transmission and distribution facilities will be owned and operated by Applicant.

It is estimated that the total cost of all construction by Applicant will amount to $24,760.44 to be financed by the issuance of $25,000 in bonds.

The application indicates that the estimated third year annual requirements would be 13,930 Mcf, while the estimated third year peak day requirements would be 124.3 Mcf of natural gas.

On April 29, 1963, Cities filed an answer to the subject application stating that it did not object to rendering the requested service.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on June 18, 1963 (28 F.R. 6250). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

(1) Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) Applicant, Town of Gate, Oklahoma, is a municipal corporation incorporated under the laws of the State of Oklahoma and is legally empowered to construct and operate natural gas facilities and to sell and distribute natural gas in the Town of Gate.

(3) It is necessary and desirable in the public interest that Cities be directed to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant and to sell and deliver up to 124.3 Mcf of natural gas per day to Applicant, its estimated third year peak day requirement, as set forth in the application, and as hereinafter ordered and conditioned.

(4) Applicant should be prepared to receive natural gas from Cities within one year from the date of issuance of this order, and in addition execute a service agreement with Cities in accordance with the Commission's Regulations under the Natural Gas Act.

(5) The requirement that Cities serve Applicant, as proposed, will not place any undue burden upon Cities nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Cities Service Gas Company be and it is hereby directed to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant and to sell and deliver up to 124.3 Mcf of natural gas per day to Applicant, its estimated third year peak day requirement, all as hereinbefore described and as set forth in the application.

(B) Applicant shall be prepared to receive natural gas from Cities within one year from the date of issuance of this order, and in addition execute a service agreement with Cities in accordance with the Commission's Regulations under the Natural Gas Act.

(C) Cities shall report to the Commission in writing the date of commencement of service to Applicant.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

HASSIE HUNT TRUST, DOCKET NO. RI64-53; WILLIAM HERBERT HUNT TRUST ESTATE, DOCKET NO. RI64-54

ORDER PROVIDING FOR HEARINGS ON AND SUSPENSION OF PROPOSED CHANGES IN RATES [1]

(Issued July 31, 1963)

The above-named Respondents have tendered for filing proposed changes in presently effective rate schedules for sales of natural gas subject to the jurisdiction of the Commission. Both of the sales are made at a pressure base of 14.65 psia. The proposed changes, which constitute increased rates and charges, are designated as follows:

---

[1] This order does not provide for the consolidation for hearing or disposition of the matters covered herein, nor should it be so construed.

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until	Cents per Mcf		Rate in effect subject to refund in Docket Nos.
									Rate in effect	Proposed increased rate	
RI64-53...	Hassie Hunt Trust, 700 Mercantile Bank Building, Dallas 1, Texas.	2	14	Texas Eastern Transmission Corporation (Southwest Speaks Field, Lavaca County, Texas) (R.R. District No. 2).	$3,650	July 1, 1963	Aug. 1, 1963[2]	Jan. 1, 1964	[4] 13.8733	[3] [5] 14.3733	----------
RI64-54...	William Herbert Hunt, Trust Estate, 700 Mercantile Bank Building, Dallas 1, Texas.	2	13	Texas Eastern Transmission Corporation (Arneckeville Field, DeWitt County, Texas) (R.R. District No. 2).	1,825	July 1, 1963	Aug. 1, 1963[2]	Jan. 1, 1964	[6] 13.8733	[3] [5] 14.3733	----------

[2] The stated effective date is the first day after expiration of the required statutory notice.
[3] Periodic rate increase.
[4] Settlement rate accepted in order issued May 29, 1963, in Docket No. G-18093.
[5] Equivalent to 14.8733¢ when cost to buyer of 0.5¢ per Mcf for dehydration and central point delivery is taken into consideration.
[6] Settlement rate accepted in order issued May 29, 1963, in Docket No. G-18091.

Hassie Hunt Trust and William Herbert Hunt Trust Estate (both referred to herein as Hunt) request an effective date of February 5, 1963, for their proposed rate increases. Good cause has not been shown for waiving the 30-day notice requirement provided in Section 4(d) of the Natural Gas Act to permit an earlier effective date for Hunt's rate filings.

Hunt's presently effective 13.8733¢ per Mcf rates resulted from settlement offers approved by orders issued on June 24, 1963. The proposed increased rates, which were contractually due on February 5, 1963, are equivalent to rates of 14.8733¢ per Mcf when the cost to the buyer of 0.5¢ per Mcf for dehydration and central point delivery is taken into consideration and exceed the increase ceiling of 14.6¢ per Mcf as set forth in the Commission's Statement of General Policy No. 61–1, as amended [18 CFR, Chapter I, Part 2, Section 2.56].

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds:

It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon hearings concerning the lawfulness of the proposed changes, and that the above-designated supplements be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly Sections 4 and 15 thereof, the Commission's Rules of Practice and Procedure, and the Regulations under the Natural Gas Act [18 CFR, Chapter I], public hearings shall be held upon dates to be fixed by notices from the Secretary concerning the lawfulness of the proposed increased rates and charges contained in the above-designated supplements.

(B) Pending hearings and decisions thereon, the above-designated rate supplements are hereby suspended and the use thereof deferred until the date indicated in the above "Date Suspended Until" column, and thereafter until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended, nor the rate schedules sought to be altered thereby, shall be changed until these proceedings have been disposed of or until the periods of suspension have expired, unless otherwise ordered by the Commission.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the Rules of Practice and Procedure [18 CFR 1.8 and 1.37(f)] on or before September 16, 1963.

Commissioner O'Connor *dissenting* for the reasons set forth in his dissenting statement accompanying the order issued February 4, 1963 in *Mills Bennett Estate, et al.*, Docket No. RI63–308, *et al.*, 29 FPC 212, 217.

Before Commissioners: Charles R. Ross, Acting Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO CP62-144

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 31, 1963)

On March 22, 1963, Natural Gas Pipeline Company of America (Movant), filed in Docket No. CP62-144 a motion to amend the Commission's order issued on June 8, 1962, 27 FPC 1126, granting a certificate of public convenience and necessity, by authorizing the installation of additional facilities consisting of storage injection-withdrawal wells and appurtenant gathering lines, all as more fully set forth in the subject motion.

The Commission authorized Movant (formerly Natural Gas Storage Company of Illinois at the time of issuance of the order) to acquire certain underground storage rights and to construct and operate facilities for the evaluation of the characteristics and capabilities of an underground natural gas storage reservoir, described as the Cairo Storage Area, in Louisa County, Iowa. Such authorization included facilities necessary for the injection of gas into the St. Peter Formation of that storage area and limited the inventory of gas stored to 2,800,000 Mcf. Movant anticipated that the total quantity could be injected within a twelve month period. However, it now appears that the facilities originally authorized are not adequate to inject the volumes of gas in accordance with the reservoir testing program. The drilling of the additional storage wells proposed will allow Movant to inject the necessary volumes so as to complete its evaluation of this formation as a possible storage reservoir within the specified time as set out in the order of June 8, 1962.

The additional facilities sought herein consist of six new injection-withdrawal wells and approximately 3.0 miles of 6-inch gathering pipeline.

The total estmated cost of said facilities sought herein is $194,500 to be financed from funds on hand.

Due notice of the filing of the motion to amend and opportunity for hearing thereon has been given by publication in the Federal Register on June 22, 1963 (28 F.R. 6472). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order, issued June 8, 1962, in Docket No. CP62-144 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order, issued June 8, 1962, in Docket No. CP62-144 be and the same is hereby amended by authorizing Natural Gas Pipeline Company of America to install six new injection-withdrawal wells in the St. Peter Formation of the Cairo Area in Louisa County, Iowa, and to construct approximately 3.0 miles of 6-inch gathering pipeline.

(B) The requirements of paragraph (F) of that order shall apply to the facilities authorized in paragraph (A) above.

(C) In all other respects said order shall remain in full force and effect.

Before Commissioners: Charles R. Ross, Acting Chairman, L. J. O'Connor, Jr., and Harold C. Woodward.

SOCONY MOBIL OIL COMPANY, INC., DOCKET NOS. G–15505, G–16426, G–16965, G–19660.* RI61–113,* RI62–112* AND RI62–113*

ORDER ACCEPTING OFFER OF SETTLEMENT, ACCEPTING NOTICES OF CHANGE FOR FILING, REQUIRING REFUNDS, TERMINATING PROCEEDINGS IN WHOLE OR IN PART

(Issued July 31, 1963)

On July 1, 1963, Socony Mobil Oil Company, Inc. (Socony) submitted an offer of settlement,[1] as amended by letters submitted on July 8, 1963, in the above-designated rate suspension proceedings, which relate to jurisdictional sales of natural gas under Socony's FPC Gas Rate Schedule Nos. 146, 149, and 151, to Shell Oil Company (Shell).

The gas is resold by Shell to Texas Eastern Transmission Corporation under Shell's FPC Gas Rate Schedule No. 10. Shell's resale rate of 14.6 per Mcf was established by settlement order in *Shell Oil Company, et al.*, Docket No. G–9446, *et al.*, issued August 1, 1962, 28 FPC 257.[2] The sales under Socony's FPC Gas Rate Schedule No. 146 and 149 are made in Colorado County, Texas (Railroad Commission District No. 3), and the sale under Socony's FPC Gas Rate Schedule No. 151 is made in Lavaca County, Texas (Railroad Commission District No. 2).

The presently effective rates under Socony's rate schedules are set forth in the following table:

Docket Number	Rate schedules No. 146[1]		Rate schedules No. 149[2]		Rate schedules No. 151	
	Supplement No.	Rate	Supplement No.	Rate	Supplement No.	Rate
		Cents		*Cents*		*Cents*
G–15505	4	14.2	5	14.2	3	14.2
G–16426	5	14.4	6	14.4	4	14.4
G–16965	6	14.6	7	14.6	5	14.6
G–19660	7	14.8	8	14.8	7	14.8
RI61–113	8	15.0	10	15.0	9	15.0
RI62–112	9	15.2	11	15.2		
RI62–113					10	15.2

[1] Rates under this rate schedule are subject to a deduction of 1.5¢ per Mcf for gathering.
[2] Rates under this rate schedule are subject to deduction of 1.25¢ per Mcf for gathering and, effective on April 18, 1960, 1.75¢ per Mcf for compression.

Socony tendered for filing, on June 10, 1963,[3] notices of change in its above-designated rate schedules proposing to decrease its rates to reflect the effect of the Shell settlement order.[4] Socony's decreased rates, 14.6¢ per Mcf at 14.65 psia, are the same as those under Shell's FPC Gas Rate Schedule No. 10, less certain contractual deductions as shown in the tabulation above. Socony states that it has made refunds to Shell of all amounts collected above 14.6¢ per Mcf

*The proceedings in Docket Nos. G–19660, RI61–113, RI62–112, and RI62–113, relating to certain additional rate schedules not involved in this order, will be terminated only in part.

[1] Although the document is styled as a motion to terminate, it has been construed as an offer of settlement.

[2] Under Socony's rate schedules involved here, Socony receives all of the revenues collected by Shell for the resale of gas to Texas Eastern, less certain deductions specified in the rate schedules.

[3] Socony proposed an effective date of August 1, 1963, for these changes.

[4] The notices of change are designated as Supplement Nos. 10, 12, and 11 to Socony's FPC Gas Rate Schedule Nos. 146, 149, and 151, respectively.

in accordance with the Shell settlement order under the aforementioned rate schedules, and that it will file a report of such refunds. Socony also waives its right to file for any increase in rate resulting from the operation of the favored-nation or price redetermination provisions in the subject contracts.[5]

Since the proposed settlement rates of 14.6¢ per Mcf, including present tax reimbursement, less applicable deductions, at 14.65 psia, are acceptable under the provisions of the Second Amendment to the Commission's Statement of General Policy No. 61–1, issued December 20, 1960, 24 FPC 1107, as amended by Order No. 264, issued March 27, 1963, 29 FPC 590, for jurisdictional sales of natural gas in Texas Railroad Commission District Nos. 2 and 3, it is believed that the public interest will best be served by accepting Socony's proposed settlement as hereinafter set forth.

However, we desire to make it clear that acceptance of the offer of settlement shall not be construed as approval of any future increased rate proposed by Socony.

The Commission finds:

The proposed settlement of the above-designated proceedings, on the basis described herein, and as set forth in the offer of settlement filed by Socony with the Commission on July 1, 1963, as amended by letters filed on July 8, 1963, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of settlement filed by Socony with the Commission on July 1, 1963, as amended by letters filed on July 8, 1963, and as hereinafter conditioned, is approved in accordance with the provisions of this order.

(B) Within 30 days from the date of issuance of this order, Socony shall refund to Shell all amounts collected under its FPC Gas Rate Schedule Nos. 146, 149, and 151, in excess of the settlement rate of 14.6¢ per Mcf, including present tax reimbursement, less applicable deductions, from and after January 1, 1961, in accordance with the aforementioned Shell settlement order, with appropriate interest to the date of refund. Socony shall bear all costs incidental to the making of such refunds.

(C) Within 45 days from the date of issuance of this order, Socony shall report to the Commisison in writing the details of its calculations resulting in refunds ordered pursuant to paragraph (B) above, together with a copy of a release from Shell with respect to such refunds.

(D) Upon notification by the Secretary of the Commission that Socony has complied with the terms of this order, the notices of change tendered for filing by Socony on June 10, 1963, providing for a 14.6¢ per Mcf rate, including present tax reimbursement, less applicable deductions, under Socony's FPC Gas Rate Schedule Nos. 146, 149, and 151, and the other supplements thereto, as designated above, are hereby accepted for filing, to be effective as of the date of issuance of this order, the proceedings in Docket Nos. G–15505, G–16426 and G–16965 shall be deemed terminated, the proceedings in Docket Nos. G–19660, RI61–113, RI62–112, and RI62–113 shall be deemed terminated only insofar as they relate to Socony's FPC Gas Rate Schedule Nos. 146, 149, and 151, and in all other respects shall remain in full force and effect, and Socony's refund obligations with respect to its FPC Gas Rate Schedule Nos. 146, 149, and 151 shall be deemed discharged.

[5] The letters and amendatory agreements relating to waiver are designated as follows: Supplement Nos. 1 to 10, and 11, to Socony's FPC Gas Rate Schedule No. 146; Supplement Nos. 1 to 12, 13, and 14 to Socony's FPC Gas Rate Schedule No. 149; and Supplement Nos. 1 to 11, and 12, to Socony's FPC Gas Rate Schedule No. 151.

Before Commissioners: Charles R. Ross, Acting Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

SOUTHERN NATURAL GAS COMPANY AND TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. G–4715

ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND ACCEPTING TARIFF SHEETS FOR FILING

(Issued July 31, 1963)

On April 16, 1963, Southern Natural Gas Company (Southern) and Tennessee Gas Transmission Company (Tennessee) (sometimes hereinafter referred to jointly as Applicants) filed in Docket No. G–4715 an application to amend further the Commission's order, issued February 25, 1955, 14 FPC 577, in said docket, all as more fully set forth in the joint application to amend.

The subject order, as amended, authorized Applicants to exchange up to 15,000 Mcf of natural gas per day with Southern delivering said volume to Tennessee from the Franklin Field, St. Mary's Parish, Louisiana. Tennessee redelivers said volume to Southern to two points: the Bayou Sale redelivery point in St. Mary's Parish and the Eloi Bay redelivery point in Block 49, Chandeleur Sound, Offshore Louisiana.

The application indicates that Southern has now developed gas reserves in the High Island Field, Cameron Parish, Louisiana, and that Tennessee is presently purchasing gas in said High Island Field. Further, the application indicates that Tennessee owns and controls certain reserves from the Bastian Bay Field, Plaquemines Parish, Louisiana, and that Southern is presently purchasing gas from said field. Therefore, Applicants request that the subject order be further amended as follows:

(a) to authorize a new delivery point in the immediate vicinity of the existing High Island metering facilities and to authorize Southern to deliver to Tennessee at said point up to 5,000 Mcf of gas per day for the first 18 calendar months after commencement of deliveries at said point. During such 18 month period, the quantity of gas delivered by Southern at the Franklin delivery point would be reduced to 10,000 Mcf.

(b) to authorize, after the above-described 18 month period, Southern to deliver to Tennessee and Tennessee to redeliver to Southern up to 20,000 Mcf of gas per day; Southern to deliver said quantity at the High Island and Franklin delivery points.

(c) to authorize a new redelivery point in the immediate vicinity of Southern's receiving facilities in Bastian Bay, and to authorize Tennessee to redeliver to Southern at said point up to 2,000 Mcf of gas per day, with a corresponding reduction in the amount of gas redelivered by Tennessee at the Bayou Sale and Eloi Bay redelivery points.

The application shows that Southern's reserves in the High Island area are presently without an outlet and are being subjected to drainage. Southern states that only a short gathering line and delivery meter will be necessary to complete the High Island tie-in to Tennessee's system, and, thence, Southern will be able to commence deliveries of its gas at a minimum cost of construction of new facilities. The facilities necessary for Tennessee to redeliver at the proposed Bastian Bay point are already in existence and no additional construction will be required.

Applicants have entered into an amendatory exchange agreement, dated March 14, 1963, providing for the subject proposals. May 1 and May 13, 1963, Southern and Tennessee, respectively, filed the following applicable tariff sheets:

Southern: Original Sheet No. 68A; First Revised Sheets Nos. 63, 64, 65 and 68; Second Revised Sheets Nos. 60, 61, 62, 66 and 67, and the Third Revised Sheet No. 59, all to Southern's FPC Gas Tariff, Original Volume No. 2.

Tennessee: Original Sheet No. 57A; Second Revised Sheets Nos. 51, 52, 53, 54, 55 and 57; and Third Revised Sheets Nos. 49, 50 and 56, all to Tennessee's FPC Gas Tariff, Fourth Revised Volume No. 2.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on June 15, 1963 (28 F.R. 6201). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order, issued February 25, 1955, as amended, in Docket No. G–4715 be further amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order, issued February 25, 1955, as amended, in Docket No. G–4715 be and the same is hereby further amended to authorize the proposed additional delivery point and redelivery point and to authorize the exchange and delivery of natural gas, all as hereinbefore described and as set forth in the subject application to amend and the amendatory exchange agreement, dated March 14, 1963.

(B) In all other respects said order, as amended, shall remain in full force and effect.

(C) Southern's applicable tariff sheets, filed on May 1, 1963, and hereinbefore described, are hereby accepted for filing to become effective on the date this order issues.

(D) Tennessee's applicable tariff sheets, filed on May 13, 1963, and hereinbefore described, are hereby accepted for filing to become effective on the date this order issues.

Before Commissioners: Charles R. Ross, Acting Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP63–271

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 31, 1963)

On April 4, 1963, United Gas Pipe Line Company (Applicant) filed in Docket No. CP63–271 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of some 5.2 miles of 6-inch loop pipeline, and the sale and delivery of additional volumes of natural gas to United Gas Corporation (United), all as more fully represented in the application in this proceeding.

The facilities proposed to be constructed would be used in conjunction with the sale and delivery of additional quantities of natural gas to United in Cherokee and Rusk Counties, Texas, in order to meet the additional requirements of United for resale to the communities of Henderson, Rusk, and Jacksonville, Texas. Applicant would construct and operate a new Rusk Lateral of approximately 3.0 miles of 6-inch pipeline loop beginning near the point of tie-in of the Rusk 4-inch lateral and the Longview-Palestine 8-inch pipeline located in the Thomas Quevedo Survey, Abstract 44, Cherokee County, Texas, and extending

in a southerly direction parallel to the existing Rusk lateral to a point in the Jose Pineda Survey, Abstract 41, Cherokee County, Texas. The estimated third year requirements to be delivered to the Jacksonville-Rusk communities would be 614,940 Mcf, while the annual peak day requirement is estimated at 4,025 Mcf. Applicant further estimates that the total cost of constructing the new Rusk Lateral will be $91,700.

Applicant would construct and operate a second pipeline called the Henderson Lateral of approximately 2.2 miles in length consisting of a 6-inch pipeline loop beginning at a point near Milepost 9.8 on Applicant's existing facilities in the John Runnels Survey, Abstract 679, Rusk County, Texas, and extending in a southerly direction parallel to the existing facilities to a point in the E. B. Warren Survey, Abstract 835, Rusk County, Texas. The estimated third year requirements to be delivered to the Henderson community would be 557,370 Mcf, while the annual peak day requirement is estimated at 5,665 Mcf. Applicant estimates that the total cost of constructing this new Henderson Lateral will be $57,000.

Applicant states that the increased sales would have no significant effect on its reserves nor impair service to other customers served by the facilities involved herein. It intends to finance the proposed construction out of current working funds.

Pursuant to due notice, a public hearing was held in Washington, D.C., on July 18, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation with its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof as well as the sale of natural gas by Applicant, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities as well as the sale of natural gas, as proposed by Applicant, are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure here was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30 (c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, United Gas Pipe Line Company, to construct and operate certain natural gas facilities, and to sell up to 4,025 Mcf of natural gas per day to United Gas Corporation for resale to the Jacksonville-Rusk communities, and further to sell up to 5,665 Mcf of natural gas per day to United Gas Corporation for resale to the Henderson community, as hereinbefore described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the right granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the sale of natural gas shall commence as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within six months from the date on which this order issues.

Before Commissioners: Charles R. Ross, Acting Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

WESTERN GAS SERVICE COMPANY, DOCKET NO. CP62-113

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 31, 1963)

On November 2, 1961, as supplemented on December 13, 1962, Western Gas Service Company (Applicant) filed in Docket No. CP62-113 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the operation of certain existing facilities comprising Applicant's Texhoma-Beaver pipeline, all as more fully described in the application, as supplemented.

The subject existing facilities consist of approximately 106.2 miles of various size pipe extending from a point near the Jones 1-A and Jones 1-B wells in Texas County, Oklahoma, to a point near the Town of Beaver, in Beaver County, Oklahoma.

Applicant states that it has been operating said facilities in the belief that it was not transporting natural gas in interstate commerce. However, Applicant states further that said facilities now do transport natural gas in interstate commerce and that it requests herein appropriate authorization to continue to operate said existing facilities.

The application indicates that the subject facilities connect with and form a continuous system with certain facilities heretofore certificated by the Commission's order, issued February 5, 1959, 21 FPC 164, in Docket No. G-16390.

Pursuant to due notice, a public hearing was held in Washington, D.C., on July 16, 1963, respecting the matters involved in and the issues presented by the application, as supplemented, herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Western Gas Service Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are to be used in the transportion and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the operation thereof by Applicant is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The operation of the existing facilities by Applicant is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Western Gas Service Company, to operate the subject existing facilities as hereinbefore described, all as more fully described in the application, as supplemented, herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

Before Commissioners: Charles R. Ross, Acting Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

GRARIDGE CORPORATION (OPERATOR), ET AL., DOCKET NOS. CI63-369 AND RI60-468

ORDER APPROVING PROPOSED OFFER OF SETTLEMENT, ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND REQUIRING REFUNDS

(Issued August 1, 1963)

On September 18, 1962, Graridge Corporation (Operator), *et al.* (Graridge), filed in Docket No. CI63-369 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Graridge to continue the services authorized to be rendered by Midhurst Oil Corporation (Operator), *et al.* (Midhurst), in Docket No. CI60-727.[1] Midhurst's authorization covers sales of natural gas to Tennessee Gas Transmission Company (Tennessee) for transmission and sale in interstate commerce from the Areopagita G. de Garcia Lease, West Magnolia City Field, Jim Wells County, Texas (Texas Commission Railroad District No. 4).

Concurrent with its application for a certificate of public convenience and necessity, Graridge filed a notice of succession to Midhurst's FPC Gas Rate Schedule No. 7, and a motion to be substituted, concurrent with an agreement and undertaking, as respondent in Docket No. RI60-468. In its motion to be substituted, Graridge requests that it be made co-respondent with Midhurst in Docket No. RI60-468 because effective as of March 1, 1962, Graridge acquired all of Midhurst's interest in the properties related to the subject sale.

Docket No. RI60-468 relates to Midhurst's proposed rate increase from 12.12268¢ per Mcf to 17.24347¢ per Mcf at 14.65 psia, designated Supplement No. 6 to Midhurst's FPC Gas Rate Schedule No. 7, which was suspended by order issued July 8, 1960 until December 10, 1960. From December 10, 1960 to March 1, 1962, Midhurst collected the proposed increased rate subject to refund. Graridge states that it has been collecting the increased rate since March 1, 1962 under its FPC Gas Rate Schedule No. 15.

On April 8, 1963, Graridge submitted an Offer of Settlement covering the subject sale.[2] Under the terms of the Offer, Graridge agrees to amend its contract with Tennessee to eliminate the favored-nation and price-redetermination clauses from the contract. Graridge also agrees to refund to Tennessee all amounts collected from Tennessee in excess of the 14.6¢ per Mcf settlement rate applicable to volumes delivered on and after March 1, 1962, together with simple interest at the rate of 7 percent per annum until the date of refund. Graridge also agrees to accept a settlement rate of 14.6¢ per Mcf, including tax reimbursement, which would be contractually effective until January 1, 1964, with periodic escalations thereafter as follows:

From January 1, 1964 to January 1, 1969	15.6¢ per Mcf
From January 1, 1969 to January 1, 1974	16.6¢ per Mcf
From January 1, 1974 to balance of term	17.6¢ per Mcf

[1] A certificate of public convenience and necessity was issued to Midhurst by order issued March 10, 1961, as amended February 15, 1962, in *Elliott, Inc., et al.*, Docket No. G-3693, *et al.*

[2] With regard to Docket No. RI60-468, the Offer of Settlement covers only the interest of Graridge, and not the interest of Midhurst.

Tennessee has concurred in the Offer of Settlement.

Pursuant to due notice, a public hearing was held in Washington, D.C., on July 22, 1693, respecting the matters involved in and the issues presented by the application and the Offer of Settlement herein. No protest to the granting of the application or protest to the Offer of Settlement or petition to intervene has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c) (1) of its Rules of Practice and Procedure.

The proposed settlement is acceptable under the provisions of the Second Amendment to the Commission's Statement of General Policy No. 61–1 (18 CFR, Chapter I, Part 2, Section 2.56), issued December 20, 1960, 24 FPC 1107, as amended by Order No. 264, issued March 27, 1963, 29 FPC 589. It appears that the public interest will be served by accepting Graridge's Offer of Settlement, issuing Graridge a certificate of public convenience and necessity in Docket No. CI63–369, and requiring refunds.

By accepting Graridge's Offer of Settlement, the basis for making Graridge a respondent in Docket No. RI60–468 has been eliminated and Graridge's motion to be made a respondent is moot. However, the proceeding in Docket No. RI60–468 should remain in full force and effect with regard to Midhurst for the period prior to March 1, 1962.

We desire to make it clear that the acceptance of this Offer of Settlement shall not be construed as approval of any future increased rates proposed by Graridge under the periodic escalation provisions or otherwise.

The Commission finds:

(1) Graridge is a natural-gas company within the meaning of the Natural Gas Act, and is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(2) The proposed sale of natural gas is subject to the jurisdiction of the Commission, and such sale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The proposed settlement on the basis described herein, as more fully set forth in the Offer of Settlement filed by Graridge with the Commission on April 8, 1963, is in the public interest and is appropriate to carry out the provisions of the Natural Gas Act, and should be approved by the Commission and made effective as hereinafter ordered.

(4) Graridge is able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) The proposed sale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, are required by the public convenience and necessity and are in the public interest upon the conditions set forth below, and a certificate should be issued as ordered below.

(6) A request during the public hearing by Staff Counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c) (1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity is hereby issued to Graridge for the sale of natural gas in interstate commerce for resale as proposed, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in Graridge's application and Offer of Settlement.

(B) The certificate issued by Paragraph (A) above is granted upon the express condition that Graridge comply fully with the terms of the Offer of Settlement referred to above and which was entered into evidence in this proceeding, which settlement is expressly approved as of the date of the issuance of this order.

(C) The certificate granted in Paragraph (A) above is not transferable and shall be effective only so long as Graridge continues the acts or operations thereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations, and orders of the Commission thereunder.

(D) The grant of the certificate issued in Paragraph (A) above shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 or 157 of the Commission's Regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Graridge. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas-purchase contract herein involved. Nor shall the grant of the certificate aforesaid for service to Tennessee imply approval of all of the terms of the respective contracts, particularly as to the cessation of service upon termination of said contracts as provided by Section 7(b) of the Natural Gas Act. Nor shall the grant of the certificate aforesaid be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sales of natural gas subject to said certificate.

(E) Graridge shall file within 60 days of the date of issuance of this order a notice of change to its FPC Gas Rate Schedule 15, providing for the 14.6¢ rate, including tax reimbursement, specified in its Offer of Settlement, and a contractual amendment to its FPC Gas Rate Schedule No. 15, which Graridge shall execute with Tennessee in conformity with Graridge's Offer of Settlement in all respects. Both the notice of change and the contractual amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(F) Within 60 days from the date of the issuance of this order, with regard to the subject sale Graridge shall refund to Tennessee all amounts collected from Tennessee in excess of the 14.6¢ per Mcf rate, together with simple interest, at the rate of 7 percent per annum from March 1, 1962 to the date of refund. Graridge shall bear all costs incidental to the making of such refunds.

(G) Within 60 days from the date of the issuance of this order, Graridge shall report to the Commission the details of its calculations resulting in the refunds ordered pursuant to Paragraph (F) above, together with a copy of a release from Tennessee with respect to such refunds.

(H) Graridge's motion to be made respondent in Docket No. RI60–468 is moot and is therefore denied; however, the proceeding in Docket No. RI60–468 shall remain in full force and effect with regard to Midhurst.

(I) Upon notification by the Secretary of the Commission that Graridge has complied with the terms and conditions of this order, the rate and charge of 14.6¢ per Mcf at 14.65 psia, including tax reimbursement, specified in the Offer of Settlement, shall be effective as of the date of the issuance of this order, and Graridge's refund obligation shall be deemed discharged.

Before Commissioners: Charles R. Ross, Acting Chairman; L. J. O'Connor, Jr., and Harold C. Woodward.

REVISION OF ANNUAL REPORT FORM PRESCRIBED FOR CLASS A AND CLASS B ELECTRIC UTILITIES, LICENSEES AND OTHERS SUBJECT TO THE FEDERAL POWER ACT, F.P.C. FORM NO. 1, DOCKET NO. R-238

ORDER NO. 269

ORDER PROMULGATING REVISIONS IN REGULATIONS AND ANNUAL REPORT FORM FOR ELECTRIC UTILITIES, LICENSEES AND OTHERS

(Issued August 1, 1963)*

This Commission has under consideration in this proceeding revisions in its F.P.C. Form No. 1, Annual Report Form Prescribed for Class A and Class B Electric Utilities, Licensees and Others [1] subject to the provisions of the Federal Power Act, and § 141.1, Subchapter D, Approved Forms, Federal Power Act, prescribing F.P.C. Form No. 1.

That Report Form, as revised, is prescribed hereinafter effective for use in reporting for the calendar year beginning January 1, 1963 or subsequently during the calendar year 1963 if an established fiscal year is other than the calendar year, and thereafter.

In addition, seven revised schedules and one new schedule in the form attached hereto,[2] are prescribed, and shall be properly completed and filed as a

---

*Published in the Federal Register on August 8, 1963 (28 F.R. 8140).

[1] Part 141—Statements and Reports (Schedules), of Subchapter D—Approved Forms, Federal Power Act, of Chapter 1—Federal Power Commission, Title 18—Conservation of Power, of the Code of Federal Regulations.

[2] See following table: [Schedules omitted in printing.]

Title	*Page*
Steam-Electric Generating Plant Statistics (Large Plants)	432–432a
Steam-Electric Generating Plant Statistics (Large Plants)—Average Annual Heat Rates and Corresponding Net kwh Output for Most Efficient Generating Units [New Schedules]	432b
Hydroelectric Generating Plant Statistics (Large Plants)	433a–433b
Generating Plant Statistics (Small Plants)	434
Changes Made or Scheduled To Be Made in Generating Plant Capacities	435
Steam-Electric Generating Plants	436–437
Hydroelectric Generating Plants	438–439
Internal-Combustion Engine and Gas-Turbine Generating Plants	440–441

part of 1962 Reports on Form No. 1 within 90 days from the date of this order.[2]

This proceeding was commenced by notice of proposed rulemaking describing the proposed changes. That notice was served upon interested parties, including State and Federal regulatory agencies, and by publication in the Federal Register on April 25, 1963 (28 F.R. 4097). Copies of the revised schedules and new schedule, as proposed, were served as a part of the notice of rulemaking as well as being filed with the Federal Register as a part of the notice (28 F.R. 4097). That notice afforded a period of 30 days for the submission to the Commission of written data, views, comments and suggestions concerning the proposed revisions of F.P.C. Form No. 1 and Part 141. Numerous responses were received and all are now before the Commission for consideration. As pointed out hereinafter the conclusions expressed in certain of the data, views, comments and suggestions are adopted and others are rejected.

Pages 432 through 441, F.P.C. Form No. 1, containing the seven revised and one new schedule as promulgated herein, are set forth in the attached Appendix A* showing the changes adopted in typed or handscript form rather than the printed form in which those changes will ultimately appear. Copies of these eight schedules will be made available in printed format by the Commission on or before September 1, 1963. Copies of the complete F.P.C. Report Form No. 1, including the revisions promulgated herein, also will be available from the Commission or the Superintendent of Documents, United States Government Printing Office. The 90 day period from the time of promulgation of this order and the due date for filing the revised schedules as a part of 1962 FPC Form No. 1 Reports will afford time for familiarization with the schedules herein adopted.

Generally, the changes adopted herein bring the subject eight schedules into agreement with the revised production expense account classifications under the Uniform System of Accounts which became effective January 1, 1961. In addition, those schedules have been revised to eliminate detailed reporting for certain smaller generating plants; i.e., of less than 10,000 kw for steam electric generating plants and of less than 5,000 kw for internal combustion and gas turbine plants. The one new schedule requests data on BTU's per net kilowatt hour of generation, net generation in million kilowatt hours, and kind of fuel for the reporting system's ten most efficient generating units and corresponding information for the company's total system.

Comments and suggestions were filed by 31 privately owned Class A & B electric utilities and the Tennessee Valley Authority.

Three of the 32 respondents suggested deletion of the new (heat rate) schedule, and one indicated it would have difficulty in completing the schedule. These objections were based upon the need for additional instrumentation, recording and estimating procedures required for individual units coming within the scope of the new schedule and not an objection to reporting system heat rate data. Although precise data may not be available in all cases, experience gained in supplying the requested data should resolve the relatively few objections which have been advanced to the schedule. The Commission is of the

---

[2] By letter of the Commission's Secretary of February 4, 1963, all Class A and B private utilities were advised:

The Commission has under consideration for reports for 1962 and subsequent years certain revisions in the schedules on pages 432 through 441. In preparing your report, omit the data required by these schedules. After rulemaking proceedings are ended, copies of such revised schedules as may be prescribed will be supplied for completion and filing as a supplement to your 1962 report.

* Omitted in printing.

opinion that the benefits to be derived from the new schedule warrant its adoption. Other suggested changes to the proposed revisions of Form No. 1 as attached to the notice of rulemaking have been adopted as indicated in the attached Appendix A.

A total of sixteen companies suggested a separate schedule for reporting pumped storage plants in lieu of Schedule 433a, together with revisions in expense accounts as applied to pumped storage projects. There are only a few pumped storage plants in existence at the present time, although additional large installations are expected to be in operation in the near future. Adequate provision for reporting data from this method of operation is necessary and this matter will be studied for future consideration. Operating experience in connection with the pumped storage plants will disclose more clearly the need for specific revisions which may be desirable.

One company suggested the existence of an ambiguity in Schedule 432 lines 38, 39, and 41–43 as noticed for rulemaking. Those lines have been changed to read "Quantities of fuel burned" and "Average cost per unit of fuel burned", respectively. Instruction 6 has been revised for purpose of clarification to read: "Quantities of fuel burned (line 38) and average cost per unit of fuel burned (line 41) should be consistent with the charges to expense accounts 501 and 547 (line 42) as shown on line 21."

The Commission's staff recommends our adoption of the revised schedules and new schedule as set forth in the annexed Appendix A as pages 432 through 441 inclusive, F.P.C. Form No. 1.

The Commission further finds:

(1) The notice and opportunity to participate in this proceeding with respect to the matters presently before this Commission through the submission, in writing, of data, views, comments and suggestions in the manner as described above are consistent and in accordance with all procedural requirements therefor as prescribed in section 4 of the Administrative Procedure Act.

(2) In view of the foregoing, and upon consideration of all relevant matters presented, it is necessary and appropriate for the purposes of the Federal Power Act that:

(a) Report Form F.P.C. No. 1 be revised to include pages 432 through 441 inclusive as set forth in annexed Appendix A and as so revised be adopted and promulgated as this Commission's F.P.C. Form No. 1 effective for use in reporting for the calendar year beginning January 1, 1963 or subsequently during the calendar year 1963 if an established fiscal year is other than the calendar year, and years thereafter; all as hereinafter provided.

(b) The eight schedules of Form No. 1 consisting of pages 432 through 441 inclusive as set forth in annexed Appendix A be adopted and promulgated as a part of the Report Form F.P.C. No. 1 prescribed for use in reporting for the year 1962; such schedules to be filed within 90 days from the issuance of this order.

(c) Section 141.1(d), Title 18 of the Code of Federal Regulations be amended to read as hereinafter provided.

(3) Good cause exists for adoption and promulgation of the matters referred to above immediately upon issuance of this order; all as hereinafter provided.

The Commission acting pursuant to the Federal Power Act, as amended, particulary sections 3(13), 4 (a), (b), (c), 301(a), 302, 304, 309 and 311 thereof (16 U.S.C. 796(13), 797 (a), (b), (c), 825 (a), 825c, 825h, and 825) *orders:*

(A) Report Form F.P.C. Form No. 1 as prescribed in § 141.1, is hereby revised to include pages 432 through 441 inclusive as set forth in annexed Appendix A and as so revised is hereby adopted and promulgated as this Commis-

sion's Annual Report, F.P.C. Form No. 1 effective for use in reporting for the calendar year beginning January 1, 1963, or subsequently during the calendar year 1963 if an established fiscal year is other than the calendar year, and years thereafter.

(B) The eight schedules of Form No. 1 consisting of pages 432 through 441 inclusive as set forth in annexed Appendix A are hereby adopted and promulgated as a part of the Report Form F.P.C. No. 1, prescribed for use in reporting for the year 1962 and such schedules shall be filed within 90 days from the issuance of this order.

(C) Paragraph (d) of § 141.1, Subchapter D—Approved Forms, Federal Power Act of Chapter I of Title 18 of the Code of Federal Regulations, is hereby amended to list the following schedules in lieu of the schedules presently listed between the schedules entitled "Monthly Peaks and Output" and "Transmission Line Statistics":

Steam-Electric Generating Plant Statistics (Large Plants)
Steam-Electric Generating Plant Statistics (Large Plants) (continued)
Steam-Electric Generating Plant Statistics (Large Plants) Average Annual Heat Rates and Corresponding Net kwh Output for Most Efficient Generating Units
Hydroelectric Generating Plant Statistics (Large Plants)
Hydroelectric Generating Plant Statistics (Large Plants) (continued)
Generating Plant Statistics (Small Plants)
Changes Made or Scheduled to be Made in Generating Plant Capacities
Steam-Electric Generating Plants
Steam-Electric Generating Plants (continued)
Hydroelectric Generating Plants
Hydroelectric Generating Plants (continued)
Internal-Combustion Engine and Gas-Turbine Generating Plants
Internal-Combustion Engine and Gas-Turbine Generating Plants (continued)

[Secs. 3(13), 4 (a), (b), (c), 41 Stat. 1065, as amended, secs. 301(a), 302, 304, 309, 311, 49 Stat. 838, 839, 854, 855, 858, 859; 16 U.S.C. 796(13), 797(a), (b), (c), 825(a), 825c, 825h, 825j.]

(D) This order shall be effective upon the date of issuance thereof.

(E) The Secretary of the Commission shall cause prompt publication of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

TENNECO CORPORATION, DOCKET NO. G–19983

ORDER CONDITIONALLY ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICE OF CHANGE AND CONTRACT AMENDMENTS, REQUIRING REFUNDS, AND TERMINATING PROCEEDINGS

(Issued August 2, 1963)

On March 6, 1963, Tenneco Corporation (Tenneco) submitted pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure, an offer of settlement in the above-designated rate suspension proceeding which relates to seventeen jurisdictional sales of natural gas by Tenneco to eight pipeline companies.

These sales, previously made by Tennessee Gas Transmission Company (TGT), relate to properties which were assigned to Tenneco on February 28, 1961. By order issued August 28, 1962, 28 FPC 382, in Docket No. CI61–1273, the Commission authorized Tenneco to succeed to the interest of TGT in these sales effective as of the date of assignment. TGT's refund obligation in this proceeding for the period of time prior to Tenneco's succession was discharged as a result of a settlement order issued December 21, 1962, in Docket No. G–11980, *et al.*, 28 FPC 1100.

In its offer of settlement, Tenneco proposes settlement rates consistent with the Commission's announced area price levels. The settlement rate under Tenneco's FPC Gas Rate Schedule No. 8 is consistent with the Second Amendment to the Commission's Statement of General Policy No. 61–1, issued December 20, 1960, 24 FPC 1107.[1] The rates under Tenneco's FPC Gas Rate Schedule Nos. 21 and 39 will be reduced to the initial rates, which are below the applicable initial ceiling rates. The details pertinent to the sales are as follows:

Tenneco R.S. No.	Field, County, State, Area	Purchaser	Rate in effect subject to refund*	Settlement rate*
2	Aztec Fld. San Juan County, N. Mex. (San Juan Basin).	El Paso, Natural Gas Company.	11.0¢	11.0¢
5	Eunice Monument Fld. Lea County, N. Mex. (Permian Basin).	Northern Natural Gas Company.	10.7688	10.7688
7	Sibley Field, Webster Co., Louisiana (N. La.).	United Gas Pipe Line Company.	11.2432	11.2432
8	Mustang Island Area, Nueces County, Texas (Dist. No. 4).	United Gas Pipe Line Company.	14.8	[1] 14.6
9	Prentice Plant, Yoakum County, Texas (Dist. No. 8).	Northern Natural Gas Company.	13.0504	12.096
11	Doyle Fld., Stephens County, Okla. (Oklahoma Panhandle).	Lone Star Gas Company.	11.0	11.0
15	W. Kutz Canyon & Aztec Flds., (Pictured Cliffs), San Juan County, N. Mex. (San Juan Basin).	El Paso Natural Gas Company.	11.0	11.0
16	Blanco Fld (Mesa Verde), San Juan Co. N. Mex. (San Juan Basin).	El Paso Natural Gas Company.	12.0	12.0
17	San Juan Basin Area, Rio Arriba, N. Mex.	El Paso Natural Gas Company.	11.0	11.0
18	San Juan Basin Area, Rio Arriba County, N. Mex.	El Paso Natural Gas Company.	12.0	12.0
20	S. Fullerton Plant, Andrews County, Texas (Dist. No. 8).	El Paso Natural Gas Company.	10.8054	10.0
21	Fairbanks Fld., Harris County, Texas (Dist. No. 3).	Natural Gas Pipeline Company of America.	16.3555	[2] 15.2877
37	Seclusion Fld., Lavaca County, Texas (Dist. No. 2).	Texas Eastern Transmission Corp.	11.3254	11.3254
38	Blanco Fld., San Juan & Rio Arriba Counties, N. Mex. (San Juan Basin).	El Paso Natural Gas Company.	12.0	12.0
39	Keyes Fld., Cimarron Co., Okla. (Okla. Panhandle).	Colorado Interstate Gas Co.	16.0	[2, 3] 15.0
40	S. E. Braman Fld., Kay County, Okla. (Okla. Other).	Arkansas Louisiana Gas Co.	11.0	11.0
41	S. E. Braman Fld., Kay County, Okla. (Okla.-Other).	Arkansas Louisiana Gas Company.	11.0	11.0

*New Mexico and Louisiana sales are at 15.025 psia; Texas and Louisiana sales are at 14.65 psia.

[1] Settlement rate is consistent with the Second Amendment to the Policy Statement; Tenneco waives the right to file for any increase under the price redetermination clause.

[2] Settlement rate is the initially approved rate which is below the applicable initial rate ceiling.

[3] Subject to BTU adjustment; Tenneco agrees that any BTU adjustment will not cause the total rate to exceed the area initial price level of 17¢ per Mcf.

Tenneco requests that the settlement rates be made effective as of April 5, 1960, the date the increased rates suspended in Docket No. G–19983 became ef-

[1] Tenneco proposes to file a notice of change to its FPC Gas Rate Schedule No. 8 in conformity with its offer.

fective subject to refund. Consistent with our usual practice in situations of this type, however, we shall make the settlement rates effective as of the date of issuance of this order.

As a part of the offer, Tenneco proposes to make appropriate refunds with 6% interest from the date of its acquisition of the properties, March 1, 1961, of the amounts collected in Docket No. G–19983 in excess of the settlement rates. But, since the order of April 29, 1960 provides for interest at 7%, we will require, as a condition of this order, that the interest be at the rate of 7% per annum.

Since the proposed settlement rates are acceptable under the provisions of the Commission's Statement of General Policy No. 61–1,[3] as amended, for jurisdictional sales of natural gas in the respective areas, it is believed that the public interest will best be served by accepting Tenneco's proposed settlement as hereinafter set forth.

However, we desire to make it clear that acceptance of the offer of settlement shall not be construed as approval of any future increased rates proposed by Tenneco.

The Commission finds:

The proposed settlement of the above-designated proceeding, on the basis described herein, as more fully set forth in the Offer of Settlement filed by Tenneco with the Commission on March 6, 1963, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The Offer of Settlement filed by Tenneco with the Commission on March 6, 1963, is hereby approved in accordance with the provisions of this order.

(B) Tenneco shall file, within 30 days from the date of issuance of this order, a notice of change in its FPC Gas Rate Schedule No. 8, providing for the 14.6¢ per Mcf rate, at 14.65 psia, specified in its offer of settlement, and a contractual amendment to its FPC Gas Rate Schedule No. 8, which Tenneco shall execute with United Gas Pipe Line Company in conformity with Tenneco's offer of settlement in all respects. Both the notice of change and the contract amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Within 30 days from the date of issuance of this order, Tenneco shall refund to its purchasers all amounts collected in Docket No. G–19983 in excess of the respective settlement rates prescribed herein, together with simple interest at the rate of 7% per annum, from March 1, 1961, to the date of refund. Tenneco shall bear all costs incidental to the making of such refunds.

(D) Within 45 days from the date of issuance of this letter, Tenneco shall report to the Commission in writing the details of its calculations resulting in refunds ordered pursuant to paragraph (C) above, together with copies of releases from the purchasers to whom refunds were made.

(E) Upon notification by the Secretary of the Commission that Tenneco has complied with the terms and conditions of this order, the settlement rates set forth above and specified in the Offer of Settlement, shall be effective as of the date of issuance of this order, the above-designated proceeding shall be deemed terminated, and Tenneco's refund obligations with respect to the above-designated proceeding shall be deemed discharged.

---

[3] Issued September 28, 1960, 24 FPC 818 (18 CFR, Chapter I, Part 2, Section 2.56).

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Charles R. Ross.

MOUND COMPANY, ET AL., DOCKET NO. G–17362, ET AL.;[1] MOUND COMPANY (OPERATOR), ET AL., DOCKET NO. G–19729, ET AL.

ORDER CONDITIONALLY APPROVING RATE SETTLEMENT PROPOSAL, TERMINATING PROCEEDINGS AND PRESCRIBING REFUNDS

(Issued August 5, 1963)

We have before us for consideration a Motion for Approval of Settlement Offer filed on June 24, 1963, by Mound Company (Mound) encompassing the rates for eleven of Mound's presently effective gas rate schedules.

In summary, the settlement proposal as submitted by Mound provides:

(1) Settlement rates, including tax reimbursement, equal to or less than the Commission's applicable area ceilings;

(2) Mound waives the right to file for contractually authorized increased rates until January 1, 1966. Mound reserves the right to file for any increased rates, if contractually authorized, up to the applicable area-rate levels determined through area hearings or by amendment of the Commission's Statement of General Policy No. 61–1, or any contractually authorized increase in tax reimbursement;

(3) Mound waives the right to file for any increase in rate resulting from the operation of any favored-nation, price redetermination or periodic escalation provision contained in its FPC Gas Rate Schedules Nos. 1, 2, 3, 4, 9, 10, 11, 12 and 16;

(4) Refunds with interest at the applicable rates under each rate schedule where collection was made subject to refund of the difference between the revenues actually collected and those which would have been collected at the settlement rate, in each instance, commencing with the effective date of the increased rate to April 1, 1962.

In support of its proposal, Mound states that the settlement rates, refunds, moratorium periods and other provisions thereof, are in the public interest in that the rates are reasonable and will provide price stability for a long period of time for natural gas moving in interstate commerce.

With respect to refunds, the April 1, 1962 termination date is based upon Mound's revenue-cost relationship for recent years as found by the parties to these proceedings utilizing cost-of-service studies. Such studies reveal that during the first quarter of 1962 Mound's costs per Mcf of natural gas produced had increased to such an extent that its jurisdictional cost began to exceed its jurisdictional revenue. In view of that, and all the terms of the settlement proposal, as hereinafer conditioned, it is appropriate that refunds should be computed for sales made under each of Mound's rate schedules where increased rates were being collected subject to refund from the effective date thereof to April 1, 1962, with interest to be paid on the refund to the date the refunds are made to the purchasers. The refunds will be approximately $335,000 plus applicable interest and Mound's annual revenues will be decreased approximately $113,000 as a result of the settlement.

In its settlement proposal Mound proposes to waive the right to file for any increase in rate resulting from the operation of any favored nations or price re-

[1] The additional dockets involved herein are set forth in the Appendix hereto.

determination clauses contained in its FPC gas rate schedules set forth in paragraph 3, *supra*. However, we hereby condition our approval of the settlement proposal to require Mound to file executed contract amendments eliminating such favored-nation and price redetermination clauses from the subject rate schedules.

Under the settlement proposal Mound will make refunds to Tennessee Gas Transmission Company, Texas Gas Pipe Line Corporation, Transcontinental Gas Pipe Line Corporation and United Gas Line Company (United). Each of said companies is under a requirement to flow-through to its jurisdictional customers the proportionate share of the amount it will receive by way of refunds from Mound. However, for the reasons set forth in our order issued July 16, 1963 in *Hunt Oil Company*, Docket No. G–9065, *et al.* 30 FPC 220, we shall order United to retain the refunds (without further interest obligation by it) and to submit a report setting forth the proposed disposition of such refunds. Thereafter we shall take such action as set forth in the *Hunt* order, *supra*.

Additionally we hereby condition our approval of the settlement proposal so as to provide that the settlement rates conditionally approved herein, shall be applicable to all sales of natural gas from all acreage dedicated as of the date of the issuance of this order under each of the rate schedules currently on file with the Commission for the moratorium period approved hereby whether such sales are made by Mound, its successors or assignees.

We believe this settlement proposal, as herein modified, and in other particulars not specifically noted or set forth herein, meets the criteria previously set forth in other of our recent settlement orders and accordingly we find it to be in the public interest and should be approved as hereinafter provided.

The Commission finds:

The proposed settlement of the subject proceedings on the basis described herein, as more fully set forth in the settlement proposal filed on June 24, 1963, as herein modified, is in the public interest and it is appropriate in carrying out the provisions of the Natural Gas Act that it be conditionally approved and conditionally made effective subject to the modifications hereinafter ordered, and good cause exists for approving the settlement rates, for terminating certain proceedings and providing for refunds.

The Commission orders:

(A) The Settlement of these proceedings on the basis of the Settlement Proposal, filed June 24, 1963, as herein modified, is approved and made effective subject to the following terms and conditions.

(B) The applicable settlement rates set out in the appendix hereto are approved and such rates shall be effective as of July 1, 1963, in accordance with the Settlement Proposal.

(C) Within 90 days from the date of this order, Mound shall make such filings under its rate schedules as are required to make effective the terms of the Settlement Proposal, as modified herein.

(D) Within 90 days from the date of this order, Mound shall (1) refund, with interest as specified in each docket computed to the date of actual refund, the differences between the rates collected subject to refund, prior to April 1, 1962 and the related settlement rates; and (2) report to the Commission, in writing, the amount of refunds made to each of its purchasers, showing separately the amount of principal and interest so paid, and the basis used for such determination, together with releases from its purchasers showing receipt of the refunds in conformity with the Settlement Proposal as modified and approved herein.

(E) Within 15 days from date of receipt by it of the refunds herein provided, United Gas Pipe Line Company shall submit a report to the Commission, and

serve a copy thereof upon each of its jurisdictional customers, setting forth a plan for distribution of such refunds to its customers. The report shall show separately the amount of principal and interest, together with a computation showing the manner in which such distribution was determined. United shall retain the refunds received pursuant to this order, subject to further order of the Commission, provided, however, that United shall not be required to pay interest on such funds.

(F) Mound shall, over the signature of a responsible officer, file with the Commission, within 30 days from the date of the issuance of this order, an original and one copy of its acceptance or rejection of the terms and conditions of this order applicable to it.

(G) Upon full compliance by Mound with all the terms and provisions of this order applicable to it, the Section 4(e) proceedings listed in the appendix hereto shall terminate.

(H) This order is without prejudice to any findings or orders which have been or may be made hereafter by the Commission, and is without prejudice to claims or contentions which may be made by Mound, the Commission Staff, or any affected party hereto, in any proceedings now pending, or hereafter instituted by or against Mound or any other companies, person or parties affected by this order.

Commissioner O'Connor *not participating.*

APPENDIX

Mound Company, docket No. G–17362, et al.

Purchaser (1)	Field (2)	FPC gas rate schedule No. (3)	Presently effective price [1] (4)	Proposed settlement price [1] (5)	Section 4(e) docket No. (6)
Texas RRC District No. 2:					
Tennessee Gas Transmission Co.	Cologne	10	15.1140	[2] 15.0	G–17362
Texas RRC District No. 3:					
Texas Gas Pipe Line Corp	Big Hill	1	16.5	15.0	G–19729
Trunkline Gas Co	Ramsey	2	9.2880	[3] 15.0	
Natural Gas Pipeline Co. of America.	Old Ocean	7	11.4	11.4	
Tennessee Gas Transmission Co.	East Bay City	9	16.16947	[2] 15.0	G–17362
Tennessee Gas Transmission Co.	Lisle	11	15.95016	[2] 15.0	G–20275
Tennessee Gas Transmission Co.	Chesterville	12	15.95016	[2] 15.0	G–18911
Tennessee Gas Transmission Co.	Deckers Prairie	16	16.16947	[2] 15.0	G–18911
Texas RRC District No. 4:					
Tennessee Gas Transmission Co.	La Gloria	3	17.24347	15.0	G–19880, R160–297
Tennessee Gas Transmission Co.	East Alice	4	17.24347	15.0	G–19880, R160–297
Natural Gas Pipeline Co. of America.	La Gloria	5	9.998856	9.998856	
Transcontinental Gas P/L Corp.	La Gloria	8	8.890883	8.890883	
Southern Louisiana:					
Transcontinental Gas P/L Corp.	Cowpen Creek	15	23.55	[4] 17.5	G–17658, G–20275
Transcontinental Gas P/L Corp.	Cowpen Creek	17	11.3	11.3	
Mississippi:					
United Gas Pipe Line Co	Baxterville	13	21.5	14.0	G–18773

[1] All prices in cents per Mcf, including tax reimbursement. Texas prices at 14.65 psia; Louisiana and Mississippi prices at 15.025 psia

[2] Subject to contract provisions for downward adjustment for dehydration, compression, transportation charges, etc.

[3] Settlement price approved by Commission order issued December 26, 1962, in *Cities Service Production Co.*, Docket No. G–9510, *et al.*, 28 FPC 1114, with respect to Cities Service Rate Schedule No. 1 for sales to Trunkline in the Columbus-Ramsey Field. Mound's gas now sold under Cities Service Rate Schedule No. 1.

[4] Initial contract price, including tax reimbursement.

Before Commissioners: Joseph C. Swidler, Chairman: Howard Morgan, L. J. O'Connor, Jr., and Charles R. Ross.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G-13221, ET AL.; MOUND COMPANY (OPERATOR), ET AL., DOCKET NO. CI60-258

ORDER SEVERING PROCEEDING, CONDITIONALLY APPROVING OFFER OF SETTLEMENT AND CONDITIONALLY ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 5, 1963)

On June 24, 1963, Mound Company (Operator), *et al.* (Mound) filed a motion requesting the severance of Docket No. CI60-258 from the consolidated certificate proceeding, Union Texas Petroleum, *et al.*, Docket No. G-13221, *et al.* and approval of the offer of settlement attached to the motion.

The Pennsylvania Public Utility Commission (Pennsylvania) filed an answer in opposition to the Mound motion on July 10, 1963. However, on July 31, 1963, Pennsylvania filed a withdrawal of its objection. No other party has filed an answer to Mound's motion.

Mound offers to reduce the rate under its Rate Schedule No. 18 from 20.675¢ per Mcf[1] to 20.625¢ per Mcf effective July 1, 1963, and to have a moratorium on rate increase filings through June 30, 1968; except that such filings may be made (1) prior to July 1, 1968, to the extent that the maximum statutory suspension period under Section 4(e) of the Natural Gas Act may be extended beyond 5 months, and (2) at any time for reimbursement for one-half the amount of increased State or Federal taxes or payments in lieu of taxes, provided that such increase does not exceed the reimbursement to which Mound is entitled by its contract with Southern Natural Gas Company (Southern) the purchaser in Docket No. CI60-258.

Mound is presently collecting its initial contract rate of 20.675¢ per Mcf under a temporary authorization without refund condition issued April 14, 1960, and does not propose to refund any amounts above the settlement rate collected prior to July 1, 1963. There are no take-or-pay provisions in the Mound-Southern contract involved herein.

We find the settlement proposal of Mound to be, generally, in the public interest. Accordingly, we shall sever Docket No. CI60-258 from the consolidated proceeding, Union Texas Petroleum, *et al.*, Docket No. G-13221, *et al.*, omit the intermediate decision[2] in Docket No. CI60-258 and issue a certificate of public convenience and necessity to Mound in accordance with its application and offer of settlement.

The settlement provisions for adjustments in rates according to our order or orders in Area Rate Proceeding, Docket No. AR61-2, seek to anticipate in part the nature of our final determinations in that matter. It is clear that we shall make no determinations in this matter which will control our conclusions in Docket No. AR61-2. The settlement proposal also provides that adjustments in price growing out of the Area Rate Proceeding, Docket No. AR61-2, should go into effect upon conclusion of judicial review of our final order. However, we cannot now commit the Commission to conditionally staying the effectiveness of its final order in Docket No. AR61-2. These matters should be decided at the conclusion of that proceeding and our approval of the settlement will be so conditioned.

---

[1] All volumes expressed at 15.025 psia and all rates expressed inclusive of tax reimbursement.

[2] The hearings in the Union Texas Petroleum, *et al.* consolidated proceeding concluded July 25, 1963.

The Commission finds:

(1) Mound Company (Operator), *et al.* is a natural-gas company within the meaning of the Natural Gas Act, and is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(2) The proposed sale of natural gas is subject to the jurisdiction of the Commission, and such sale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, is subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Mound is able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed sale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, are required by the public convenience and necessity and are in the public interest upon the conditions set forth below, and a certificate should be issued as ordered below.

(5) The conditions attached to the certificate herein issued are required by the public convenience and necessity.

(6) No party has opposed the waiver of the intermediate decision in this proceeding.

The Commission orders:

(A) The motion for waiver of the intermediate decision is granted.

(B) The matters in Mound Company (Operator), *et al.*, Docket No. CI60-258 are hereby severed from the consolidated proceeding, Union Texas Petroleum, *et al.*, Docket No. G-13221, *et al.*

(C) A certificate of public convenience and necessity is hereby issued upon the conditions set forth herein to Mound for the sale of natural gas in interstate commerce for resale as proposed and as modified by the settlement proposal and this order, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in Mound's application and settlement proposal herein.

(D) The certificate issued by paragraph (C) above, is granted upon the express condition that Mound comply fully with the terms of the settlement proposal which settlement is expressly approved, as conditioned.

(E) Upon full compliance of Mound with all the terms of this order and of the settlement proposal, said proceeding shall terminate.

(F) The certificate herein issued is not transferable and shall be effective only so long as Mound continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(G) The grant of the certificate herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or Part 154 of the Regulations thereunder; *Provided, however,* that the 30-day notice provision of Part 154.94(b) and the detailed submittal requirements of Part 154.94(f) are hereby waived insofar as they apply to the filing of reduction in rate as required by this order and the settlement proposal.

(H) The grant of certificate, herein and approval of the settlement proposal is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Mound, particularly any proceeding under Section 5 of the Natural

Gas Act and is without prejudice to claims or contentions which may be made by the Commission, Applicant, the Commission staff, or any affected party herein in any other proceeding.

Commissioner O'Connor *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

ALGONQUIN GAS TRANSMISSION COMPANY, DOCKET NO. CP63-97

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 6, 1963)

On April 11, 1963, Algonquin Gas Transmission Company (Applicant) filed in Docket No. CP63-97 an application to amend the Commission's order issued March 18, 1963, 29 FPC 536, in the subject docket to authorize the sale of additional maximum daily quantities of natural gas to ten of Applicant's existing customers, all as more fully set forth in the application to amend.

The subject order, among other things, authorized Applicant to construct and operate certain facilities and to sell and deliver additional maximum daily quantities of natural gas to certain of Applicant's customers.

It appears that as a result of the extreme cold weather experienced during the past winter, ten of Applicant's existing customers have re-evaluated their requirements and in order to prevent a critical deficiency of supply, have requested additional quantities of firm gas under Applicant's F-1 Rate Schedule commencing November 1, 1963. The requests for additional gas, totaling 5,460 Mcf at 14.73 psia, are as follows:

Customer	Presently authorized F-1 MDQ	Additional F-1 MDQ requested	Proposed F-1 MDQ
Bristol & Warren Gas Company	1,400	100	1,500
Brockton Taunton Gas Company	18,700	978	19,678
The Connecticut Gas Company	29,000	1,000	30,000
Fall River Gas Company	12,500	500	13,000
The Hartford Gas Company	23,200	800	24,000
New Bedford Gas & Edison Light Company	15,870	630	16,500
The Newport Gas Light Company	2,800	400	3,200
City of Norwich, Connecticut	3,100	300	3,400
Norwood Gas Company	1,969	252	2,221
Worcester Gas Light Company	14,000	500	14,500

Due notice of the filing of the subject application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on July 2, 1963 (28 F.R. 6815). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued March 18, 1963, in Docket No. CP63-97 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued March 18, 1963, in Docket No. CP63-97 be and the same is hereby amended to authorize the sale by Applicant to ten of

its existing customers of additional maximum daily quantities of natural gas totalling 5,460 Mcf, all as hereinbefore described and as set forth in the application to amend.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

MISSISSIPPI RIVER FUEL CORPORATION, DOCKET NO. CP63-295

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 6, 1963)

On May 6, 1963, Mississippi River Fuel Corporation (Applicant) filed in Docket No. CP63-295 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities, and the sale and delivery of quantities of natural gas to Arkansas Louisiana Gas Company (ArkLa) for resale to the City of Griffithville, White County, Arkansas, all as more fully represented in the application in this proceeding.

Applicant proposes to establish a new delivery point on its main-line to enable ArkLa to provide natural gas service to the City of Griffithville. Applicant states that ArkLa did not request an increase in its existing stated demand of gas because of the small requirements Griffithville will need, accordingly no increase is proposed. The estimated total cost of establishing the new delivery point, consisting of a main-line tap connection and metering, regulating, and appurtenant facilities, would be $4,400 to be financed from cash on hand. The estimated third year peak day and annual requirements would be 105 Mcf and 10,500 Mcf of natural gas respectively.

Pursuant to due notice, a public hearing was held in Washington, D.C., on July 23, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Mississippi River Fuel Corporation, a Delaware corporation having its principal place of business in St. Louis, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof as well as the sale of natural gas by Applicant, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities as well as the sale of natural gas, up to 105 Mcf per day, as proposed by Applicant, are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Mississippi River Fuel Corporation, to construct and operate certain natural gas facilities, and to sell up to 105 Mcf of natural gas per day for resale, as hereinbefore described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the sale of natural gas shall commence as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within six months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP63-219

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 6, 1963)

On February 4, 1963, as amended on May 1, 1963, Northern Natural Gas Company (Applicant) filed in Docket No. CP63-219 an application pursuant to Section 7(c) of Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities enabling the sale and delivery of additional contract demands to existing customers for the 1963-64 heating season, and further authorizing a certain initial firm service to a large industrial consumer and changes in present firm service to two large volume industrial consumers served by three of Applicant's customer utility companies, all as more fully set forth in the application, as amended.

Based upon their experience during the past heating season, fourteen of Applicant's utility customers requested increases in their contract demand volumes of natural gas. Applicant's original application filed on February 4, 1963, requested an additional increase of some 13,461 Mcf, however, the amended appli-

cation increased this amount to 30,127 Mcf. In order to meet such increases, Applicant finds it necessary to construct and operate additional mainline facilities as follows: (1) 2000 horsepower addition at the Beatrice, Nebraska Compressor Station; (2) turbocharge units 19 and 20 at the Mullinville, Kansas Compressor Station adding 1400 horsepower; (3) 3400 horsepower addition at the Oakland, Iowa Compressor Station; (4) 11.9 miles of 30-inch pipeline loop north of Ogden, Iowa; (5) 16.8 miles of 30-inch pipeline loop north of Ventura, Iowa; (6) 10.8 miles of 30-inch pipeline loop north of Clifton, Kansas; (7) 11.7 miles of 30-inch pipeline loop north of Tescott, Kansas; (8) 15.7 miles of 30-inch pipeline loop north of Beaver, Oklahoma; (9) 10.4 miles of 26-inch pipeline loop east of Ogden, Iowa; and (10) 0.3 miles of 26-inch pipeline loop at Bushton, Kansas. In addition, Applicant proposes to change compressor cylinders in a unit at the Beatrice Station and to change or modify the compressor cylinders in certain units at the Clifton Station. The total estimated cost including interest and overheads of increasing the system salable capacity is $10,423,900, all to be financed from funds on hand, reserve accruals, and retained earnings.

Under the provisions of Applicant's existing tariff, firm service to a large volume industrial consumer is subject to certificate authorization. Therefore, it proposes to (1) initiate firm service of 210 Mcf per day to the W. S. Moore Company to be served by the City of Duluth, Minnesota; (2) increase the firm service from 738 Mcf to 850 Mcf per day to Wood Conversion Company being served by Iron Ranges Natural Gas Company; and (3) increase the firm service from 738 Mcf to 1000 Mcf per day to Minnesota Mining and Manufacturing Company being served by Applicant's Peoples Division. No additional contract demands are requested by these utilities since these volumes will be met under existing contract quantities.

Pursuant to due notice, a public hearing was held in Washington, D.C., on July 24, 1963, respecting the matters involved in and the issues presented by the application herein. Petitions of Intervention in support of the application were filed by Northern States Power Company on July 10, 1963, and by Minneapolis Gas Company on July 11, 1963. The Webster Cooperative Dairy Association, Inc. filed a Petition to Intervene on July 11, 1963, but later filed a Motion of Leave to Withdraw Petition to Intervene on July 19, 1963. A Joint Petition by Fuels Research Council, Inc., National Coal Association, United Mine Workers of America, Mid-West Coal Producers Institute, Inc., and Upper Lake Docks Coal Bureau, Inc. to Intervene was filed on July 11, 1963, in opposition to the application. At the hearing of July 24, 1963, Fuels Research Council, Inc., *et al.*, made an appearance for the purpose of withdrawing its opposition to the application and made a statement on the record to that effect. No other notices or petitions of intervention or protest were filed. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation with its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Com-

mission, and the construction and operation thereof as well as the sale of natural gas by Applicant, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities as well as the sale of natural gas, both proposed by Applicant, are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Applicant should be allowed to increase its system salable capacity by 30,127 Mcf per day in order to meet additional contract demand volumes. Furthermore, firm deliveries of natural gas by Applicant made through (1) the City of Duluth, Minnesota, to the W. S. Moore Company, should be allowed in amounts up to 210 Mcf per day; (2) Iron Ranges Natural Gas Company to Wood Conversion Company should be allowed in amounts up to 850 Mcf per day; (3) Applicant's Peoples Division to Minnesota Mining and Manufacturing Company should be allowed in amounts up to 1000 Mcf per day.

(6) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(7) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Northern Natural Gas Company, to construct and operate certain natural gas facilities, and to sell natural gas for resale, as hereinbefore described in the application in this proceeding, upon the terms and conditions of this order.

(B) Applicant shall be allowed to increase its system salable capacity by 30,127 Mcf per day in order to meet additional contract demand volumes. Firm deliveries of nautral gas by Applicant made through (1) the City of Duluth, Minnesota, to the W. S. Moore Company shall be allowed in amounts up to 210 Mcf per day; (2) Iron Ranges Natural Gas Company to the Wood Conversion Company shall be allowed in amounts up to 850 Mcf per day; and (3) Applicant's Peoples Division to Minnesota Mining and Manufacturing Company shall be allowed in amounts up to 1000 Mcf per day.

(C) Furthermore, the certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(D) The facilities hereby authorized shall be constructed and placed in actual operation and the sale of natural gas shall commence as provided by paragraph (b) or Section 157.20 of the Commission's Regulations under the Natural Gas Act within six months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

APPEALS FROM STAFF ACTION UNDER DELEGATED AUTHORITY, DOCKET NO. R-245

ORDER NO. 270

AMENDING §§ 1.7 (d), 1.9 OF RULES OF PRACTICE AND PROCEDURE

(Issued August 6, 1963) *

The amendments herein adopted are to cure an unintentional inconsistency resulting from an amendment to § 1.7 prescribed by Order No. 255 (28 FPC 500, 790; 27 F.R. 9499, 12212) which added a new paragraph (d) thereto. That paragraph, relating to appeals from staff actions taken pursuant to delegated authority, restricted such appeals to actions taken by the staff pursuant to the specific delegations of authority listed in § 3.5. No such narrow effect was intended. Appeals should be allowed from any delegated action whether the delegation is specific or is implicit in the provisions of a particular rule. One amendment made herein simply removes the present reference to § 3.5 from paragraph (d) of § 1.7. The paragraph is also amended to provide that answers to such appeals may be filed within 10 days.

The amendments to § 1.9, the general rule relating to answers, are to make it consistent with the provision for answers added to § 1.7(d).

The Commission finds:

(1) The amendments herein adopted pertain to matters of practice and procedure which do not require notice or hearing under section 4(a) of the Administrative Procedure Act.

(2) Adoption of these amendments is necessary and appropriate for the administration of both the Federal Power Act and the Natural Gas Act.

The Commission, acting pursuant to authority granted by the Federal Power Act, particularly sections 308 and 309 thereof (49 Stat. 858; 16 U.S.C. 825g, 825h), and the Natural Gas Act, as amended, particularly sections 15 and 16 thereof (52 Stat. 829, 830; 15 U.S.C. 717n, 717o), *orders:*

(A) Part 1, Rules of Practice and Procedure, of Subchapter A, General Rules, Chapter I of Title 18 of the Code of Federal Regulations, is amended as follows:

1. Paragraph (d) of § 1.7 is amended to read as follows:

(d) *Appeals from actions of the staff.* Actions taken pursuant to authority delegated by the Commission may be appealed to the Commission by filing a petition within ten days after such action. Answers to such petitions may be filed by any party or staff counsel within 10 days after the date of service thereof. Such petitions or answers shall conform to the requirements of §§ 1.15 through 1.17.

2. Paragraph (a) of § 1.9 is amended by inserting after "to intervene" the words "and petitions of appeal from delegated actions of the staff." As so amended paragraph (a) reads as follows:

§ 1.9 Answers.

(a) *Answers to formal complaints and petitions.* Answers to formal complaints and petitions, other than petitions to intervene and petitions of

* Published in the Federal Register on August 13, 1963 (28 F.R. 8287).

appeal from delegated actions of the staff, shall be filed with the Commission within 30 days after the date of service, unless for cause the Commission with or without motion shall prescribe a different time, but in no case shall answer be required in less than 10 days after the date of service. Any defendant failing to file answer within such period shall be deemed in default, and all relevant basic facts stated in such complaint or petition may be deemed admitted. All answers shall be in writing and under oath, and so drawn as fully and completely to advise the parties and the Commission as to the nature of the defense. They shall admit or deny specifically and in detail each material allegation of the pleading answered, and state clearly and concisely the facts and matters of law relied upon. They shall conform to the requirements of §§ 1.15 to 1.17, inclusive.

3. Section 1.9 is amended by adding a new paragrapgh (i) as follows:

(i) *Answers to appeals from actions of the staff.* (See § 1.7(d)) [Secs. 308, 309, 49 Stat. 858, secs. 15, 16, 59 Stat. 829, 830; 16 U.S.C. 825g, 825h: 15 U.S.C. 717n, 717o.]

(B) These amendments shall become effective upon issuance of this order.

(C) The Secretary shall cause publication of this order to be made in the Federal Register.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP61-292

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 6, 1963)

On March 29, 1963, Transcontinental Gas Pipe Line Corporation (Applicant) filed in Docket No. CP61-292 an application to amend the Commission's order, issued January 18, 1963, in Docket No. CP61-292, CP61-294, *et al.*, 29 FPC 119, to authorize the installation and operation of three compressor units totaling 10,200 horsepower at Applicant's proposed Station No. 515 in lieu of the five presently authorized units totaling 10,000 horsepower, all as more fully set forth in the application to amend.

The subject order authorized Applicant to construct and operate, among other things, a new compressor station of 10,000 horsepower, designated as No. 515, to be located in Luzerne County, Pennsylvania, on Applicant's Leidy Line. Applicant states that substantial savings will be realized through the installation of the herein proposed substitute facilities.

The estimated total cost of the presently authorized units is $3,445,500, compared to $3,239,000 for the proposed substitute units; hence, a total estimated saving of $206,500 would be realized by installation of the substitute units.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on May 30, 1963 (28 F.R. 5399). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's

order, issued January 18, 1963, in Docket No. CP61–292, CP61–284, *et al.*, be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order, issued January 18, 1963, in Docket No. CP61–292, CP61–284, *et al.*, be and the same is hereby amended to authorize the installation and operation of three compressor units totaling 10,200 horsepower at Applicant's proposed Station No. 515 in lieu of the five units totaling 10,000 horsepower heretofore authorized in the subject docket, all as hereinbefore described and as set forth in the subject application to amend.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP63–299

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 6, 1963)

On May 9, 1963, Transcontinental Gas Pipe Line Corporation (Applicant) filed in Docket No. CP63–299 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a sales meter station and appurtenant equipment on Applicant's 36-inch transmission line, Louisa County, Virginia, and to utilize said station as an additional delivery point for natural gas service to Lynchburg Gas Company (Lynchburg Gas), an existing customer for resale, all as more fully set forth in the application on file with the Commission.

The application indicates that Lynchburg Gas has requested the proposed new delivery point in order that natural gas service may be rendered to the Town of Gordonsville, Virginia (Gordonsville) and an industrial plant of Gordonsville Industries, Inc. (Industries). Deliveries of natural gas are proposed to be made into the facilities of Lynchburg Pipe Line Company (Lynchburg Pipe), a wholly-owned subsidiary of Lynchburg Gas. Lynchburg Pipe will purchase said gas from Lynchburg Gas for resale to Gordonsville and Industries.

The natural gas requirements for the proposed service are:

	Maximum daily volumes (Mcf)	Annual volumes (Mcf)
Industries-interruptible	200	40,000
Industries-firm	10	
Gordonsville	160	24,000
Total	370	64,000

The volumes of gas to be delivered at the proposed new delivery point will be out of allocations previously authorized by the Commission.

The application indicates further that Lynchburg Pipe, itself or through its parent, Lynchburg Gas, will construct and operate all facilities between the proposed sales meter station and Gordonsville and Industries.

Applicant's proposed facilities are estimated to cost approximately $12,500, which cost will be initially financed from general funds. Lynchburg Gas will reimburse Applicant in full for the entire cost of facilities.

Pursuant to due notice, a public hearing was held in Washington, D.C., on July 30, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 18, 1948, in Docket No. G–1143 (7 FPC 139).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30 (c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Transcontinental Gas Pipe Line Corporation, to construct and operate the proposed facilities in order to provide an additional delivery point for natural gas service to Lynchburg Gas as hereinbefore described, all as more fully described in the application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP63-337

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 6, 1963)

On June 7, 1963, United Gas Pipe Line Company (Applicant) filed in Docket No. CP63-337 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the installation during the 12-month period commencing October 1, 1963, and the operation of taps on its existing transmission system to enable Applicant to sell natural gas to new and existing customers for resale to rural consumers along and in the vicinity of said system, all as more fully set forth in the application.

Sales and deliveries by means of the proposed facilities will not exceed 300,000 Mcf per year and no expansion or enlargement of Applicant's presently existing system will be required. The effect of these proposed sales on the reserve life index of Applicant would be negligible.

The proposed facilities will not exceed a maximum cost of $14,000 and no single connection will exceed a cost of $700, said costs to be financed from current working funds.

Pursuant to due notice, a public hearing was held in Washington, D.C., on July 30, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 20, 1942, in Docket No. G-216 (3 FPC 3).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, as integral parts of Applicant's existing pipeline system, and the installation and operation thereof by Applicant and the proposed sales of natural gas are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The installation and operation by Applicant of facilities to sell natural gas to new and existing customers for resale as proposed herein is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit prior to December 1, 1964, a statement showing by projects: (a) names of customers served, together with the dates of the sales service agreements and FPC gas rate schedules applicable to said sales, (b) estimates of annual delivery volumes, (c) actual final costs, (d) description of the project or projects, and (e) the location of said facilities.

(6) The authorization hereinafter granted should be limited to installations during the 12-month period commencing October 1, 1963, and the total expenditures for facilities installed thereunder should be limited to $14,000, with no single project to exceed a cost of $700.

(7) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, United Gas Pipe Line Company, to install during the 12-month period commencing October 1, 1963, the facilities hereinbefore described, all as more fully described in the application in this proceeding, and to operate such facilities only to sell and deliver natural gas to existing or new customers for resale to rural consumers along or in the vicinity of Applicant's existing pipeline system.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(C) Applicant shall submit, prior to December 1, 1964, a statement showing by projects: (a) names of customers served, together with the dates of the sales service agreements and FPC gas rate schedules applicable to said sales, (b) estimates of annual delivery volumes, (c) actual final costs, (d) description of the project or projects, and (e) the location of said facilities.

(D) The authorization granted in paragraph (A) above is hereby limited to maximum total expenditures of $14,000, with no single project to exceed a cost of $700.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

THE CALIFORNIA COMPANY, A DIVISION OF CALIFORNIA OIL COMPANY, DOCKET NOS. G-16167, G-19343, CI61-348, CI61-628, CI61-629, CI61-630, AND CI61-1285

ORDER CONDITIONALLY APPROVING PROPOSED SETTLEMENT AND CONDITIONALLY ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND AMENDING CERTIFICATE

(Issued August 7, 1963)

The California Company, a Division of California Oil Company (California) filed on June 25, 1963, a settlement proposal and a motion for approval of said proposal, for severance of the captioned dockets from the consolidated proceeding, Union Texas Petroleum, *et al.*, Docket No. G-13221, *et al.*, and for issuance

of permanent certificates of public convenience and necessity and an amendment to a certificate of public convenience and necessity therein. No party filed an answer to California's motion and settlement proposal. On July 19, 1963, we granted California's motion to sever and fixed July 30, 1963, as the date for a hearing on these applications.

Pursuant to such notice, a hearing was held concerning the above-captioned matters on July 30, 1963. Staff Counsel moved for the omission of the intermediate decision pursuant to section 1.30(c)(1) of the Rules of Practice and Procedure and the record including the settlement proposal was certified to us by the presiding examiner. No party opposed the omission of the intermediate decision in these proceedings.

In general, California agrees (1) to reduce its South Louisiana initial service rates under its FPC Gas Rate Schedule Nos. 13, 15, 19, 24, 25, and 26 (Docket Nos. G–16167, G–19343, CI61–348, CI61–628, CI61–629, CI61–630, respectively) to 20.625¢ per Mcf (inclusive of tax reimbursement); (2) to the amendment of its permanent certificate of public convenience and necessity in Docket No. CI61–1285 for the sale of gas at 19.9¢ per Mcf (inclusive of tax reimbursement) from acreage added under Supplement No. 2 to its FPC Gas Rate Schedule No. 23;[1] (3) to have a five-year moratorium on rate increase filings from April 1, 1963 through March 31, 1968, inclusive; (4) to extend make-up periods for take-or-pay gas to 48 months where applicable; and (5) to refund two-thirds of the difference between the rates actually collected in the subject dockets and the settlement rates from the date of initial deliveries through March 31, 1963, with interest at 6 percent per annum as to volumes delivered prior to March 1, 1960, and at 7 percent per annum as to volumes delivered after that date, and to refund all amounts above the settlement rate collected since March 31, 1963.

California reserves the right to file for changes in rate during the moratorium period according to any specifically applicable area rate determined in the South Louisiana Area Rate Proceeding, Docket No. AR61–2, or similar proceeding. If California becomes obligated to pay any tax levied for which reimbursement is contractually provided, a rate increase equal to one-half of such tax may be filed. If the existing maximum five-month suspension period under Section 4(e) of the Act is lengthened, or if the Commission may hereafter be authorized to lengthen such period beyond five months, the March 31, 1968 moratorium date will be moved up correspondingly.

Generally, the terms of the settlement are similar to those approved by the Commission in the Texaco-Seaboard settlements[2] and other recent settlements.[3] The starting date for the regressive two-thirds refund calculation is March 31, 1963. The refunds, estimated to be over $350,000, are to be paid to Southern Natural Gas Company (Southern) Texas Gas Transmission Corporation (Texas Gas) and United Gas Pipe Line Company (United).

In our order of July 16, 1963, conditionally approving a rate settlement in *Hunt Oil Company*, Docket No. G–9065, *et al.*, 30 FPC 220 we noted that we were disturbed about the possible existence of a gap in the refund line and that we intended to take steps, when ordering refunds, to insure the proper disposition

---

[1] Permanent certificate issued by order September 10, 1962, in *W. E. Walker and J. R. Mecker, et al.*, Docket No. G–13265, *et al.* Temporary authorization was granted on February 28, 1963, to sell from the additional acreage at 19.9¢ per Mcf.

[2] *Texaco Inc.*, 28 FPC 247 (July 30, 1962).

[3] See Orders issued June 24, 1963, in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, 29 FPC 1283 and 1279, respectively concerning Union Oil Company of California and Tenneco Corporation.

thereof. We believe that similar action is necessary in this matter. Accordingly, we shall require United, Texas Gas and Southern, each of whom is a party intervenor herein, to submit reports indicating their proposed disposition of such refunds and interest and require that they shall hold such refund and interest amounts in a special fund (without further interest obligation) pending Commission action on such proposed dispositions. On the basis of these reports, we shall then decide whether further Commission proceedings are required with respect to jurisdictional natural gas companies who do not agree to pass such refunds and interest to their customers.

We find that the proposal, generally, is in the public interest. However, no provision is made for the accrual of interest subsequent to March 31, 1963, on the amounts to be refunded. In keeping with present Commission policy of requiring refunds to accrue through the last day of the month in which the settlement proposal is filed, our order granting certificates in these dockets requires that interest accrue through June 30, 1963.

The settlement provisions for adjustments in rates according to our order or orders in *Area Rate Proceeding*, Docket No. AR61–2, seek to anticipate in part the nature of our final determinations in that matter. It is clear that we shall make no determinations in this matter which will control our conclusions in Docket No. AR61–2. The settlement proposal also provides that adjustments in price growing out of the *Area Rate Proceeding*, Docket No. AR61–2, should go into effect upon conclusion of judicial review of our final order. However, we cannot now commit the Commission to conditionally staying the effectiveness of its final order in Docket No. AR61–2. These matters should be decided at the conclusion of that proceeding and our approval of the settlement will be so conditioned.

The Commission finds:

(1) The California Company, a Division of California Oil Company is a natural-gas company within the meaning of the Natural Gas Act, and is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(2) The proposed sales of natural gas are subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsection (c) and (e) of Section 7 of the Natural Gas Act.

(3) California is able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, are required by the public convenience and necessity and are in the public interest upon the conditions set forth below, and certificates should be issued as ordered below.

(5) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

(6) It is in the public interest and it is appropriate in carrying out the provisions of the Natural Gas Act that United, Texas Gas and Southern be required to submit the reports and retain the refunds and interest as ordered below.

(7) No party has opposed the waiver of the intermediate decision in these proceedings.

The Commission orders:

(A) The motion for waiver of the intermediate decision procedure is granted.

(B) Certificates of public convenience and necessity and an amendment to the certificate in Docket No. CI61–1285 are hereby issued upon the conditions set forth herein to The California Company, a Division of California Oil Company for the sale of natural gas in interstate commerce for resale as proposed and as modified by the settlement proposal and this order, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in California's applications and settlement proposal herein.

(C) The certificates and amendment issued by paragraph (B) above, are granted upon the express condition that California comply fully with the terms of the settlement proposal referred to above and which was entered into evidence in this proceeding, which settlement is expressly approved, except that interest shall accrue through the last day of the month in which the settlement proposal was filed, June 30, 1963.

(D) Within 30 days after making the refunds required by the terms and conditions of this order and the settlement proposal, California shall report to the Commission, in triplicate, the amount of the refunds made to its pipeline purchasers, showing separately the amount of principal and interest so paid and the bases used for such determination, together with releases from the purchasers showing receipt of the refunds in conformity to the settlement as approved.

(E) Upon full compliance of California with all the terms of this order and of the settlement proposal, California shall be relieved of any further refund obligations in these proceedings and said proceedings shall terminate.

(F) The certificates and amendment herein issued are not transferable and shall be effective only so long as California continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(G) The grant of the certificates and amendment herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or Part 154 of the Regulations thereunder; *Provided, however*, that the 30-day notice provision of Part 154.94(b) and the detailed submittal requirements of Part 154.94(f) are hereby waived insofar as they apply to the filing of reductions in rate as required by this order and the settlement proposal.

(H) The grant of certificates and amendment herein and approval of the settlement proposal is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against California, particularly any proceeding under Section 5 of the Natural Gas Act and is without prejudice to claims or contentions which may be made by the Commission, Applicant, the Commission staff, or any affected party herein in any other proceeding.

(I) Within 15 days from the date of receipt of refunds and interest required by this order, United, Texas Gas and Southern shall each submit a report to the Commission and serve a copy on their respective jurisdictional customers, and the various State Utility Commissions wherein each pipeline does business, setting forth the amount of refund and interest received and their proposed disposition of such amounts. Pending Commission action and further orders respecting such proposed dispositions, the aforementioned companies shall hold such refund and interest amounts in a special fund (without further interest obligation).

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Charles R. Ross.

INDIANA & MICHIGAN ELECTRIC COMPANY, DOCKET NO. E-7089

ORDER MODIFYING ORDER FOR PRODUCTION OF DATA PURSUANT TO SUBPOENA DUCES TECUM AND TO REQUIRE THE MAKING OF MINUTES AVAILABLE FOR EXAMINATION

(Issued August 7, 1963)

This order amends an order of the Commission issued July 23, 1963, 30 FPC 391, in the above entitled matter requiring *inter alia* the production before the Commission's trial examiner of certain documents, records and data of Indiana & Michigan Electric Company (Indiana-Michigan) and its corporate affiliates in the American Electric Power Company System. On July 30, 1963, the presiding examiner certified to the Commission, pursuant to Section 1.27 of the Rules of Practice and Procedure, a recommendation by staff counsel and counsel for Indiana-Michigan for modification of the Commission's July 23, 1963 order to permit production of the subject documents, records and data at the respective corporate business offices where they are maintained, and for such further continuances of the hearing in this matter as the examiner may deem reasonable.

The Commission finds:

It is necessary and appropriate for purposes of the aforementioned order issued July 23, 1963 that paragraph (A) thereof be modified so as to permit the companies therein named (and their President, Mr. Donald C. Cook) to make all original source data specified in subparagraphs (a), (b), (c), (d) and (e) of paragraph (A) available to the Commission's staff for purposes of inspection and supplying copies to the staff at the respective places of business of those companies where those records are maintained.

The Commission orders:

(A) Paragraph (A) of the Commission's order issued July 23, 1963 in the above entitled matter is hereby modified as provided above.

(B) The hearing in this proceeding shall be continued as directed by the presiding examiner.

(C) The order of July 23, 1963 is otherwise affirmed in all respects.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

SOCONY MOBIL OIL COMPANY, INC., DOCKET NO. G-17625; CONTINENTAL OIL COMPANY, DOCKET NO. G-17649; NEWMONT OIL COMPANY, DOCKET NO. G-17765; TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. RP64-4

ORDER CONDITIONALLY APPROVING PROPOSED SETTLEMENT, CONDITIONALLY ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND IMPOSING REPORTING REQUIREMENTS

(Issued August 7, 1963)

On October 29, 1962, Socony Mobil Oil Company, Inc., Continental Oil Company and Newmont Oil Company (hereafter collectively referred to as MCN) filed an offer of settlement in the above-captioned dockets which was rejected by our order of April 10, 1963[1] for the reasons therein set out. On June 19, 1963,

[1] *Union Texas Petroleum, et al.*, Docket No. G-13221, *et al.*, "Order Denying Motions to Sever and Rejecting Settlement Proposal," 29 FPC 734.

MCN filed an amended settlement proposal[2] and a motion for severance and issuance of certificates upon shortened procedures. No answers to this latter settlement proposal and motion have been received.

The major defects in the original proposal (i.e. ambiguities and failure to provide for permanent certificates as to some of the properties) have been cured.

A settlement rate of 19.0¢ per Mcf[3] is proposed for all three sales. Escrow provisions for an additional 1.5¢ per Mcf are to provide for the contingency of the producing acreage's being finally adjudicated as lying within the taxing jurisdiction of the State of Louisiana. Similar provisions were approved in the Commission's order of August 24, 1962 in *Socony Mobil Oil Company, Inc.*, 28 FPC 357, and other settlements. MCN represent that they are not now nor have they been paying Louisiana State taxes referable to the properties in question. The buyer in each case is Tennessee Gas Transmission Company (TGT).

MCN's offer applies to all properties (a 160-acre tract[4] and a 2340-acre tract[5] in the Block 62 Field, East Cameron Area, offshore Louisiana) covered under the rate schedules proposed to be settled.[6] It provides for: (1) a reduction in rate for the 160-acre tract sales from 22.9¢ per Mcf (includes 1.5¢ per Mcf tax reimbursement) now being collected to 19.0¢ per Mcf, and a reduction for the 2340-acre tract from 19.5¢ per Mcf to 19.0¢ per Mcf.[7] In addition, 1.5¢ per Mcf will be paid to an escrow agent pending final adjudication of the proper taxing jurisdiction for the subject properties; (2) a moratorium on further rate increases from October 1, 1962 to June 30, 1967, inclusive; (3) extension of make-up periods for take-or-pay gas to 48 months; (4) refunds of all amounts heretofore collected as reimbursement for Louisiana State taxes for deposit in the escrow account; (5) refund of two-thirds of the difference between 21.4¢ per Mcf (referable to to 160-acre tract) and 19.0¢ per Mcf collected from the date of initial delivery through September 30, 1962; and (6) refund of two-thirds of the difference between 19.5¢ per Mcf (referable to the 2340-acre tract) and 19.0¢ per Mcf collected from the date of initial delivery through September 30, 1962; (7) refunds of all amounts above the settlement rates collected subsequent to September 30, 1962.

Changes upward or downward in the settlement prices may be made during the moratorium period according to any specifically applicable area rate determined in the Area Rate Proceeding, Docket No. AR61–2, or other proceeding of similar nature. If MCN becomes obligated to pay any tax levied by the United States for which reimbursement is contractually provided, a rate increase equal to one-half of such tax may be filed. If the existing five-month suspension period of Section 4 of the Natural Gas Act is lengthened, the July 1, 1957 moratorium date for increased filings shall be moved up correspondingly.

Generally, the terms of the settlement are similar to those previously accepted by the Commission in recent settlements.[8] As noted above, interested interveners participated in negotiations for settlement and have signed the settlement proposal, and no comments have been received opposing the settlement. Refunds to

[2] Other parties to the proposal are Consolidated Edison Company of New York, Inc., Long Island Lighting Co. and Public Service Electric and Gas Company.

[3] All volumes at 15.025 psia.

[4] MCN contracts dated December 12, 31, and 30, 1958, respectively.

[5] MCN contracts dated September 6, September 6 and September 14, 1961, respectively.

[6] Socony's FPC Gas Rate Schedule No. 177, Continental's FPC Gas Rate Schedule No. 165 and Newmont's FPC Gas Rate Schedule No. 4.

[7] The original proposal of October 29, 1962, provided for the continuance of the temporary authorization at 19.5¢ per Mcf for the 2340-acre tract.

[8] See Orders issued June 24, 1963 in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, concerning *Union Oil Company* of California and *Tenneco Corporation*, 29 FPC 1283 and 1279, respectively.

TGT are estimated to be $300,000 [9] (exclusive of interest) and under TGT's latest rate settlement in Docket No. G–11980, *et al.* such refunds will flow through to its customers.

Interest on refunds is proposed to be paid at a rate of 6% per annum, and no interest is proposed to accrue subsequent to April 30, 1963. However, in keeping with the present Commission policies of (1) requiring refunds to accrue until the last day of the month in which the proposal is received and (2) requiring interest to be paid at the rate of 6% per annum for refunds referable to sales made prior to March 1, 1960, with 7% interest for refunds made for sales after that date, our order below grants the certificates in these dockets upon the condition that interest on refunds accrue through June 30, 1963, the last day of the month in which the proposal was filed, and upon the further condition that interest attributable to volumes delivered prior to March 1, 1960 be computed at a rate of 6 percent per annum and for volumes delivered thereafter at a rate of 7 percent per annum.

In previous settlements involving another pipeline purchaser, where escrow arrangements have been necessary to account for monies pending final adjudication of the proper taxing jurisdiction for properties involved, we have required the pipeline company to make certain filings with us in order that we might be properly appraised of developments.[10] We believe that a similar requirement should be imposed upon TGT, an intervener party in these proceedings, at this time. Accordingly, in Docket No. RP64–4, TGT will file its escrow agreement with the agent selected and will file a special report of the amounts initially paid into escrow, special annual reports of the status of the escrow account, and special reports whenever the escrow agent makes disbursements therefrom.

We have approved of two other settlements involving TGT as purchaser in which similar escrow arrangements were provided.[11] In order to keep the Commission and interested parties informed as to the status of all of TGT's escrow accounts, we shall require TGT to file with the Commission in Docket No. RP64–4 the same reports for those other two escrow arrangements.

The settlement provisions for adjustments in rates according to our order or orders in *Area Rate Proceeding*, Docket No. AR61–2, seeks to anticipate in part the nature of our final determinations in that matter. It is clear that we shall make no determinations in this matter which will control our conclusions in Docket No. AR61–2. The settlement proposal also provides that adjustments in price growing out of the Area Rate Proceeding, Docket No. AR61–2, should go into effect upon conclusion of judicial review of our final order. However, we cannot now commit the Commission to conditionally staying the effectiveness of its final order in Docket No. AR61–2. These matters should be decided at the conclusion of that proceeding and our approval of the settlement will be so conditioned.

Pursuant to due notice, a hearing was held concerning the above-captioned matters on July 23, 1963. Staff Counsel moved for the omission of the intermediate decision pursuant to section 1.30(c)(1) of the Rules of Practice and Procedure and the record including the settlement agreement was certified to us by the presiding examiner. No party opposed the omission of the intermediate decision in these proceedings.

---

[9] Includes full tax refund paid to escrow account.

[10] See *Socony Mobil Oil Company, Inc.*, 28 FPC 357; footnote 8, *supra*.

[11] See *Continental Oil Company, et al.*, Docket No. G–11024, *et al.*, "Order Conditionally Approving Rate Settlement Proposal, Severing and Terminating Proceedings," issued December 21, 1962, 28 FPC 1090, and *Tennessee Gas Transmission Company, et al.*, Docket No. G–14562, *et al.*, "Order Granting Motion to Omit the Intermediate Decision, Approving Proposed Settlement and Issuing Certificates of Public Convenience and Necessity," issued January 2, 1963, 29 FPC 4.

The Commission finds:

(1) Socony Mobil Oil Company, Inc., Continental Oil Co., and Newmont Oil Co. are natural-gas companies within the meaning of the Natural Gas Act, and are engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(2) The proposed sales of natural gas are subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) MCN are able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, are required by the public convenience and necessity and are in the public interest upon the conditions set forth below, and certificates should be issued as ordered below.

(5) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that TGT be required to report to the Commission on its escrow arrangements, as ordered below.

(7) No party has opposed the waiver of the intermediate decision in these proceedings.

The Commission orders:

(A) The motion for waiver of the intermediate decision procedure is granted.

(B) Certificates of public convenience and necessity are hereby issued upon the conditions set forth herein to Socony Mobil Oil Company, Inc., Continental Oil Co., and Newmont Oil Co. for the sale of natural gas in interstate commerce for resale as proposed, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in the MCN's applications and settlement proposal herein.

(C) The certificates issued by paragraph (B) above, are granted upon the express condition that MCN comply fully with the terms of the settlement proposal referred to above and which was entered into evidence in this proceeding, which settlement is expressly approved, as conditioned herein.

(D) Within 30 days after making the refunds required by the terms and conditions of this order and the settlement proposals, the MCN shall report to the Commission, in triplicate, the amount of the refunds made to TGT, showing separately the amount of principal and interest so paid and the bases used for such determinations, together with releases from the purchaser showing receipt of the refunds in conformity to the settlement as approved.

(E) Upon full compliance of MCN with all the terms of this order and of the settlement proposals, MCN shall be relieved of any further refund obligations in these proceedings and said proceedings shall terminate.

(F) The certificates herein issued are not transferable and shall be effective only so long as MCN continue the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(G) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or Part 154 of the

Regulations thereunder; *provided, however*, that the 30-day notice provision of Part 154.94(b) and the detailed submittal requirements of Part 154.94(f) are hereby waived insofar as they apply to the filing of reductions in rate as required by this order and the settlement proposal.

(H) The grant of certificates herein and approval of the settlement proposal is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against MCN particularly any proceeding under Section 5 of the Natural Gas Act or Section 5(c) of the Outer Continental Shelf Lands Act and is without prejudice to claims or contentions which may be made by the Commission, Applicant, the Commission staff, or any affected party herein in any other proceeding.

(I) Within 30 days after it has executed an agreement with an escrow agent, pursuant to this order, TGT shall file with the Commission a conformed copy of such agreement and a special report of the amounts paid into escrow. In addition, within 30 days of the date of this order TGT shall file with the Commission conformed copies of the escrow agreements entered into pursuant to our orders of December 21, 1962, and January 2, 1963, *supra*, and special reports of the amounts paid into escrow thereunder. Each year thereafter and until the escrow agreements terminate, TGT shall file contemporaneously with its Form 2 Annual Report a report of the amounts in the escrow accounts as of the last day of the reporting year. In addition, whenever the escrow agent pays out monies from the escrow accounts, TGT shall file a special report of the principal and interest so paid out, the reason for such payments, and the manner of distribution and basis therefor. Whenever the escrow agent pays out monies, TGT shall serve a copy of its special report on each interested State Commission. All filings and reports required by this paragraph shall be made by a responsible corporate official in Docket No. RP64-4 and shall include a statement of the amounts attributable to each rate schedule and field.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G-13221, ET AL.; GRARIDGE CORPORATION (OPERATOR), ET AL., DOCKET NO. G-19246, ET AL.; HUMBLE OIL & REFINING COMPANY, DOCKET NOS. G-14967, G-15227, G-17349, G-17570, G-17772, G-18547, G-18714, G-18715, G-18716, G-19800, G-20019, CI60-96, CI60-177, CI60-631, CI60-623, CI61-397, CI61-425, CI61-1176, CI62-69, CI63-635, CI62-70, CI63-455, AND CI63-755.

ORDER SEVERING PROCEEDINGS, CONDITIONALLY APPROVING PROPOSED SETTLEMENT AND CONDITIONALLY ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 7, 1963)

Humble Oil & Refining Company (Humble) and certain interested interveners,[1] submitted on April 11, 1963, a settlement agreement and a motion for severance

[1] The Brooklyn Union Gas Company, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, Philadelphia Gas Works Division of the United Gas Improvement Company, Public Service Electric and Gas Company, South Jersey Gas Company, The United Gas Improvement Company, the New England Distributors group, the East Ohio Gas Company, Hope Natural Gas Company, Lake Shore Pipe Line Company, New York State Natural Gas Corporation, The Peoples Natural Gas Company, and The River Gas Company.

of twenty-two of the Humble dockets listed above from the consolidated certificate proceeding, Union Texas Petroleum, *et al.* Docket No. G–13221, *et al.* and one Humble docket (CI63–455) from the consolidated proceeding, Graridge Corporation (Operator), *et al.* Docket No. G–19246, *et al.* The motion also requested the expeditious issuance of permanent certificates of public convenience and necessity according to the applications as modified by the settlement agreement in each of the dockets except Docket No. CI63–635. The agreement proposed that the sale in Docket No. CI63–635 continue under temporary authorization.

Answers in opposition to this motion were filed on April 22, 1963, by the Pennsylvania Public Utility Commission (Pennsylvania), Alabama Gas Corporation (Alabama Gas) and the Memphis Gas, Light and Water Division of the City of Memphis, Tennessee (Memphis). Transcontinental Gas Pipe Line Corporation (Transco), a purchaser from Humble, on May 13, 1963, filed a statement objecting to the date on which the proposed moratorium would end and on the same date, the Philadelphia Electric Company filed a letter with the Secretary objecting to the treatment proposed for Docket No. CI63–635. The Public Service Commission of New York, on April 26, 1963, filed a response to the motion. Because of the opposition by parties and without passing on the merits of the settlement proposal, on May 21, 1963, we issued an order denying the motion.[2]

On May 31, 1963, Memphis filed a withdrawal of objection and on June 6, 1963, Pennsylvania filed an "Amended Answer" to the Humble, *et al.* motion withdrawing its objection. Alabama Gas, on June 10, 1963, filed a letter with the Secretary requesting that its Answer of April 22, 1963, be considered a statement of position and not be considered an objection to the settlement proposal of Humble, *et al.*

On June 7, 1963, Humble filed an application for rehearing and reconsideration of our order of May 21, 1963,[3] and on June 12, 1963, the Eastern Seaboard Interveners[4] filed a motion for reconsideration of the same order.

Since we could not approve of the entire package settlement proposal as submitted because of its failure to provide for the issuance of a permanent certificate of public convenience and necessity in Docket No. CI63–635 and its failure to provide for the accrual of interest on the amounts to be refunded through the last day of the month in which the settlement was filed, we granted the motions for reconsideration on July 8, 1963,[5] for the limited purpose of allowing the parties an opportunity to consider our proposal to approve of the settlement upon condition that a permanent certificate be issued at a settlement rate of 20.625¢ per Mcf[6] in Docket No. CI63–635 subject to the moratorium and the take-or-pay make-up provisions of the agreement. On July 22, 1963, Humble filed a letter with the Secretary advising "* * * that Humble will accept the settlement conditioned as proposed in the Commission's said order issued July 8, 1963." No objections to our proposed disposition of these matters have been filed.

---

[2] *Humble Oil & Refining Company, et al.*, Docket No. G–14967, *et al.*, "Order Denying Motion for Severance, for Approval of Settlement Agreement and for Issuance of Permanent Certificates and Request for Prompt Determination."

[3] This application was treated as a motion for reconsideration. Our Order of May 21, 1963, *supra*, was not a final order.

[4] See footnote 1.

[5] *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, "Ordering Granting Motions for Reconsideration," 30 FPC 60.

[6] All volumes expressed at 15.025 psia.

The settlement agreement as now modified provides the following:

(1) In respect to the Humble Rate Schedules listed in paragraphs (2), (3), (4), and (5) below, a moratorium on rate increase filings from April 1, 1963, through March 31, 1968; except that such filings may be made (1) prior to April 1, 1968, to the extent that the maximum statutory suspension period under Section 4(e) of the Natural Gas Act may be extended beyond 5 months or the Commission may hereafter be authorized to lengthen such suspension period, and (2) at any time for reimbursement of one-half the amount of increased State or Federal taxes or payments in lieu of taxes, provided that such increase does not exceed the reimbursement to which Humble is entitled by contract.

(2) Permanent certification at settlement rates of 20.625¢ per Mcf inclusive of tax reimbursement, for gas delivered pursuant to Humble's Rate Schedules Nos. 136 (G–15227), 148 (G–17349), 152 (G–17772), 158 (G–18547), 163 (G–18714), 164 (G–18715), 165 (G–18716), 168 (G–19800), 169 (G–20019), 234 (CI60–177), 238 (CI60–623), 246 (CI61–397), 247 (CI61–425), 269 (CI61–1176), 274 (CI60–531), 280 (CI62–70) and 317 (CI63–635).

(3) Permanent certification at settlement rates of 19¢ per Mcf, inclusive of reimbursement for payments under Section 6(a)(9) of the Outer Continental Shelf Lands Act,[7] for gas delivered pursuant to Humble's Rate Schedule Nos. 241 (CI60–96) and 304 (CI62–69).

(4) Permanent certification at a rate of 19.5¢ per Mcf inclusive of tax reimbursement for gas delivered pursuant to Humble's FPC Gas Rate Schedule No. 323 (CI63–755).

(5) Permanent certification at contractual initial rates of 18.70¢, 20.25¢ and 14.25¢ per Mcf, inclusive of tax reimbursement, for gas delivered pursuant to Humble's Rate Schedules Nos. 135 (G–14967), 149 (G–17570) and 314 (CI63–455), respectively.

(6) Prospective upward or downward adjustment of settlement rates according to any applicable area rate or rates determined in Area Rate Proceeding, Docket No. AR61–2.

(7) Collection of the increased rates now in effect subject to refund in Docket Nos. RI62–82,[8] RI62–393,[9] RI63–94,[10] to be continued and the increased rate filed for but under suspension in Docket No. RI63–172[11] to be collected, subject to further orders of the Commission in those suspension dockets.

(8) Extension of the make-up period for gas paid for but not taken to 4 years in any case where the contract provides a lesser make-up period.

(9) Full refunds to be paid on all amounts collected by Humble in excess of the proposed settlement rate of 20.625¢ per Mcf for gas purchased under Humble's Rate Schedules Nos. 274 and 269. In both instances sales are being made to Tennessee Gas Transmission Company (Tennessee) under temporary authorizations subject to refund of amounts above the rate required by public convenience and necessity down to a floor of 20¢.

(10) Full refunds of all amounts above the settlement rates collected by Humble since April 1, 1963, the effective date of the rate reductions.

(11) Interest on the refundable amounts at 7% per annum to accrue through April 30, 1963.

The pipeline purchasers which will receive refunds and rate reductions under the settlement are Tennessee, United Gas Pipe Line Company (United), Trans-

[7] 67 Stat. 462.
[8] Related to Supplement No. 5 to Humble's FPC Gas Rate Schedule No. 135.
[9] Related to Supplement No. 4 to Humble's FPC Gas Rate Schedule No. 149.
[10] Related to Supplement No. 6 to Humble's FPC Gas Rate Schedule No. 135.
[11] Related to Supplement No. 6 to Humble's FPC Gas Rate Schedule No. 314.

continental Gas Pipe Line Corporation (Transco), Southern Natural Gas Company (Southern), and Trunkline Gas Company (Trunkline).

Tennessee, which will receive the greatest share of the refunds (approximately $400,000) will, in accordance with its rate settlement in Docket No. G–11980, *et al.*, pass the refunds on to its customers and also reflect Humble's reduced rates in its rates. Subject to the various conditions in their respective rate settlements, Tennessee's jurisdictional customers will in turn reflect Tennessee's refunds and rate adjustments.

United's rate case in Docket No. RP63–1 is presently before the Commission. Any adjustments necessary to reflect Humble's reduced rates will be considered in that proceeding.

The refunds to Transco (approximately $10,000) will be passed on and the Humble rate reductions will be reflected by Transco, subject to the accumulation provision of its rate settlement in Docket No. RP61–13.

Southern, whose refund will be approximately $2,000, is under a similar obligation. The dollar effect of this settlement on Trunkline is *de minimis*.

Transco, as we noted in our order of July 8, 1963, objects to the date of the end of the moratorium period because it fears that since the moratoria in other settlement agreements concerning its suppliers end less than six months prior to the date proposed by Humble, *et al.*, Transco may not be in a position to pass on Humble's prospective rate increases immediately. We stated in that order that we feel that an otherwise acceptable settlement agreement should not be rejected because of these circumstances. Should the circumstances which Transco fears actually occur it would be free to make application for special permission at that time to file rate changes during a suspension period.

The settlement provisions for adjustments in rates according to our order or orders in *Area Rate Proceeding*, Docket No. AR61–2, seek to anticipate in part the nature of our final determinations in that matter. It is clear that we shall make no determinations in this matter which will control our conclusions in Docket No. AR61–2. The settlement proposal also provides that adjustments in price growing out of the Area Rate Proceeding, Docket No. AR61–2, should go into effect upon conclusion of judicial review of our final order. However, we cannot now commit the Commission to conditionally staying the effectiveness of its final order in Docket No. AR61–2. These matters should be decided at the conclusion of that proceeding and our approval of the settlement will be so conditioned.

We find the settlement proposal as modified to be in the public interest. Accordingly, we shall sever the above-captioned Humble dockets from the consolidated proceedings in Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*, and Graridge Corporation (Operator), *et al.*, Docket No. G–19246, *et al.*, omit the intermediate decisions in regard to these dockets[12] and conditionally issue certificates of public convenience and necessity.

The Commission finds:

(1) Humble Oil & Refining Company is a natural-gas company within the meaning of the Natural Gas Act, and is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(2) The proposed sales of natural gas are subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are

[12] The hearings in the Union Texas Petroleum, *et al.* consolidated proceeding concluded July 25, 1963, and the hearing in the Graridge Corporation (Operator), *et al.*, consolidated proceeding concluded on May 14, 1963.

subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Humble is able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, are required by the public convenience and necessity and are in the public interest upon the conditions set forth below, and certificates should be issued as ordered below.

(5) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

(6) No party has opposed the waiver of the intermediate decision in these proceedings.

The Commission orders:

(A) The motion for waiver of the intermediate decision is granted.

(B) The matters in the Humble dockets listed in the caption to this order, except Docket No. CI63–455, are hereby severed from the consolidated proceeding, Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.* and Docket No. CI63–455 is hereby severed from the consolidated proceeding, Graridge Corporation (Operator), *et al.*, Docket No. G–19246, *et al.*

(C) Certificates of public convenience and necessity are hereby issued upon the conditions set forth herein to Humble Oil & Refining Company for the sales of natural gas in interstate commerce for resale as proposed and as modified by the settlement proposal and this order, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in Humble's applications and settlement proposal herein.

(D) The certificates issued by paragraph (C) above, are granted upon the express condition that Humble comply fully with the terms of the settlement proposal as modified which settlement is expressly approved, as modified by this order.

(E) Within 30 days after making the refunds required by the terms and conditions of this order and the settlement proposal as modified, Humble shall report to the Commission, in triplicate, the amount of the refunds made to its pipeline purchasers, showing separately the amount of principal and interest so paid and the bases used for such determination, together with releases from the purchasers showing receipt of the refunds in conformity to the settlement as approved.

(F) Upon full compliance of Humble with all the terms of this order and of the settlement proposal as modified, Humble shall be relieved of any further refund obligations in these certificate proceedings and said proceedings shall terminate.

(G) The certificates herein issued are not transferable and shall be effective only so long as Humble continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(H) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or Part 154 of the Regulations thereunder; *Provided, however,* that the 30-day notice provision of Part 154.94(b) and the detailed submittal requirements of Part 154.94(f) are hereby waived insofar as they apply to the filing of reductions in rate as required by this order and the settlement proposal.

(I) The grant of certificates herein and approval of the settlement proposal is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Humble, particularly any proceeding under Section 5 of the Natural Gas Act or Section 5(c) of the Outer Continental Shelf Lands Act and is without prejudice to claims or contentions which may be made by the Commission, Applicant, the Commission staff, or any affected party herein in any other proceeding.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr. and Charles R. Ross.

CALIFORNIA ELECTRIC POWER COMPANY, DOCKET NO. E-7107

ORDER AUTHORIZING ISSUANCE OF PROMISSORY NOTES

(Issued August 9, 1963)

California Electric Power Company (Applicant), a corporation organized under the laws of the State of Delaware and doing business in the States of California and Nevada, with its principal business office at San Bernardino, California, filed an application on June 11, 1963, for authority, pursuant to Section 204 of the Federal Power Act, to issue unsecured Promissory Notes in the aggregate principal amount of $17,000,000.[1] The Notes are proposed to be issued to the Bank of America National Trust and Savings Association in accordance with the terms of a Loan Agreement dated May 31, 1963 and will mature in less than 12 months from the date of issue. Interest on the note or notes will be at a fluctuating rate, which shall be equal at all times to Bank of America's prime rate for 90-day to 180-day prime commercial loans.

Applicant states that it will use the proceeds from the proposed issuance of Promissory Notes to redeem all of the outstanding shares of its $2.50 Cumulative Preferred Stock, 6% Cumulative Preferred Stock and 5.75% Cumulative Preferred Stock prior to the record date to be selected for determining the shareholders who will be entitled to vote upon the adoption of the proposed Merger Agreement. According to the application, the three issues to be called are quite costly in the light of the present Preferred Stock market.

Applicant states that if the issues remained outstanding at the time of merger the surviving corporation would, of necessity, be required to exchange and convert them into Preferred shares of the surviving corporation at ratios which would provide an equally high cost. It further states redemption through the proceeds of a bank loan bearing interest at prime rate will eliminate these three issues prior to the merger and permit the surviving corporation flexibility in selecting the method of replacing them with permanent financing on a basis which may be more advantageous than exchange or conversion in the course of merger.

If the contemplated merger does not take place the Applicant states amounts borrowed will be repaid through the issuance of additional securities. Applicant anticipates that it will be able, to market one or more new series of Cumulative Preferred to repay these redemption borrowings and to restore the Preferred element to Applicant's capital structure without financial detriment.

Present market conditions of the electric utility's Preferred Stock issues indicate that any new Preferred Stocks so issued by the Applicant could be placed at

[1] In a related application (Docket No. E-7106), filed on the same day pursuant to Section 203 of the Federal Power Act, California Electric seeks authority to merge with the Southern California Edison Company.

dividend rates which are less than the dividend rates for the three series proposed for redemption.

The total redemption cost of the three callable series of Preferred Stock will require $17,046,000.[2]

Written notice of the application has been given to the Public Utilities Commission of California, the Public Service Commission of Nevada, and to the Governors of each of those states. Notice has also been given by publication to the Federal Register on June 26, 1963 (28 F.R. 6604), stating that any person desiring to be heard, or to make any protest to the application should file a petition or protest on or before July 15, 1963 with the Federal Power Commission, Washington 25, D.C. No protest, petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore determined and set forth in the Commission's order issued August 30, 1957, *California Electric Power Company*, Docket No. E-6770 (18 FPC 239).

(2) The proposed issuance of Promissory Notes in the aggregate principal amount of $17,000,000 all as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) The proposed issuance of Promissory Notes in the aggregate principal amount of $17,000,000, all as described above, will be in excess of 5% of the par value of the other securities of Applicant, and, therefore, will not be exempt by virtue of Section 204(e) from the requirements of Section 204(a) of the Act.

(4) Applicant is not organized and operating in a State, under the laws of which the security issue here involved is regulated by a State Commission within the meaning of Section 204(f) of the Act, and the proposed issuance is, therefore, not exempt by virtue of that Section from the requirement of Section 204 of the Act.

(5) The proposed issuance of Promissory Notes is exempt from the competitive bidding requirements of Section 34.1a of the Commission's Regulations under the Federal Power Act by reason of Paragraph 34.1a(a)(2) thereof.

(6) The proposed issuance of Promissory Notes, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility, and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

The Commission orders:

(A) The proposed issuance of Applicant of Promissory Notes in the aggregate principal amount of $17,000,000, outstanding at any one time, upon the terms and conditions and for the purposes set forth in the application, as amended, all as described above, is hereby authorized, subject to the provisions of this order.

[2] Redemption cost:

Preferred stock	Shares outstanding	Redemption price	Cost of redemption (does not include accrued dividends)
$2.50 Series	60,000	$52.50	$3,150,000
6% Series	140,000	54.00	7,560,000
5.75% Series	115,200	55.00	6,336,000
Total			17,046,000

(B) This authorization is expressly conditioned upon the final maturity of all Notes to be issued pursuant hereunder being not later than May 31, 1964.

(C) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates, or determinations of cost or any other matter whatsoever now pending or which may come before this Commission including the proposed merger.

(D) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect of any securities to which this order relates.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

THE OHIO OIL COMPANY,[1] DOCKET NO. G–13532, ET AL.[2]

ORDER APPROVING RATE SETTLEMENT PROPOSAL, TERMINATING PROCEEDINGS, AND PROVIDING FOR REFUNDS

(Issued August 9, 1963)

On April 24, 1963, Marathon Oil Company (Marathon) filed a petition for approval of a settlement proposal concerning the rates under nine of its presently effective rate schedules. No objections or protests to such proposal have been received.

In summary the settlement proposal provides:

(1) Marathon's rates, inclusive of tax reimbursement, for sales of natural gas in interstate commerce under the nine rate schedules shall be at or below the applicable area ceilings;

(2) Marathon waives the right to file for contractually authorized increased rates for a 24-month period subsequent to the date of the Commission's order approving the settlement proposal. Marathon, however, reserves the right to file for any increased rates, if contractually authorized, up to the applicable area-rate levels determined through area hearings or by amendment to the Commission's *Statement of General Policy No. 61–1*, or any contractually authorized increase in tax reimbursement;

(3) In the event that the Natural Gas Act is amended so as to remove or release from Commission jurisdiction any sales covered by the rate schedules listed in the appendix hereto, or any of the prices contained in any or all of such rate schedules, Marathon reserves the right to claim such price or prices as it may presently be or may hereafter become entitled to under its contracts;

(4) Marathon will refund, with interest, 0.125 cents per Mcf of the 1.875 cents per Mcf Louisiana gas severance tax reimbursement collected under its FPC Gas Rate Schedules Nos. 69 and 72 (Docket Nos. G–17674 and G–17702).

In support of its proposal, Marathon states that the settlement rates, moratorium periods and other provisions thereof, some of which are not specifically noted herein, with the added benefit of termination of rate proceedings, are in the public interest in that the rates are reasonable, and will provide price stability for a long period of time for natural gas moving in interstate commerce.

---

[1] The corporate name of "The Ohio Oil Company" was changed to "Marathon Oil Company". There is pending before the Commission a motion to redesignate the subject rate proceedings from "The Ohio Oil Company" to "Marathon Oil Company."

[2] The additional dockets involved herein are set forth in the appendix hereto.

With respect to refunds, the various parties to the settlement conference compiled an agreed-upon cost-of-service. Such cost-of-service revealed that for the test year 1961, the jurisdictional costs exceeded the jurisdictional revenues. Marathon may therefore be relieved of any obligation to make refunds in the subject proceedings, other than the above-mentioned tax reimbursement refunds, as provided in the settlement proposal.

We believe that the settlement proposal meets the criteria previously set forth in other of our recent settlement orders and accordingly we find it to be in the public interest and should be approved as hereinafter provided.

Our approval of the settlement proposal should not be construed as constituting approval of any future rate increases that may be filed under the subject rate schedules, and is without prejudice to any findings or orders of the Commission in any future proceedings, including area rate proceedings, involving Marathon's rates and rate schedules.

The Commission finds:

The proposed settlement of the subject proceedings on the basis described herein, as more fully set forth in the settlement proposal filed on April 24, 1963, is in the public interest, and it is appropriate in carrying out the provisions of the Natural Gas Act that it be approved and made effective as hereinafter ordered, and good cause exists for approving the settlement rates, for terminating certain rate proceedings, and providing for refunds.

The Commission orders:

(A) The settlement of the subject proceedings on the basis of the settlement proposal filed April 24, 1963, is approved and made effective subject to the following terms and conditions.

(B) The applicable settlement rates set out in the appendix hereto are approved and such rates shall be effective as of the date of issuance of this order.

(C) Within 90 days from the date of this order, Marathon shall make such filings under its rate schedules as are required to make effective the terms of the settlement proposal.

(D) Within 90 days from the date of this order, Marathon shall (1) refund, with interest, to Texas Eastern Transmission Corporation 0.125 cents per Mcf of the 1.875 cents per Mcf Louisiana gas severance tax reimbursement collected under its FPC Gas Rate Schedule No. 69, (Docket No. G–17674), and (2) refund, with interest, to Texas Gas Transmission Corporation 0.125 cents per Mcf of the 1.875 cents per Mcf Louisiana gas severance tax reimbursement collected under its FPC Gas Rate Schedule No. 72 (Docket No. G–17702).

(E) Within 90 days from the date of this order Marathon shall report to the Commission in writing the amount of refunds made pursuant to paragraph (D) above, and the compilation of principal and interest, together with a copy of a release from Texas Eastern and Texas Gas with respect to such refunds.

(F) Upon full compliance by Marathon with all the terms and provisions of this order, the Section 4(e) proceedings listed in the appendix hereto shall terminate.

(G) This order is without prejudice to any findings or orders which have been or may be made hereafter by the Commission, and is without prejudice to claims or contentions which may be made by Marathon, the Commission Staff, or any affected party hereto, in any proceedings now pending, or hereafter instituted by or against Marathon or any other companies, person or parties affected by this order.

APPENDIX

Marathon Oil Company, docket No. G–13532, et al.

Marathon's rate schedule No.	Area	Field	Purchaser	Docket No.		Last firm rate [1]	Rate in effect [1]	Settlement rate [1]
				Certificate	Section 4(e)			
73	Texas-R.R. Dist No. 1	Cooke Field	Transcontinental Gas Pipe Line Corp.	G–17931		13.68225	13.68225	13.68225
65	Texas-R.R. Dist No. 2	Heyser Field	Tennessee Gas Transmission Co.	G–7254	G–17276	11.02818	15.3333	14.0
67	Texas-R.R. Dist No. 4	North Pasture	Natural Gas Pipeline Co. of America.	G–2602	G–20549	12.61436	16.65095	14.0
68	Texas-R.R. Dist No. 4	Plymouth and Portilla	Natural Gas Pipeline Co. of America.	G–2602	G–20549	12.62	16.6584	14.0
70	Texas-R.R. Dist No. 4	Cooke, Plymouth and Portilla	Natural Gas Pipeline Co. of America.	G–11630	G–14046 G–17265 G–20551	[2] 14.2	16.5	[2] 14.2
66	North Louisiana	Greenwood	Arkansas Louisiana Gas Co.	G–7270	[3] G–17686	12.025	12.025	12.025
69	North Louisiana	Greenwood Waskom	Texas Eastern Transmission Corp.	G–10904	G–13532 G–16631 G–17674 G–19768 RI61–180 RI62–132	14.4354	[4, 5] 16.5411	15.75
72	North Louisiana	North Dubberly	Texas Gas Transmission Corp.	G–15910	G–17702	[2] 18.25	[5] 18.375	[2] 18.25
71	West Virginia	Union District	Hope Natural Gas Co.	G–12699		20.0	20.0	20.0

[1] The prices specified are at the following pressure bases: Texas, 14.65 psia; Louisiana, 15.025 psia; West Virginia, 15.325; all prices include tax reimbursement, if any.
[2] Initial price.
[3] This docket involves only a disputed portion of the Louisiana severance tax reimbursement, which was not paid by purchaser or collected by Marathon.
[4] Based upon a series of periodic increases and adjustments for tax changes.
[5] Includes 1.875¢ tax reimbursement.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Charles R. Ross.

VIRGINIA ELECTRIC & POWER COMPANY, DOCKET NO. E-7098

ORDER AUTHORIZING, ACQUISITION AND MERGER OR CONSOLIDATION OF FACILITIES

(Issued August 9, 1963)

The Virginia Electric & Power Company (VEPCO), incorporated under the laws of the State of Virginia and doing business in the States of Virginia, West Virginia, and North Carolina, with its principal business office at Richmond, Virginia filed an application on May 21, 1963 as amended on June 13, 1963, requesting authorization, pursuant to Section 203 of the Federal Power Act, for VEPCO to acquire two 66,000 volt power lines from the Mecklenburg Electric Cooperative (Cooperative) an electric cooperative organized under the laws of the State of Virginia and doing business in that State with its principal office at Boydtown, Virginia.

VEPCO, is engaged in the business of generating and purchasing electric energy and transmitting and selling it at retail and at wholesale in an area comprising the greater part of Virginia, northeastern North Carolina and east central West Virginia. The Company renders electric service in 66 counties in Virginia, in 19 counties in North Carolina and in 5 counties in West Virginia. The Company had net plant of about $730,000,000 as of December 31, 1962.

Cooperative, is engaged in the business of puchasing and distributing electric energy and selling it in the towns of Chase City and Emporia, Virginia, and in portions of 9 counties in Virginia.

VEPCO and Cooperative entered into an agreement dated as of December 18, 1962, for the purchase by VEPCO and the sale by Cooperative of two 66 kv lines as follows:

(a) A 66 kv line approximately 4.6 miles in length, extending from a point on VEPCO's present 66 kv Altavista-Chatham line to Mecklenburg's Climax Substation, Pittsylvania County, Virginia; and

(b) A 66 kv line approximately 8.1 miles in length, extending from a point on VEPCO's present 66 kv Halifax-Carter Fabrics line to Mecklenburg's Lacks Store Substation (Riverdale delivery point), Halifax County, Virginia.

According to the agreement, the transfer of the properties will be in consideration of a cash payment of $100,000 plus reimbursement of any expense in excess of an aggregate of $3,000 incurred in clearing any defects in title in the right-of-way to be transferred.

According to the application the lines have been and are being used for the delivery by VEPCO of power and energy to Cooperative and will continue to be used for that purpose; and in addition will be connected with other facilities proposed for construction by VEPCO to provide more reliable service to the areas served by both parties. According to the application, VEPCO proposes to (1) extend the Lacks Store Line to Clarkville, Virginia, to provide loop feed to three Cooperative and two VEPCO substations, and (2) connect the Climax Line to the Appalachian Power Company (APCO) system and provide loop feed to three Cooperative and three VEPC0 substations. The additional lines will decrease the distance over which energy from the Southeastern Power Administration must be "wheeled" and in addition will increase reliability of service to all VEPCO and Cooperative customers in the areas in question.

VEPCO proposes to record the transmission facilities at total original cost of $99,187 and also to record the estimated applicable Accumulated Provision for

Depreciation of $12,200. The consideration of $100,000 will be $13,013 in excess of net plant of $86,987 and, therefore an Electric Plant Acquisition Adjustment of $13,013 will be created on the books of VEPCO. VEPCO proposes to eliminate the entire amount of the acquisition adjustment by a charge to Account 425, Miscellaneous Amortization.

Written notice of the application has been given to the State Corporation Commission of Virginia, the North Carolina Utilities Commission, the Public Service Commission of West Virginia and to the Governor of each of those States. Notice was also published in the Federal Register on June 6, 1963 (28 F.R. 5596), stating that any person desiring to be heard or to make any protest with reference to the application should file a petition or protest on or before June 20, 1963, with the Federal Power Commission, Washington 25, D.C. No petition or protest or request to be heard in opposition to the granting of the petition has been received.

By order of May 16, 1963 the Virginia State Corporation Commission approved the request of the Cooperative to sell the said facilities and the request of VEPCO to acquire the facilities of the Cooperative.

The Commission finds:

(1) Applicant, a corporation, owns and operates facilities for the transmission and sale at wholesale of electric energy which is transmitted among the States of Virginia, West Virginia, and North Carolina, and consumed outside the State where generated, all of which facilities are in addition to, and do not include, facilities used for the generation of electric energy, facilities used in local distribution, or only for the transmission of electric energy in intrastate commerce, or facilities for the transmission of electric energy consumed wholly by the transmitter. Applicant is therefore, a public utility within the meaning of that term as used in Section 201 of the Act.

(2) By the proposed transaction, as described above, VEPCO will acquire and merge or consolidate with its facilities, subject to the jurisdiction of the Commission certain facilities of Cooperative, another person, within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed acquisition of Cooperative's facilities, by VEPCO as described above, upon the terms and conditions specified in the application and subject to the provisions of this order will be consistent with the public interest, as expressed in Section 203 of the Act, for the reasons set forth in the recital above.

The Commission orders:

(A) The proposed acquisition and merger or consolidation of the facilities of the Mecklenburg Electric Cooperative as described above, by the Virginia Electric & Power Company is hereby authorized and approved upon the terms and conditions set forth in the application, subject to the provisions of this order.

(B) VEPCO shall record the transaction herein authorized and the facilities and properties referred to above, as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees. VEPCO shall dispose of the Electric Plant Acquisition Adjustment from the proposed transaction by a charge to Account 425, Miscellaneous Amortization.

(C) This authorization shall expire unless the transaction herein authorized is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuations, estimates or determinations of costs, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

HOPE NATURAL GAS COMPANY, DOCKET NO. CP63-311

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 12, 1963)

On May 17, 1963, as supplemented on June 12, 1963, Hope Natural Gas Company (Applicant) filed an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity to construct and operate certain transmission and storage facilities for the greater utilization of its existing underground Fink and Kennedy storage pools in Harrison and Lewis Counties, West Virginia.

The proposed facilities, estimated to cost $8,461,000, principally include a new 4,000 horsepower compressor station (Lightburn Station); 38.7 miles of 30-inch pipeline connecting Lightburn Station with Applicant's existing Hastings compressor station; 6.9 miles of 20-inch pipeline connecting applicant's existing Sweeney Station with the proposed 30-inch pipeline; 2.85 miles of 20-inch pipeline connecting the Kennedy station with the proposed Lightburn Station and 1.52 miles of 20-inch pipeline connecting the Kennedy storage pool to the proposed Lightburn Station. Applicant estimates that the proposed facilities will enable it to cycle an additional 15 Mcf of natural gas now required to be maintained as non-current or cushion gas in order to meet its delivery pressure requirements.

Applicant states that the proposed construction is urgently needed to supply the increased requirements of its existing customers, particularly in colder-than-normal weather. Such increased requirements are stated to represent normal growth in residential and commercial space heating in the present markets served with natural gas by Applicant.

The facilities are to be financed by funds on hand and funds to be obtained from the Applicant's parent corporation, Consolidated Natural Gas Company.

Pursuant to due notice, a public hearing was held in Washington, D.C. on August 5, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Hope Natural Gas Company, a West Virginia corporation with its principal place of business in Clarksburg, West Virginia, is a "natural-gas" company within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transmission and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Hope Natural Gas Company, to construct and operate the facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission Regulations, within 6 months from the date on which this order issues.

OPINION NO. 400

MIDWESTERN GAS TRANSMISSION COMPANY AND NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP61-303

OPINION AND ORDER AFFIRMING EXAMINER'S DECISION

(Issued August 13, 1963)*

Syllabus

1. It may be correct that Northern's customers could cut down on interruptions and make additional sales but proof should show which customers are likely to receive such benefit and degree thereof. P. 471.
2. *Distinguishing Tennessee Gas*, Commission *notes* that evidence here does not show that benefits to all parties outweigh any alleged difficulties in system operations. P. 471.
3. Although aware of probable benefits to Midwestern and Northern's customers by proposed sale, Commission *states* such probabilities and assumptions are not a substitute for factual record which can be put to test of cross examination. P. 471.
4. Commission *denies* application for amendment of certificate of public convenience and necessity. P. 472.

---

*Initial decision appears on p. 472.

George C. Mastor and *P. L. Farnand* for Minneapolis Gas Company.

F. Vinson Roach, Daniel B. O'Brien, Justin R. Wolf, and *Charles A. Case, Jr.* for Northern Natural Gas Company.

A. R. Renquist for Northern States Power Company.

John A. McGrath, Jerome J. McGrath, and *Thomas C. Williams* for Fuels Research Council, Inc., et al.

L. R. Pankonien and *George R. Perrine* for Midwestern Gas Transmission Company.

Agnes Mae Wilson for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

SWIDLER, *Chairman:*

This proceeding concerns an application by Midwestern Gas Transmission Company for an amendment to an existing certificate, which authorized an emergency interconnection between Midwestern and Northern Natural Gas Company to provide for the use of such interconnection not only for emergencies but also for interruptible sales of gas to Northern. No further facilities would be constructed and Midwestern would not be obligated to deliver any gas, nor would Northern be obligated to take any. The interconnection is located north of Minneapolis and Midwestern would make the gas available from its supplies from Trans-Canada only after the gas had been refused by all other customers. When the application was filed it was anticipated that it would be set for an abridged hearing, but the coal interests intervened in opposition, and Northern, Northern States Power Company, and Minneapolis Gas Company thereupon intervened in support of the application. The application was also supported by the staff of the Federal Power Commission.

At the hearing Midwestern presented only one witness, a senior sales representative of Tennessee Gas Transmission Company, and Northern presented one witness, its director of customer relations. Five exhibits were introduced: (1) a map of Midwestern's northern system, (2) Midwestern's estimated sales for the last half of 1963, (3) a map of Northern's system, (4) Midwestern's actual sales in 1962, and (5) a list of Northern's interruptible customers. No other evidence was presented.

The Examiner found that the evidence presented did not show that the project was required by the public convenience and necessity. He first noted that the application did not conform to the requirements of either a full-length or an abbreviated application under our rules and suggested that it should have been rejected.

The Examiner found that the evidence showed a benefit to Midwestern if the transaction were certificated. He noted that Midwestern's price to Northern of 25.2¢ per Mcf would result in a profit to Midwestern, with a consequent benefit to its other customers, if any gas at all were sold. Midwestern had also argued that because of the minimum-take provisions in its contract with Trans-Canada, the agreement with Northern would provide a possible outlet for gas which it might be forced to pay for and which it could not otherwise use. The Examiner noted that Midwestern made no showing that this would actually happen but only indicated that the minimum-take provisions existed and that under the contract demand provisions of its present customers it could happen.

On the question of the effect on Northern, another jurisdictional pipeline, the Examiner computed a probable loss on the transaction of $34,000 a year if Northern were to take the 11.3 billion cubic feet which Midwestern indicated might be available and which Northern testified that it might take. The witness for Northern stated that a large part of this gas (7.5 million Mcf) would

be used to fill the Redfield storage in Iowa by displacement and that the rest of the gas would be sold to existing customers in order that they could reduce interruptions. He pointed out that any gas which Northern's customers could resell would result in a profit to them which would more than offset Northern's loss. Northern's witness gave no clear indication which customers would avoid interruption.

Noting that Northern had cheaper gas available elsewhere, that it was having trouble in taking all of this cheaper gas, and that it had put in no evidence to show any benefit from paying this higher price, the Examiner concluded that the application had not been justified.

Midwestern and Northern were the only parties to file exceptions to the Examiner's decision. Both argue that the Examiner's interpretation of the requirements of an application are too strict and that where, as here, no facilities are required and there is no obligation to deliver or take gas, there is no need to include the usual market data.

Midwestern argues that the Examiner should have concluded from its showing of the minimum-take obligations from Trans-Canada and the comparable obligations of Midwestern's customers that it would have a problem in avoiding payments for gas not taken.

Both Northern and Midwestern argue that the minimal adverse effect on Northern is more than outweighed by the possible benefits to Midwestern and to Northern's customers and that the Examiner's speculation as to Northern's supply problems with cheaper gas is irrelevant.

On the basis of the evidence in the record, the parties' briefs, the Examiner's decision and the exceptions thereto we are of the opinion that the Examiner's decision is correct and should be affirmed.

The application, exhibits and the testimony in this case leave many unanswered questions as to the effect of this proposal on Northern and its customers. The testimony that Northern's customers could cut down on interruptions and make additional sales may be correct, but the proof should show which customers are likely to receive these benefits and the degree thereof. It was impossible for the coal interveners to make any meaningful showing in the absence of such evidence. Northern's claim that the authorization would allow filling its storage fields faster may also be correct, but it put in no supporting evidence.

Our decision in *Tennessee Gas Transmission Company*, Docket No. G–20388, 26 FPC 860, quoted in the exceptions, is not applicable here; a reading of that decision makes clear that the evidence of the benefits to all parties could be found to outweigh any alleged difficulties in the system operations.

The price Northern would pay for the gas of 25.2¢ per Mcf, is substantially more than it receives in Minnesota from its customers. In the recent "Black Dog" case, Docket No. G–2409, Opinion No. 388, issued May 20, 1963, 29 FPC 1025, Northern was to get 23.9¢ for the gas, and with the certification of the Bushton Plant in Docket No. CP61–132, Opinion No. 374, issued December 28, 1962, 28 FPC 1155, the reduction in the quality of Northern's gas will reduce the price for Northern's jurisdictional sales by .76¢, or to a price of 23.14¢. This would seem to increase Northern's losses on the proposed purchases involved in this application.

We are aware of the probable benefits to Midwestern, and of the likelihood of benefits to Northern's customers by the sale of additional interruptible gas. We agree that Northern is not in business to lose money and, having no obligation to take gas, we assume would do so only for its advantage. However, such probabilities and assumptions are not a substitute for a factual record which can be put to the test of cross-examination. This affirmance is limited,

as was the Examiner's decision itself, to the finding that the applicant has not sustained his burden rather than any finding that the proposal is contrary to the public interest. It may well be that with an adequate record it will be demonstrated that it is in the public interest.

The Commission orders:

(A) The findings and orders in the Presiding Examiner's decision issued May 9, 1963, in the above entitled proceedings are hereby adopted as the findings and orders of the Commission.

(B) The exceptions to the Examiner's decision are hereby denied.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY UNDER THE NATURAL GAS ACT

(Issued May 9, 1963)

FRIBOURG, *Presiding Examiner:* Midwestern Gas Transmission Company (Midwestern) here applies for an amendment of a certificate of public convenience and necessity issued in this docket on August 4, 1961. The original application was filed on May 29, 1961, by Midwestern and by Northern Natural Gas Company (Northern) for authority to construct and operate facilities for the emergency exchange of natural gas at two existing interconnections, one in Morrison County, Minnesota and one in Chisago County, Minnesota. The application was unopposed and was handled under the Commission's shortened procedure.[1] The August 4, 1961 certificate ran to both Midwestern and Northern. While Northern is not itself applying for the amendment, it appears as an intervenor in support of it.

On October 29, 1962, Midwestern filed, under Section 7 of the Natural Gas Act, the petition which is the subject of the present proceeding. It requests amendment of the certificate previously issued so as to permit it to make sales of interruptible gas to Northern at the Chisago County interconnection under Midwestern's Rate Schedule I–2, which was already on file with the Commission. The rate for all gas delivered under this rate schedule is 25.2 cents per Mcf. The schedule provides for interruptible sales of natural gas from time to time to any buyer whose pipeline system "connects or can be made to connect with" Midwestern's northern system, i.e. its transmission line system between the Canadian border and the vicinity of Marshfield, Wisconsin. The gas to be offered for sale under the proposed arrangement is gas which is rejected by those customers of Midwestern who have executed service agreements with Midwestern for firm service.

Midwestern's October 29 petition set forth the letter agreement of October 17, 1962, between Midwestern and Northern which states, *inter alia:*

> * * * It is understood that Midwestern is under no obligation to sell and deliver, and Northern is under no obligation to purchase and receive such natural gas. * * *

The petition alleged that

> * * * deliveries of this gas to Northern will enable Midwestern to operate at a higher annual load factor than would otherwise be possible.

The form of applications under Section 7 of the Natural Gas Act is governed by Part 157 of the Commission's Regulations under the Natural Gas Act. That part requires (§ 157.14) that the application shall be accompanied by exhibits setting forth certain information, including detailed market data, and data as to the gas supply available to applicant's customers. No such exhibits ac-

[1] FPC Rules of Practice and Procedure, § 1.32, 18 CFR, Sec. 1.32.

companied this petition. Part 157 also provides (§ 157.7) for the filing of an abbreviated application when the proposed sales or service do not require all the data and information specified by other sections. An abbreviated application may be filed

> * * * provided it contains all information and supporting data necessary to explain fully the proposed project, its economic justification, its effect upon applicant's present and future operations and upon the public proposed to be served, and is otherwise in conformity with the applicable requirements of §§ 157.5 through 157.16 regarding form, manner of presentation, and filing. Such an application shall (a) state that it is an abbreviated application; (b) specify which of the data and information required by §§ 157.5 through 157.16 are omitted; and (c) relate the facts relied upon to justify separately each such omission.

The present petition conformed neither with the requirements for a full-length nor an abbreviated application. It was plainly deficient on its face. It should have been rejected.

The coal intervenors[2] moved early in the hearing to dismiss the petition. However, the examiner is without authority to grant such a motion prior to his initial decision,[3] and the motion was denied.[4] The denial was without prejudice to renewal of the motion at the conclusion of the evidence, but it was not renewed.

On November 21, 1962, the Commission by its Secretary wrote to Midwestern for additional information. It inquired (1) how much gas would be available to Northern in 1963 by months, (2) how much gas Northern would buy in 1963 by months, and (3) as to the Midwestern customers; first, the names of the customers who take less than their contract demands; second, their present contract demands; and third, the maximum daily, monthly, and annual volumes expected to be made available for interruptible sales to Northern due to this situation. On December 10, 1962, Midwestern responded by filing a supplement to its petition to which there was annexed a table showing the estimated amounts of gas which Midwestern would have available for interruptible sales in each month of 1963. The table presented estimates of requirements month by month for 1963 for each of Midwestern's customers on its Northern system and each customer's contract demand.

The supplement to the application stated that Midwestern was unable to estimate the quantity of gas which Northern might be expected to purchase under this proposal during 1963, and that Northern, in response to Midwestern's inquiry, had declared itself unable to make such an estimate. Northern, it was stated, "can only inform Midwestern that Northern might be in a position to purchase some of the gas which Midwestern expects to have available."

The Effect of the Proposed Sale on Midwestern.—The proposed sale would be made at 25.2 cents per Mcf. Midwestern's sole source of gas for its north-

---

[2] Fuels Research Council, Inc., National Coal Association, United Mine Workers of America, Mid-West Coal Producers Institute, Inc., and Upper Lake Docks Coal Bureau, Inc.

[3] Rule 1.12(d), Rules of Practice and Procedure.

[4] It may be desirable for the Staff to consider whether, when a petition so obviously defective has nevertheless not been rejected, sufficient information or explanation should be requested so that the published requirements will be complied with. The firm and unequivocal language of § 157.5 of the Regulations Under the Natural Gas Act would seem to indicate such a course, and it is not always practicable for the examiner to require that the defects be remedied before the hearing starts. Stricter enforcement of that section would tend to prevent situations in which everyone but the applicant is in the dark at the beginning of a hearing, and would thereby tend to promote better preparation and presentation of cases of the other participants. (This does not imply any reflection upon able counsel in the present case. They would doubtless agree that a fuller petition would have eased their task.)

ern system (which is the portion of Midwestern here involved) is from Trans-Canada Pipe Lines, Ltd. (Trans-Canada), from which it buys at a monthly demand charge of $2.30 per Mcf (at 15.025 psia) times the contract quantity (200,000 Mcf per day at 15.025 psia), and a commodity charge of 20.75 cents per Mcf purchased.[6]

Under its contract with Trans-Canada, Midwestern is now obligated to pay a minimum *monthly* bill consisting of the demand charge plus a commodity charge equal to 75 percent of the contract quantity. On December 15, 1963 and thereafter it will also be obligated to pay a minimum *annual bill* consisting of the demand charges plus an average daily commodity charge equal to 95 percent of the contract quantity. (The contract quantity, converted to 14.73 psia, at which applicant sells to its customers, is 204,000 Mcf, and 95 percent of this is 193,800 Mcf, per day.)

Midwestern points out in its brief that it has, on its northern system, contractual commitments from its customers of 118,500 Mcf per day, plus 30,000 Mcf which its northern system can dispose of under an exchange arrangement with Michigan Wisconsin, or a total of 148,500 Mcf per day, compared to its annual take-or-pay obligation of an average of 193,800 Mcf per day to Trans-Canada, beginning December 15 next. It urges approval of the sale as a means of permitting it to operate at a higher annual load factor, thus reducing the possibility that it may have to pay Trans-Canada for gas Midwestern is unable to receive.

In an earlier Midwestern case, *Midwestern Gas Transmission Co.*, Docket No. G–18313, *et al.*, 22 FPC 775, the company represented that it would have to provide in its tariff for a monthly minimum bill to Michigan Wisconsin equal to the demand charge plus a commodity charge equal to a 75 percent monthly load factor for the first three years of service and a commodity charge based on an 87½ percent monthly load factor thereafter, in order to be assured of selling all the gas it is required to buy. Because the 87½ percent provision was in violation of § 157.38(d)(3) of the Regulations Under the Natural Gas Act, it was excluded from Midwestern's tariff at that time. 22 FPC at p. 787. The exclusion, however, was without prejudice to a timely filing in the future to increase the minimum bill provision to 87½ percent. The record in the present case shows that Michigan Wisconsin has agreed not to oppose such a filing. Such a filing, if accepted, would substantially assure Midwestern of being able to dispose of the gas it is committed to buy, taking into consideration its other business. The absence of market data beyond 1963 precludes the making of any finding as to whether it might be in a take-or-pay-for situation if the filing is not approved.

Midwestern's position is that the sale should be authorized largely because its presently assured sales are less than its future obligation to Trans-Canada. The presentation gives no weight to its other business, i.e., sales which customers are not contractually obligated to take but nevertheless do take in sizeable amounts. The company makes no showing as to what that business is likely to be during even the first year after the 95 percent annual bill from Trans-Canada becomes effective.

The proposed sale, if authorized, would make no difference in the picture as Midwestern presents it, since it presents only a contrast between contractually assured sales and prospective contractual obligations. That is a contrast which the addition of an interruptible sale would in no wise disturb.

There is in the record no clear documentary showing that Midwestern is in any serious danger of finding itself in a take-or-pay-for situation vis-a-vis Trans-

[6] The payments are in Canadian funds, which are now at a substantial discount.

Canada, nor did its witness so indicate. If its Michigan Wisconsin tariff is altered to require 87½ percent takes, Midwestern would appear to be adequately protected by that provision, together with the transfer arrangement and the present demands for Midwestern's gas. If the present 75 percent tariff provision remains the development of Midwestern's other business will assume considerable importance in calculating the comparison between its sales and its obligations. In that event, however, its ability to meet the purchase obligation beginning December 15, 1963, cannot reasonably be judged on the basis of the sales estimate for the period ending December 31, 1963, which it relies on. There is no basis here for finding that Midwestern's claimed danger is real. It limited its own market showing, contrary to Commission rule and without explanation. It cannot complain of any refusal to indulge in the speculation that is necessary to bridge the gap between the showing it makes and the conclusion it requests. This record does not support the conclusion that Midwestern is likely to be unable to dispose of the gas it is required to take.

Nevertheless, the record shows that Midwestern may be able to sell as much as 11,300,000 Mcf of gas to Northern in 1963 which might otherwise remain unsold, that these proposed sales would require no additional investment and that Midwestern's resulting revenues would substantially exceed the cost of the related gas purchases. From the viewpoint of Midwestern and its customers, the proposal is a desirable one. The extent of the benefits is, however, entirely speculative for the reason that the amount of gas likely to be sold is an unknown quantity.[6]

The Effect on Northern.—Whether the proposed sale is or will be required by the present or future public convenience and necessity is not decided by finding that it would represent a desirable transaction for the seller and its customers. Where, as here, the buyer is an interstate pipeline under the jurisdiction of the Federal Power Commission, it is plainly the Commission's duty to consider the effect on the buyer as well as on the seller. Were the seller an independent producer of natural gas, the effect on the buyer would be a prime consideration in granting or denying the certificate. The mere fact that the seller is a pipeline is no reason to ignore the effect upon a jurisdictional pipeline buyer.

There is nothing new in this: the Commission has properly, in the past, considered the effect of a pipeline's proposed sale upon its proposed pipeline customer. For instance, in *Natural Gas Pipeline Company of America*, Docket No. CP62-243 *et al.*, its order of October 15, 1962, 28 FPC 593, reflects careful consideration of the effect of a proposed sale by the applicant to Mississippi Transmission upon the jurisdictional pipeline (Mississippi River Fuel) which was Mississippi Transmission's customer, as well as on Trunkline Gas Company, another jurisdictional pipeline supplying Transmission with natural gas. The concept of "public convenience and necessity" is an elastic one dependent on the circumstances of the case. The Natural Gas Act refrains from defining it,[7] and the Supreme Court has held that the very purpose of Congress in using so broad a phrase is to permit the administrative body "to draw its conclusion from the infinite variety of circumstances which may occur in specific instances. *Interstate Commerce Commission* v. *Parker*, 326 U.S. 60, 65. Clearly, a decision as to the public interest requires consideration of public loss as well as public benefit, *Democrat Printing* v. *Federal Communications Commission*, 202 F. 2d 298, 301 (CADC, 1952), cited in *Michigan Consolidated Gas Co.* v. *F.P.C.*, 283 F. 2d 204 (CADC, 1960), cert. den. 364 U.S. 913.

[6] Midwestern's brief (p. 3) emphasizes "There is no guarantee that *any* gas will be sold as a result of this requested authorization." [Emphasis in original.]

[7] So does the legislative history, *Sen. Rep. 1172, 75th Cong., 1st Sess.*, which sets forth in full the House report on the same bill.

Commissioner Ross, in his supplemental statement in *Southern Natural Gas Co.*, Docket No. G–20509 *et al.*, Opinion 379, February 18, 1963, 29 FPC 323 at 366 used words which, though spoken in another context, could well be applied to the present situation:

> That there may be benefits is clear. It is also clear that there may be offsetting factors or abuses, and I would expect the Commission's staff and other interested parties to insure that the record is complete with respect to these matters.

Most of Northern Natural's supply of gas comes from the Southwest, originating in Texas, Oklahoma and Kansas. Its markets extend from the Kansas-Nebraska border on the south to Silver Bay, Minnesota, near Duluth, on the north. The gas to be delivered under the proposed sale would enter the system at a point north of Minneapolis and St. Paul, and would move north from there.

While there is no assurance that Midwestern would have any interruptible gas to sell or that Northern would buy any, Northern's witness testified that between May 1 and December 31, 1963 Northern might buy as much as 11.3 billion cubic feet, assuming that Midwestern had the gas available at times when Northern could use it. Approximately 7.5 billion cubic feet would go into storage, and 3.8 billion "would be immediately available for sale to the gas utility customers and others." (Tr. 40.)

Although the new gas would physically flow north from the interconnection, it is not Northern's intention to give the customers in that area the full benefit of it. It would be treated as an additional source of gas on the system, with curtailment on other parts of the system being reduced as this gas flows into the northern part. That is to say, it would add to the general supply, and to storage, by displacement.

Thus, as much as 7.5 billion cubic feet would go into storage at a purchased gas cost to Northern of 25.2 cents per Mcf. Northern's cost of gas, according to its witness, is about 16.5 cents per Mcf, and any gas purchased at 25.2 cents would add to its average cost.[8] The fact that the volume here involved is so small as to cause only a slight over-all effect on Northern's average cost of gas is irrelevant. The small over-all effect of a proposal does not require its automatic approval. See, e.g., *Harper Oil Co.*, Docket No. G–14456, 22 FPC 756, 766; *Northern Natural Gas Co.*, Docket No. G–20570, *et al.*, 25 FPC 1234, 1242.

More important is the silence of the record with respect to the availability of gas to Northern from its present sources for the buildup of gas in storage contemplated as a result of this transaction. There is no showing of any inability of Northern to obtain its storage requirements from present sources at 16.5 cents or less rather than from Midwestern at 25.2 cents. Northern's witness stated (Tr. 167) that there is a sufficient supply of gas now available to meet the requirements with respect to applications Northern now has pending in other dockets.[9]

In these circumstances it is highly pertinent to give such consideration to the net effect on Northern as the meager record permits. The previously quoted portion of § 157.7 of the Regulations unequivocally contemplates consideration of

---

[8] In *Northern Natural Gas Co.*, Docket No. CP63–150, Northern states its system average cost of gas purchased in 1962 (based on 8 months actual and 4 months estimated) to be 14.3 cents per Mcf (Amendment to Application, Exh. N, Sched. 2). Since Northern's stated cost of purchased gas appears to be based in part on the filed rates of its 100 percent-owned producing subsidiary, and not on the subsidiary's costs, see *Northern Natural Gas Co.*, Docket No. G–12153, *et al.*, Opinion No. 385, April 2, 1963, 29 FPC 689, it may well be that Northern's overall gas cost is even lower.

[9] Northern's Redfield storage reservoir, in central Iowa, supplies some 230,000 Mcfd. Pending applications seek to increase peak day deliveries from storage to approximately 280,000 Mcfd.

the "effect * * * upon the public proposed to be served * * *." The cost to Northern of the 3.8 billion cubic feet it would purchase from May 1 to December 31, 1963, for immediate resale would approximate $950,000. Its revenues from that gas would approximate $916,000.

Northern's witness on direct testified that some 96,000 Mcf of the gas would be sold at 56 cents per Mcf under its ERS schedule as a replacement for gas which its customers would otherwise have to manufacture for peak use. The rest would be sold as overrun gas. It would appear, therefore, that the ERS gas alone would show revenues of about $54,000 compared with a cost of about $24,000. Thus, leaving out the ERS gas, Northern would be paying about $924,000 for the privilege of selling approximately 3.7 billion cubic feet of overrun gas for $862,000. The gross loss on the overrun gas would be $62,000 and on the entire transaction $34,000.

When the examiner inquired why Northern wanted such a deal, the witness stated that its utility customers would be able to make a profit of one million dollars on it. There is no support for this figure in the record and Northern's briefs make no mention of it. Although the Staff's brief urges it as an important reason for approving the sale, the figure, standing by itself as it does, should be viewed with much abatement.

In any event, the question whether sales to non-jurisdictional customers would prove profitable to them is beyond the scope of a Section 7 inquiry. As the Commission properly observed in *Northern Natural Gas Co.*, Docket No. CP61–132, Opinion No. 374, December 28, 1962, 28 FPC 1155 at 1161, matters pertaining to a non-jurisdictional operation are

> * * * not subject to the same scrutiny of Section 7 as to public need, etc., as are jurisdictional facilities. Rather, in the case of such a non-jurisdictional operation which is integrated with a jurisdictional proposal, we must merely determine if it entails any violation of public policy or abuse of a jurisdictional proposal which would compel rejection of the jurisdictional proposal.

Similarly, in *Transcontinental Gas Pipe Line Corp.*, Docket No. G–10000, Opinion No. 371, issued December 11, 1962, 28 FPC 979, the Commission refused to consider the effect of a proposed certificate modification on a non-jurisdictional distributor.

However, the effect of a sale on the costs of a *jurisdictional* utility is important in a certificate proceeding, and it is for this reason that a sale to a jurisdictional pipeline is closely scrutinized as to price. In the *Catco* case, the unexplained fact that the proposed price was 70 percent higher than the weighted average cost to the pipeline buyer was an important factor leading the Supreme Court to set aside the certificate. *Atlantic Refining Co.* v. *P.S.C. of New York*, 360 U.S. 378 at p. 393. The proposed price of the present sale is over 50 percent higher than Northern's present average purchased gas cost, and there is no showing that like quantities will not be available from Northern's present sources, though perhaps over a longer period. Northern urges "the more rapid buildup of inventory in the Redfield gas storage field" as the first reason for granting the requested authority. It does not say or imply, nor did its witness, that the storage inventory will not be built up absent Midwestern's gas.

The parties, including the Staff, have ignored the cost of the increased rapidity of the buildup. To pay 25.2 cents for 7.5 billion cubic feet of storage gas instead of drawing on present sources at 16.5 cents or less would require the clearest showing of public need. Such a showing is completely absent.

Commissioner Ross, in his supplemental opinion in *Southern Natural Gas Co.*, *supra*, after the words quoted on p. 476, *supra*, went on to say that "[e]vidence of alternative sources of gas at reasonable prices clearly would weight against the

advisability of encouraging a pipeline to undertake it own production." Such evidence would likewise weigh against the advisability of encouraging a pipeline to purchase gas at 50 percent above its average cost. This record does not show whether Northern has such sources or not, or why the payment of such a premium is or will be required by the present or future public convenience and necessity.

Furthermore, the dubious claim that the proposal may help Midwestern to avoid a possible take-or-pay-for situation vis-a-vis Trans-Canada is unmatched by any showing as to how Northern would be affected were it to buy from Midwestern instead of from its present sources. This record fails to inform us whether Northern has any take-or-pay-for situations of its own, either actual or potential, or whether its present sources of lower-priced gas are adequate for its needs.

The omission is of no mere academic interest. The Commission recently authorized the exchange and delivery, on a best efforts basis, of up to 50,000 Mcf per day, for the period ending December 31, 1963, between Northern and El Paso Natural Gas Company, instead of the 30,000 Mcf authorized for the period ended December 31, 1962. *El Paso Natural Gas Co.*, Docket No. CP62–63 *et al.*, order issued March 21, 1963, 29 FPC 559. The stated reason for the granting of the exchange authority was that Northern is in an under-produced position in Lea County, New Mexico, that it has had 15 million Mcf of allowable production cancelled in that field, and that it is currently carrying more than 6.5 million Mcf of underage there.

In another case, now before the Commission for consideration, the examiner found that Northern is discriminating against the producers in the Hugoton Field by taking an unduly small portion of its needs from that area. *Hugoton Plains Gas & Oil Co.*, Docket No. RI60–102, Examiner's Decision, March 12, 1962. The examiner there denied a rate increase from 9.2047 cents per Mcf on the ground that increased deliveries by Hugoton Plains (to which Northern is entitled but which it has long refused to take) would mitigate the unfavorable financial situation in which Hugoton Plains found itself as a result of Northern's low purchases. Higher rates were therefore found unjustified. To authorize sales of Canadian gas to Northern at 25 cents while American gas is available to it at 9 cents from Hugoton Plains, or at 16.5 cents, on the average, from all of its sources, is not in the public interest.[10]

According to the findings of the Presiding Examiner in *Northern Natural Gas Co.*, Docket No. CP62–85, *et al.*, Decision, April 26, 1963, 30 FPC 859, Northern's gas supply is sufficient to justify the addition of 76 new communities to its lines without jeopardy to the rest of the system.

The findings in that case, and in *El Paso* and in *Hugoton Plains* serve to emphasize the pertinence of questions which would be present here even without them and which are not touched on by the pleadings or by the briefs in support of the application.

Early in the hearing the examiner observed to counsel for the applicant that even if all the allegations of the petition were proved it was questionable

[10] The Minnesota delivery point for Midwestern's proposed sale is more advantageous to Nothern than the more southerly delivery points for the Hugoton Plains and other gas. Northern has zone rates to allow for the fact that the southern end of the system, where the supplies are located, is further from the principal markets than is the northern end. The differentials between the highest and lowest zone commodity rates are only about 3½ cents, *Northern Natural Gas Co.*, Docket No. G–19040, *et al.*, 27 FPC 915, 917. Northern's rates were designed so that the total average rate in each zone at a 70 percent load factor, would be 2 cents higher than that for the preceding zone, so as to reflect the progressively higher transmission costs as the gas moves north. *Northern Natural Gas Co.*, Docket No. G–2217, 14 FPC 11. Northern, while it now asks that weight be given to the favorable location of the delivery point (reply brief, p. 3) made no effort to show the extent of the benefit in relation to the cost. Neither did anyone else.

whether a certificate could properly be issued. The only allegation in either the original or supplemental petition that might tend to indicate that the sale is in the public interest is that it would improve Midwestern's load factor. No amendment to the petition was offered.

The findings and conclusions proposed in Midwestern's brief are purely formal except for the third: "Northern Natural has demonstrated a need for the gas." But Northern itself, with respect to the largest part of the gas—the 7.5 billion cubic feet which would go into storage—says merely that storage would be built up more rapidly. The value of this acceleration compared to the higher cost is left to conjecture. As to the 3.8 billion cubic feet which Northern would sell immediately, there is no satisfactory explanation for Northern's eagerness to sell it at a loss.

ADDITIONAL FINDINGS AND CONCLUSIONS

Upon consideration of the record and the briefs filed in this proceeding, it is found and concluded, in addition to the findings and conclusions heretofore stated, that:

(1) Midwestern Gas Transmission Company is a natural gas company within the meaning of the Natural Gas Act, and the sale of natural gas applied for herein is subject to the jurisdiction of the Commission.

(2) The applicant is able and willing properly to do the acts and perform the service proposed and to conform to the provisions of the Act and the requirements, rules and regulations of the Commission thereunder.

(3) Northern Natural Gas Company is a natural gas company within the meaning of the Natural Gas Act.

(4) The proposed sale has not been shown to be required by the present or future public convenience and necessity.

ORDER

WHEREFORE, IT IS ORDERED that the application for a certificate of public convenience and necessity be, and it hereby is, denied.

ARTHUR H. FRIBOURG,
Presiding Examiner.

OPINION NO. 390-A

EL PASO NATURAL GAS COMPANY, DOCKET NO. G-17849; NORTHERN NATURAL GAS COMPANY, G-18110; THE ATLANTIC REFINING COMPANY (OPERATOR), ET AL., G-17571; SHELL OIL COMPANY (OPERATOR), ET AL., G-17888; PIONEER PRODUCTION CORPORATION (OPERATOR), ET AL., G-18553; RIDDELL PETROLEUM CORP., G-18609; PAN AMERICAN PETROLEUM CORPORATION, G-18660; SINCLAIR OIL & GAS COMPANY (OPERATOR), ET AL., G-18748; H. H. DAVIS, G-19672; THE SUPERIOR OIL COMPANY, CI60-328; ASHLAND OIL & REFINING COMPANY, CI60-350[1]

MEMORANDUM OPINION AND ORDER CLARIFYING AND MODIFYING OPINION AND ORDER AND DENYING APPLICATIONS FOR REHEARING AND MOTIONS FOR STAY

(Issued August 14, 1963)

Syllabus

1. Upon rehearing, Commission *clarifies* and modifies prior opinion and order; *denies* applications for rehearing and motions for stay.

Commissioner O'Connor *dissenting.*

[1] Formerly United Producing Company, Inc.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

Applications for rehearing of the Commission's Opinion No. 390 and Order issued June 19, 1963, 29 FPC 1175, were filed on July 16, 1963, by Ashland Oil & Refining Company, on July 17, 1963, by the California Public Utilities Commission and on July 19, 1963, by Pan American Petroleum Corporation, Sinclair Oil & Gas Company, Pioneer Production Corporation and El Paso Natural Gas Company. Additional applications for rehearing have been rejected by the Secretary on the ground that their tender was not in conformity with the requirements of Section 19(a) of the Natural Gas Act and Sections 1.34 (a) and (b) of our Rules of Practice and Procedure. Motions for stay of our Order also were filed by certain of the parties. On examination of the rehearing applications which were accepted we find that a number of the points raised therein are restatements of arguments previously advanced which have been covered in our Opinion and Order and which do not warrant further discussion here. We direct our attention to the remaining matters.

Sinclair points out that our treatment of the sale in Docket No. G–18748 conflicts with a rate settlement proposal conditionally approved by the Commission on July 1, 1963,[1] insofar as such settlement concerns Sinclair's Rate Schedule No. 189. By errata notices issued July 23, 1963 and August 8, 1963, all reference to the certificate application in Docket No. G–18748 has been deleted from the settlement order and the conflict has now been eliminated.

A number of the applications for rehearing continue to protest our alleged "assumption" of jurisdiction over the division of proceeds on the processing and sale of the liquid hydrocarbons as not being within the authority granted to us by the Natural Gas Act. This argument was answered by the presiding examiner in his initial decision. Nothing in our Opinion is at variance with the conclusions reached by the examiner on the general question of jurisdiction over the proceeds from processing and his determination on that issue to the extent that such decision was consistent with our determination, it was adopted by our Order and is reaffirmed herein.

Apart from the arguments concerning our jurisdiction over the processing arrangement, the applications also raise some questions on which clarification and, to a slight degree, modification of the Opinion and Order is desirable or necessary. First, the applications question the meaning of "adjusted proportionately for processing shrinkage" as used in ordering paragraph (G) in determining the amount paid the producers for gas actually processed. Since the producers whose gas is processed receive only 25 percent of the liquids, or the revenues realized from the sale thereof, it would not seem reasonable to require that they bear the full cost of the processing shrinkage, but that such shrinkage should be divided between El Paso and the producers in the same proportion as the division of the proceeds on the liquids. El Paso's obligation to bear 75 percent of the shrinkage and its assumption of the construction and general operational expenses of the gasoline plant is offset by its retention of 75 percent of the gross revenues on the sale of the liquids and by its ability to control the plant operations to meet the needs of its west coast markets. Accordingly, it is our intent that the proportional adjustment for processing shrinkage to which reference has been made be limited to 25 percent as applied to the producers to correspond with the proportion of the liquid revenues received by them.

Second, some confusion is apparent regarding our limitation of the initial price to 17 cents "including reimbursement for additional taxes" and to our

[1] *Sinclair Oil & Gas Company*, Docket No. G–9291, *et al.*, 30 FPC 5.

allowance of an upward Btu adjustment "not to exceed .95 cents per Mcf at 14.74 psia for gas not processed because of El Paso's unilateral election to take quantities in excess of the capacity of its processing plant." As to the former, the contracts provide that both buyer and seller shall pay their own present taxes without reimbursement and contain a provision that El Paso will reimburse the producers for three-fourths of the amount of additional taxes. We believe it to be implicit that the additional taxes referred to in our initial price condition included only those new or increased taxes which may have become effective since the making of the contracts and until issuance of our decision in June 1963. The limitation in no way impairs the producers' contractural authority to file for rate increases on the occurrence of subsequent tax increases[3] nor, we may observe, does the initial price established under the decision prevent the producers (except for the statutory suspension period and applicability of a refund obligation) from charging their full contract price until such time as just and reasonable prices have been set for these sales.[4]

The calculation of the Btu adjustment on a pressure base of 14.74 psia was, as pointed out in the decision, grounded upon evidence presented in the hearing on the difference in the average Btu content in the gas received by El Paso and that which it delivers to Northern after processing. The values appearing in the hearing transcript are stated to be calculated at the pressure indicated by us, *i.e.*, 14.74 psia. Although the statement was not the subject of a transcript correction we may assume, in view of the unusualness of the pressure base, that what actually was intended was a pressure of 14.73 psia. This modification of one-hundredth of a pound would affect only a minuscule change in the Btu content of the gas. Since, however, the value of 1/100 cents per Mcf for each Btu passed on in excess of 1058 which we have specified was based on similar allowances which have themselves been computed at a pressure base of 14.65 psia, and since the contract pressure base is itself 14.65 psia, we shall amend our designation to provide for a pressure of this amount. The values of 1153 and 1058 Btu at 14.73 psia, upon conversion, thereby become respectively 1147 and 1052 Btu at 14.65 psia, for an identical maximum adjustment of .95 cents per Mcf.

Objection has been indicated to our failure to provide for an equivalent allowance for the Btu's down to 1000 Btu per cubic foot. This matter was among those considered and taken into account in our approval of an initial price of 17 cents per Mcf, where we indicated that such price "was the upper limit of the in-line price for initial service in the Panhandle area of Texas and Oklahoma," and in our recognition that gas produced in this area is, as a normal matter, high in Btu content. In our opinion, no basis exists for a Btu allowance greater than that specified in the Opinion.

California PUC questions the reference to certain producers on pages 1184–1185 whose gas, though purchased by El Paso, is picked up by Transwestern. In return, El Paso receives exchange gas from Transwestern at the input side of its plant. Our requirement that El Paso share the liquid revenues realized from the processing of the exchange gas was intended to hold harmless those producers selling their gas to El Paso but which is delivered to Transwestern under an agreement devised by the pipeline companies to save the

---

[3] This should not be construed to indicate a predetermination on our part that such rate increases necessarily would be allowed.

[4] *Texaco Inc.* v. *F.P.C.*, 290 F. 2d 149 (CA5, 1961); *Atlantic Refining Co.* v. *F.P.C.*, No. 17,166, 316 F. 2d 677 (CADC, March 21, 1963).

cost of laying duplicate gathering lines to the same wells or fields. It has no reference to any producers other than those whose permanent certificates of public convenience and necessity were the subject of the proceedings then before us and, specifically, was not intended to apply to those producers selling their gas to Transwestern. The fact that the gas delivered by Transwestern under the exchange comes in part from the same geographical area and, at least to this extent, may be expected to be of relatively similar Btu content affords justification for our belief that no substantial problems will arise on the apportionment of the liquid revenues.

As recognized at footnote 6, page 1179, of the Opinion, El Paso has already filed all necessary revisions of its Rate Schedule Z–1 for elimination of the 2-cents per Mcf charge on all deliveries of gas made to Northern at the Beaver County delivery point and temporary authorization therefor was granted. Paragraph (E) of our Order does not require any additional filings and, in its present form, simply confirms and makes permanent the elimination of the charge on the Beaver County deliveries. Ordering paragraph (C) will remain without change on the basis of the interrelation with the applications pending in Docket Nos. CP61–92 and CP61–265.

Except to the extent modified herein, El Paso's understanding of the terms of the producers settlements appears to reflect accurately the conditions applied in the decision. Any additional measuring facilities which it may require will, we believe, be relatively minor and should be able to be installed without difficulty or undue expense.

Finally, the producers contend that we erred in imposing certain conditions subjecting the allowance of the take-or-pay provisions and the Btu adjustment issue to ultimate disposition in the rule-making proceedings in Docket Nos. R–199 and R–200. Except for the modification in the Btu adjustment, the condition is identical with that provided in *Panhandle Eastern*, Opinion No. 350, 27 FPC 35, and *Michigan Wisconsin*, Opinion No. 353, 27 FPC 449, and in a number of other producer certificate proceedings. We are convinced that we have authority to so condition these certificates and that the imposition thereof was proper in the circumstances of this proceeding.

It has come to our attention that certain producers were erroneously designated in regard to the operating and nonoperating interests involved. The correct designations which are applicable to the producers and to other parties represented by them is contained in the caption hereto. Furthermore, numerous supplemental agreements have been submitted to the Commission which are applicable to the permanent certificates granted in Opinion No. 390. The certificates as therein issued included all supplements to the applications on file at the time of our decision in June 1963, except that the certificate issued to Sinclair in Docket No. G–18748 shall not be held to include the acreage assigned on November 30, 1961, to Crest Exploration Company, a partnership composed of Earl T. Smith and Gilbert N. Freeman. In addition, the contract of H. H. Davis dated December 31, 1958, as amended by a letter agreement dated December 23, 1959, is accepted to have been effective June 19, 1963, and is designated respectively as H. H. Davis Rate Schedule No. 1 and Supplement No. 1.

The remaining assignments of error raised in the application for rehearing do not convince us that we were incorrect in our determinations or, except as treated herein, that any further action is necessary. We accordingly find that no useful purpose would be served by granting rehearing or the stay requested.

The Commission finds:

(1) The assignments of error and grounds for rehearing set forth in the applications for rehearing filed herein present no facts or principles of law which were not considered by the Commission when it issued its Opinion No. 390 or which, having now been considered, warrant any change in, modification of, or rehearing of such Opinion and Order, except as noted above.

(2) There is no justification for, and the public interest would not be served by, granting a stay of Opinion No. 390 and accompanying Order.

The Commission orders:

(A) The applications for rehearing filed in the above-entitled proceeding are hereby denied.

(B) Except as clarified and modified above, said Opinion and Order is confirmed.

(C) The motions for stay of the Opinion and Order are denied.

Commissioner O'Connor *dissenting* stated he would grant rehearing for the reasons set forth in his dissenting statement accompanying Opinion No. 390.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

SLADE, INC. (OPERATOR), DOCKET NOS. G–19986 AND RI61–10

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICE OF CHANGE, REQUIRING REFUNDS, AND TERMINATING PROCEEDINGS

(Issued August 14, 1963)

On July 2, 1963, as supplemented on July 22, 1963, Slade, Inc. (Operator) (Slade) and Charles F. Haas and Richard E. Haas, d/b/a Sinton Gathering System (Sinton), successor in interest to Slade, submitted an Offer of Settlement, pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure, in the above-designated proceedings, which relates to the jurisdictional sale of natural gas by Slade prior to May 1, 1963 under its FPC Gas Rate Schedule No. 5 and subsequent thereto by Sinton under its FPC Gas Rate Schedule No. 1 to Tennessee Gas Transmission Company (Tennessee) from a gas compression plant in San Patricio County, Texas (Railroad Commission District No. 4). The increased rate of 15.0952¢ per Mcf, at 14.65 psia, became effective subject to refund in Docket No. G–19986 on August 3, 1960. A proposed increased rate of 17.24347¢ per Mcf was suspended in Docket No. RI61–10, but has not been placed in effect subject to refund.

Under the terms of the offer, Sinton proposes to delete the favored-nation, price redetermination and periodic escalation provisions from the rate schedule involved, and to establish a settlement rate of 15.0¢ per Mcf, inclusive of present tax reimbursement, for the remaining term of the contract. Slade agrees to withdraw its petition for review of Opinion No. 376 issued January 3, 1963 in the Fifth Circuit's Case No. 20497 insofar as it relates to Docket Nos. G–19986 and RI61–10.[1] Further, Slade and Sinton agree to waive any and all rights

[1] Docket Nos. RI60–147 and RI60–179, which relate to wellhead sales by Slade in the Permian Basin area, were also involved in Opinion No. 376, 29 FPC 11, and in Slade's petition for court review, but are not involved in this offer of settlement.

for any further or additional judicial review with respect to these dockets. Slade and Sinton also agree to make refunds, with interest, of all amounts collected in excess of 15.0¢ per Mcf in Docket No. G–19986 applicable to volumes delivered on and after August 3, 1960.[2]

In Opinion No. 376 the Commission found that the record did not permit a proper determination of Slade's rates and concluded that under the special circumstances presented it would be more appropriate to make a determination of the justness and reasonableness of Slade's rates in connection with area rate proceedings. Subsequent to the offer of settlement filed herein, the Fifth Circuit on July 11, 1963, granted the Commission's motion to dismiss Slade's petition for review. *Slade, Inc.* v. *F.P.C.* (CA5, No. 20497). The effect thereof is that Slade will not be required to withdraw its petition for review as it has agreed to do, but, of course, it may not seek further judicial review of this matter insofar as it relates to the dockets involved here.

In support of their offer, Slade and Sinton cite among other things, the deletion of the favored-nation, price redetermination and periodic escalation provisions from the gas purchase contract with Tennessee and state that such provisions were important elements of consideration required by Slade under the contract for the long-term commitment of its gas reserves to the performance of the contract. Tennessee has concurred in the offer, and has executed the contract amendment provided for therein, which is designated as Supplement No. 7 to Sinton's FPC Gas Rate Schedule No. 1. No answers or protests to the offer have been received.

Since the proposed settlement rate of 15.0¢ per Mcf, including present tax reimbursement, at 14.65 psia, is acceptable under the provisions of the Second Amendment to the Commission's Statement of General Policy No. 61–1, issued December 20, 1960, 24 FPC 1107, as amended by Order No. 264, issued March 27, 1963, 29 FPC 589, for jurisdictional sales of natural gas in Texas Railroad Commission District No. 4, it is believed that the public interest will best be served by accepting the proposed settlement as hereinafter set forth.

However, we desire to make it clear that acceptance of the offer of settlement shall not be construed as approval of any future increased rate proposed by Sinton.[3]

The Commission finds:

The proposed settlement of the above-designated proceeding, on the basis described herein, as more fully set forth in the Offer of Settlement filed by Slade and Sinton with the Commission on July 2, 1963, as supplemented, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The Offer of Settlement filed by Slade and Sinton with the Commission on July 2, 1963, as supplemented, is hereby approved in accordance with the provisions of this order.

---

[2] By letter order issued July 11, 1963, the Commission granted Sinton temporary authorization to continue the sales previously made by Slade. The temporary certificate was conditioned at a rate of 15.0952¢ per Mcf, subject to Sinton refunding to Tennessee from the date of transfer of the property any amounts collected, plus interest, in excess of the rate determined to be proper in the suspension proceeding in Docket No. G–19986.

[3] Sinton retains the right to file for future increases in tax reimbursement to the extent permitted under its rate schedule.

(B) Sinton shall file, within 30 days from the date of issuance of this order, a notice of change providing for the 15.0¢ per Mcf rate, including present tax reimbursement, specified in its offer of settlement. The notice of change shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Within 30 days from the date of issuance of this order, Slade and Sinton shall refund to Tennessee all amounts collected under their respective rate schedules in Docket No. G–19986 in excess of the settlement rate of 15.0¢ per Mcf, together with simple interest at the rate of 7% per annum, from the date of receipt of such excess amounts by Slade or Sinton to the date of refund. Slade and Sinton shall bear all costs incidental to the making of such refunds.

(D) Within 45 days from the date of issuance of this order, Slade and Sinton shall report to the Commission in writing the details of their calculations resulting in refunds ordered pursuant to paragraph (C) above, together with a copy of a release from Tennessee with respect to such refunds.

(E) Upon notification by the Secretary of the Commission that Slade and Sinton have complied with the terms and conditions of this order, the rate and charge of 15.0¢ per Mcf at 14.65 psia, including present tax reimbursement, specified in the Offer of Settlement, and the executed contract amendment, designated as Supplement No. 7 to Sinton's FPC Gas Rate Schedule No. 1 shall be effective as of the date of issuance of this order, Docket Nos. G–19986 and RI61–10 shall be deemed terminated, and the refund obligation of Slade and Sinton with respect to Docket No. G–19986 shall be deemed discharged.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

CARNEGIE NATURAL GAS COMPANY, DOCKET NO. CP63–282

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued August 15, 1963)

On April 11, 1963, Carnegie Natural Gas Company (Applicant) filed in Docket No. CP63–282 an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities to replace and relocate certain existing facilities, and for permission and approval to abandon approximately 3 miles of 16-inch and 20-inch pipeline, all located in the vicinity of Pittsburgh, Pennsylvania, all as more fully set forth in the application.

Applicant states that portions of its present transmission system now pass through various densely populated areas and because of the type of contruction and age of the line it is undesirable to operate such portions at other than restricted pressures. Hence, Applicant proposes to relocate and replace said portions by constructing and operating approximately ten miles of 16-inch and 20-inch pipeline extending in an easterly direction from Applicant's city gate, Allegheny County, Pennsylvania, thence in a north-northeasterly direction to a point in the City of Duquesne, Pennsylvania, and thence in a north-northwesterly direction to a terminus in the Borough of Munhall, Pennsylvania. Applicant states further that the proposed facilities will permit applicant to abandon ap-

737–370—66——34

proximately 3 miles of 16-inch and 20-inch line and to reduce pressure in other parts of its present transmission system.

The application shows that the cost of the proposed facilities is estimated to be $1,600,000, which cost will be financed by cash funds and other cash-type assets now available.

By letter, dated June 7, 1963, Applicant was granted a temporary certificate to construct and operate the proposed facilities.

Pursuant to due notice, a public hearing was held in Washington, D.C., on August 1, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Carnegie Natural Gas Company, a Pennsylvania corporation having its principal place of business in Munhall, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of August 3, 1943, in Docket No. G–263 (3 FPC 1052).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) The facilities to be abandoned, as hereinbefore described, are subject to the jurisdiction of the Commission, and abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(5) Such abandonment by Applicant, as hereinbefore described, is permitted by the public convenience and necessity and should be approved as hereinafter ordered.

(6) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(7) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Carnegie Natural Gas Company, to construct and operate the proposed facilities, as hereinbefore described, all as more fully described in the application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within four months from the date on which this order issues.

(D) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, all as more fully described in the application in this proceeding, be and the same is hereby granted.

(E) Applicant shall advise the Commission of the date of abandonment within 30 days of the date thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY, DOCKET NO. CP63-294

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued August 15, 1963)

On May 3, 1963, Central Illinois Public Service Company (Applicant) filed in Docket No. CP63-294 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Panhandle Eastern Pipe Line Company (Panhandle) to establish physical connection of its transmission facilities with the proposed facilities of and to sell natural gas to Applicant for resale and distribution in the Village of Murrayville, Morgan County, Illinois, and environs, all as more fully set forth in the application.

Applicant proposes to construct and operate the necessary transmission and distribution facilities in order to render service to Murrayville. Said facilities are estimated to cost $55,475. Panhandle will construct and operate a metering and regulating station at an estimated cost of $17,000.

The application shows Applicant's estimated third year peak day and annual natural gas requirements to be 310 Mcf and 32,760 Mcf, respectively.

It appears that Applicant has received the appropriate authorization from Murrayville and the Illinois Commerce Commission.

On June 5, 1963, Panhandle filed an answer to the subject application stating that it has no objection to the granting of the requested order.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on July 3, 1963 (28 F.R. 6840). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

(1) Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 17, 1945, in Docket No. G-254 (4 FPC 1081).

(2) Applicant, Central Illinois Public Service Company, is a public utility duly organized and existing under the laws of the State of Illinois and is authorized to engage in the business of distributing and selling natural gas within said State.

(3) It is necessary and desirable in the public interest that Panhandle be directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to sell and deliver up to 310 Mcf of natural gas per day to Applicant, as set forth in the application and as hereinafter ordered and conditioned.

(4) Applicant should be prepared to receive natural gas from Panhandle within one year from the date of issuance of this order.

(5) The requirement that Panhandle serve Applicant, as proposed, will not place any undue burden upon Panhandle nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Panhandle Eastern Pipe Line Company be and it is hereby directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to sell and deliver up to 310 Mcf of natural gas per day to Applicant, all as hereinbefore described and as more fully set forth in the application.

(B) Applicant shall be prepared to receive natural gas from Panhandle within one year from the date of issuance of this order.

(C) Panhandle shall report to the Commission in writing the date of commencement of service to Applicant within ten days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

FLORIDA GAS TRANSMISSION COMPANY, DOCKET NO. CP63-277

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 15, 1963)

On July 3, 1963, 30 FPC 27, the Commission issued an order in Docket No. CP63-277 in which it inadvertently described the proposed facilities to include "two miles of 4½-inch O.D. transmission pipeline", whereas, the application stated that Applicant proposed "a line tap and metering facilities."

The first and third paragraphs on page 27 of the order refers to Applicant's affiliate, the Florida Gas Transmission Company, whereas, the reference should have been to Applicant's parent, the Florida Gas Company.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, and the public convenience and necessity require that the Commission's order, issued July 3, 1963, in Docket No. CP63-277 be amended as hereinafter ordered.

The Commission orders:

The Commission's order of July 3, 1963, in Docket No. CP63-277 is amended in the following manner:

(A) The first paragraph, line 3, to read "a line tap and metering facilities at . . ." instead of "two miles of 4½-inch O.D. transmission pipeline from . . ."

(B) Reference in the first and third paragraphs to Applicant's affiliate, the Florida Gas Transmission Company, is hereby changed to refer to Applicant's "parent, Florida Gas Company."

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

HARKINS & COMPANY (OPERATOR), ET AL., DOCKET NO. RI61-69

ORDER ACCEPTING OFFER OF SETTLEMENT AND TERMINATING PROCEEDING

(Issued August 15, 1963)

On July 12, 1963, Harkins & Company (Operator), *et al.* (Harkins) filed an Offer of Settlement in the above-designated rate suspension proceeding, pursuant to Section 1.18 of the Commission's Rules of Practice and Procedure. This proceeding relates to the jurisdictional sale of natural gas by Harkins under its FPC Gas Rate Schedule No. 3 to United Gas Pipe Line Company (United) from Goliad County, Texas (Railroad Commission District No. 2).

The following table sets forth the data pertinent to the proceeding involved herein.

Docket No.	Rate schedule No.	Supplement No.	Effective rate	Date effective subject to refund
RI61-69	3	2	[1] 14.5	2-1-61

[1] At 14.65 psia.

In its Offer of Settlement, Harkins proposes to delete from the contract the price redetermination clause and to limit future increases to 1.0 cent per Mcf on April 1, 1968, and an additional 1.0 cent per Mcf five years thereafter.[1]

United has joined in the Offer of Settlement and approves the proposed contractual amendments. No objection to the settlement has been received from any interested party.

Since the proposed settlement rate of 14.5 cents per Mcf, inclusive of tax reimbursement, is acceptable under the provisions of the Second Amendment to the Commission's Statement of General Policy No. 61-1 (18 CFR, Chapter I, Part 2, Section 2.56) issued December 20, 1960, for the jurisdictional sale of natural gas in Texas Railroad Commission District No. 2, it appears that the public interest will best be served by accepting Harkins' proposed settlement.

Because the settlement rate is the same as the increased rate in the above-designated proceeding there are no refunds involved herein.

We desire to make it clear that acceptance of this Offer of Settlement shall not be construed as approval of any future increased rates proposed by Harkins under the periodic escalation provisions or otherwise.

---

[1] The contract does not contain a favored nation clause.

The Commission finds:

The proposed settlement on the basis described herein, as more fully set forth in the Offer of Settlement filed by Harkins on July 12, 1963, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved by the Commission and made effective as hereinafter ordered.

The Commission orders:

(A) The proposed Offer of Settlement filed by Harkins with the Commission on July 12, 1966, is hereby approved in accordance with the provisions of this order.

(B) Harkins shall file, within 30 days from the date of issuance of this order, a contractual amendment to its FPC Gas Rate Schedule No. 3, which Harkins shall execute with United in conformity with Harkins' Offer of Settlement in all respects. The contractual amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Upon notification by the Secretary of the Commission that Harkins has complied with the terms and conditions of this order, the rate and charge of 14.5 cents per Mcf, inclusive of tax reimbursement, specified in the Offer of Settlement, shall continue in effect without obligation to refund as of the date of issuance of this order, the above-designated proceeding shall be terminated, and Harkins' refund obligation with respect to the above-designated proceeding shall be deemed to be discharged.

(D) The acceptance of this Offer of Settlement is without prejudice to any findings or determination that may be made in any proceeding now pending or hereafter instituted by or against Harkins.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Charles R. Ross.

THE MONTANA POWER COMPANY, PROJECT NOS. 517 AND 1467

ORDER ACCEPTING SURRENDER OF LICENSES

(Issued August 15, 1963)

Applications were filed on June 10, 1963, by The Montana Power Company (Licensee) of Butte, Montana, for surrender of its licenses for transmission line Project Nos. 517 and 1467 affecting lands of the United States within the Deerlodge National Forest, Montana.

The application respecting transmission line Project No. 1467 [issued October 1938] was filed pursuant to Commission order issued November 1, 1961, 26 FPC 671, approving the transfer, among others, of the license for Project No. 1467, from Montana-New Jersey to the Licensee. The order recited that according to a staff study of the function of the lines, transmission line Project No. 1467, among others, is not a primary line or part of a "project" as defined in Section 3 (11) of the Federal Power Act.

Originally, the license for transmission line Project No. 517 was issued to the East Butte Copper Mining Company (East Butte) [in January 1925]. The line was 60 kv, extending a distance of about 4.84 miles from the end of the Licensee's

Boulder-Rodersburg (B–R) line to East Butte's mines and mills in the Elkhorn District. The Licensee acquired Project No. 517 and incorporated those facilities in its existing system. The B–R line is connected to the Licensee's non-licensed 60 kw East Helena-Butte line. The nearest source of power on the system is the Licensee's 17.0 mw Hauser Lake Project No. 2188 and the Bureau of Reclamation's 50.0 mw Canyon Ferry development. The Hauser Lake development is connected directly to the East Helena substation which apparently transmits all power received by Project No. 517. Available records show, however, that more power is transmitted over Project No. 517 from East Helena substation than is received from Hauser Lake, and that East Helena substation is also connected to several 110 kv transmission lines of the Licensee which transmit power from Canyon Ferry as well as many other hydroelectric sources.

Special use permits for Project Nos. 517 and 1467 were issued by the Forest Service effective as of January 30 and 31, 1963, respectively.

Annual charges under the licenses for Project Nos. 517 and 1467 have been paid for the calendar year 1962, and both license instruments have been returned by the Licensee.

The Commission finds:

(1) Transmission line Project Nos. 517 and 1467 are not primary lines or parts of a "project" as defined in Section 3(11) of the Federal Power Act.

(2) Acceptance of surrender of the licenses for Project Nos. 517 and 1467 is appropriate, as hereinafter provided.

The Commission orders:

Surrender of the licenses for Project Nos. 517 and 1467 is hereby accepted, effective as of December 31, 1962.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

NEW YORK STATE NATURAL GAS CORPORATION, DOCKET NO. CP63–285

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 15, 1963)

On April 15, 1963, as supplemented on June 3, 1963, New York State Natural Gas Corporation (Applicant) filed in Docket No. CP63–285 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity to construct and operate approximately 10.5 miles of 30-inch loop line extending from the present terminus of its 30-inch loop line at the Dryden connection, in a northeasterly direction and parallel to Applicant's line No. 30, to the South Cortland connection, all in Cortland County, New York. Applicant states that the proposed construction is necessary to supply the increased requirements of its existing customers. Such requirements represent normal growth in residential and commercial space heating in the present market served with natural gas by Applicant.

The facilities to be constructed are estimated to cost approximately $1,373,000, to be financed from funds on hand and funds to be obtained from Applicant's parent corporation, Consolidated Natural Gas Company.

Pursuant to due notice, a public hearing was held in Washington, D.C., on August 5, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, New York State Natural Gas Corporation, a New York corporation with its principal place of business in Pittsburgh, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, New York State Natural Gas Corporation, to construct and operate the natural gas facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission Regulations, within 6 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Charles R. Ross.

PACIFIC GAS & ELECTRIC COMPANY, PROJECT NO. 2106

ORDER APPROVING REVISED PROJECT EXHIBITS

(Issued August 15, 1963)

On April 29, and May 9, 1963, Pacific Gas & Electric Company, licensee for Project No. 2106 [issued 26 FPC 399] filed a request for Commission approval of revised Exhibits L and M showing proposed changes and modifications to the proposed Pit Nos. 6 and 7 developments. As shown on the revised exhibits, the principal proposed changes are:

Pit No. 6 Development

1. Change the spillway gates from 2–60 feet wide by 40 feet high to 2–49 feet wide by 42 feet high (with spillway sill at same elevation as before);

2. The sluice pipes through the dam are increased in size from 7 to 8 feet in diameter, but are reduced in number from three to two;

3. The penstocks are redesigned so as to extend in two pipes from the intake structure at the upstream face of the dam and two gated outlets through the dam, rather than from the construction bypass tunnel;

4. The power plant structure has been changed from a conventional type to an outdoor type; and

5. The powerhouse installation has been increased in size from 73,800 kw (2 units of 36,900 kw each) to 79,200 kw (2 units of 39,600 kw each).

Pit No. 7 Development

1. Change the spillway gates from 2–60 feet wide by 40 feet high to 2–49 feet wide by 42 feet high (with spillway sill at same levation as before);

2. The sluice pipes through the dam are increased in size from 7 to 8 feet in diameter, but are reduced in number from three to two;

3. The penstocks are redesigned so as to extend in two pipes from the intake structure at the upstream face of the dam and two gated outlets through the dam, rather than from the construction bypass tunnel. They are also reduced in size from 18 to 15 feet in diameter;

4. The power plant structure has been changed from a conventional type to an outdoor type; and

5. The powerhouse installation has been increased in size from 99,900 kw (2 units of 49,950 kw each) to 104,400 kw (2 units of 52,200 kw each).

The proposed changes result from further flood studies made subsequent to the filing of amended applications for licenses for the proposed Pit Nos. 6 and 7 developments. The spillway for the Pit No. 6 development, as now proposed, is estimated to be capable of passing a maximum flow of about 100,000 c.f.s. with about four feet of remaining freeboard, is comparable to that provided at the constructed upstream Pit No. 5 development which has about the same drainage area (5,000 square miles), and is considered adequate. The spillway for the Pit No. 7 development, as now proposed is estimated to be capable of passing a maximum flow of about 100,000 c.f.s. with about four feet of remaining freeboard, is comparable to that to be provided at the upstream Pit No. 6 development which has about the same drainage area (5,000 square miles), and is considered adequate. The capacity of the sluice pipes as now proposed, for the

Pit Nos. 6 and 7 developments, has been estimated to decrease somewhat from that previously provided, but is considered adequate to permit sluicing and unwatering of the reservoirs. The changes in the penstocks and type of powerhouse to be used were occasioned by additional economic studies of plant layouts. The slight increase in rating of the generator units results from minor changes in effective head resulting from the modified penstock design, from revised efficiency data, and from rounding out when establishing name plate ratings.

The proposed changes will result in a substantial reduction in the cost of the Pit Nos. 6 and 7 developments and in a slight increase in the installed generating capacity.

Appropriate revision in the authorized installed capacity of the project for annual charge purposes and a revision of the description of the several developments comprising the project, to conform with the modifications authorized herein, will be made at a later date.

The Commission finds:

(1) The following described revised exhibits conform to the Commission's rules and regulations and should be approved as part of the license for the project:

Exhibit L–6 (FPC No. 2106–51) entitled "Dam and Penstocks";

Exhibit L–7 (FPC No. 2106–52) entitled "Power House";

Exhibit L–8 (FPC No. 2106–53) entitled "Dam, Penstocks and Afterbay Dam";

Exhibit L–9 (FPC No. 2106–54) entitled "Power House"; and

Exhibit M–1 entitled "General Descriptions and General Specifications of Mechanical, Electrical and Transmission Equipment, Pit No. 6 and Pit No. 7 Developments".

(2) The following described exhibits, now part of the license for the project and which have been superseded by the revised exhibits described in finding (1) above, should be eliminated from the license:

Exhibits L–1, L–2, L–1A and L–2A (FPC Nos. 2106, 36, 37, 45 and 46 respectively); and

Exhibits M insofar as they relate to the Pit Nos. 6 and 7 developments.

The Commission orders:

(A) The revised project exhibits described in finding (1) above are hereby approved as part of the license for Project No. 2106.

(B) The project exhibits described in finding (2) above as being superseded are hereby eliminated from the license for the project to the extent therein indicated.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

ARIZONA POWER AUTHORITY, PROJECT NO. 2248

ORDER REOPENING THE RECORD TO PERMIT THE SECRETARY OF THE INTERIOR TO FILE A PLAN FOR DEVELOPMENT OF THE COLORADO RIVER

(Issued August 16, 1963)

We have reviewed the supplemental briefs which we permitted the parties to file by our order issued June 21, 1963. In his brief the Secretary of the Interior states that soon after August 15, 1963, he will have formulated

a comprehensive plan for the development of the Colorado River for presentation to Congress in January 1964.

The Commission believes that it would be in the public interest to reopen the record to permit the Secretary to file his comprehensive plan of development and permit the other participants in the proceeding to comment thereon.

The Commission orders:

The record is hereby reopened to permit the Secretary of the Interior to file as soon as possible, but not later than January 15, 1964, 20 copies of his plan for development of the Colorado River, and to serve two copies on each participant of record in this proceeding. Each participant is granted 30 days within which to file a response thereto.

Commissioner Morgan *concurring.*

MORGAN, *Commissioner, concurring:*

For each of the reasons enumerated and explained in my dissent from the Commission's Order of November 2, 1962, 28 FPC 769, 773, wherein the Commission denied the Secretary of the Interior's motion to reopen the record in this proceeding to accept evidence from the Secretary regarding the plans of the Department of the Interior for the comprehensive development and utilization of the mainstream waters of the lower Colorado River,[1] I now concur with pleasure and gratitude in this Order reopening the record in this proceeding for that purpose.

My colleagues are to be commended for this action.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

PAN AMERICAN PETROLEUM CORPORATION (OPERATOR), ET AL., DOCKET NO. RI61–532; J. M. HUBER CORPORATION, ET AL., DOCKET NO. RI61–533; KANSAS NATURAL GAS, INC., KANSAS NATURAL GAS, INC., (OPERATOR), ET AL., N. APPLEMAN COMPANY, ET AL., GRAHAM-MICHAELIS DRILLING COMPANY (OPERATOR), ET AL., WILLIAM GRAHAM OIL COMPANY (OPERATOR), ET AL., NORTHERN PUMP COMPANY (OPERATOR), ET AL., JOHN B. HAWLEY, JR., JOHN B. HAWLEY, JR., TRUSTEE, G. S. & NORMA D. DAVIDSON, G. A. KANE, ET AL., W. L. HARTMAN (OPERATOR), ET AL., SALMON CORPORATION, W. E. BAKKE OIL COMPANY (OPERATOR), ET AL., NATIONAL ASSOCIATED PETROLEUM COMPANY ET AL., W. J. COPPINGER (OPERATOR), ET AL., THE PWC CORPORATION, ET AL., AUSTIN BRADY, PETROLEUM, INC., GRAHAM-MICHAELIS DRILLING COMPANY, WALTER F. KUHN, ET AL., DOCKET NO. RI62–100

ORDER DENYING APPLICATION FOR REHEARING AND CLARIFYING OPINION NO. 391

(Issued August 16, 1963)

On July 19, 1963, Cities Service Gas Company (Cities Service) filed an application for rehearing of the Commission's Opinion No. 391 issued June 20, 1963, 29 FPC 1216, in the above-entitled proceeding. By that opinion the Commission, in interpreting Section 154.91 of its Regulations under the Natural Gas Act, held that where Pan American Petroleum Corporation (Pan Am), which was selling

[1] 28 FPC 769–784.

natural gas to Cities Service under a contract dated June 23, 1950, had assigned various leases to certain assignees under "farmout" agreements as permitted by the contract, the farmout assignees may file for rate increases under the said Section 154.91, even though such assignees were not signatories to the contract between Pan Am and Cities Service.

We conclude that Opinion No. 391 adequately disposes of all the objections urged by Cities Service in its application for rehearing, except for one point. Concerning that point, Cities Service contends that the decision of the Supreme Court of Kansas in *Pan American Petroleum Corporation* v. *Cities Service Gas Company*, 191 Kan. 511, 382 P. 2d 645 (1963), decided immediately prior to the issuance of Opinion No. 391 and involving the contract there in issue, supports its position that only signatories to the contract can properly file rate schedules with the Commission under the section of the regulations cited above.

This contention is without merit. The decision cited by Cities Service involved an action by Pan American for a declaratory judgment determining the price for gas to be sold to Cities Service. A subsidiary issue was whether the farmout assignees were necessary parties to the litigation; and on this issue the court held that they were not, because the contract contemplated that controversies arising thereunder were to be determined and settled by the original parties thereto. The court's ruling on this "indispensable party" issue involved altogether different considerations than those involved in determining the proper application of our regulations under the Natural Gas Act. By no means does it suggest that we are precluded from interpreting those regulations in a manner we find appropriate to carrying out the provisions of the regulations and the Act. Accordingly, we affirm what we said in Opinion No. 391, that as a matter of contract law there is sufficient "privity of contract" between an assignor and assignee that we may treat an assignee as having attained signatory status within the meaning of our regulations. Apart from contract law, however, this interpretation is firmly grounded on the many administrative and regulatory considerations we discussed in the opinion.

For clarification, ordering paragraph (B) of Opinion No. 391 should be revised to read as set forth in paragraph (B) below.

The Commission finds:

The application for rehearing by Cities Service presents no factual or legal considerations which were not considered by the Commission when it issued Opinion No. 391, or which, having now been considered, warrant any change in or modification of the said opinion.

The Commission orders:

(A) The application for rehearing filed herein by Cities Service is hereby denied.

(B) Ordering paragraph (B) by Opinion No. 391 is revised to read as follows:

(B) In conformity with Opinion No. 391, all applications of public convenience and necessity, rate schedules, and all filings pertaining thereto made by the farmout assignees under the basic contract of June 23, 1950, between Pam Am and Cities Service, as described in the examiner's decision issued January 23, 1963, were and are acceptable for filing with the Commission, subject to the Commission's rules and regulations and the provisions of the Act; and any authorizations issued by the Commission in connection therewith are and shall remain, in full force and effect, subject to the Commission's rules and regulations and the provisions of the Act.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

PAN AMERICAN PETROLEUM CORPORATION

ORDER DENYING APPLICATION FOR REHEARING

(Issued August 16, 1963)

On July 18, 1963, Pan American Petroleum Corporation (Pan American) filed an application for rehearing of the Commission's letter-order dated June 19, 1963, rejecting the Notice of Producer Rate Change[1] filed by Pan American on May 31, 1963, for a proposed rate increase from 15.0¢ per Mcf to 17.9¢ per Mcf for gas presently being sold by Pan American, pursuant to conditioned temporary authorizations issued in Docket No. CI61–1772, to Lone Star Gas Company from the East Durant Field, Bryan County, Oklahoma.

The basis for the rejection was that the proposed increase was not in conformity with the express conditions in the temporary authorizations that the 15.0¢ rate shall remain in effect until changed by further Commission order in the certificate proceedings in Docket No. CI61–1772.

Pan American relies principally[2] upon the fact that a similar condition has been held to be invalid by the Fifth Circuit Court of Appeals, *Hunt* v. *F.P.C.*, 306 F. 2d 334. However, the Commission is seeking review of this decision in the Supreme Court [see *F.P.C.* v. *Hunt*, certiorari granted, 375 U.S. 810; Fifth Circuit reversed, 376 U.S. 515 (1964).] and, pending such review, does not intend to accept the decision of the circuit court as binding, even with respect to new applications. *A fortiori* we cannot give effect to it here where (unlike *Hunt* which in accepting the temporary expressly reserved the right to seek review and did so after denial of a petition for rehearing) Pan American accepted the temporary authorization as tendered and allowed the Commission's letter-order granting the temporary to become final.[3]

The Commission finds:

The assignments of error and grounds for rehearing set forth in the application of Pan American present no new facts or principles of law which were not considered by the Commission when it issued its letter-order of June 19, 1963, or which having now been considered warrant any change or modification of said order.

---

[1] Supplement No. 6 to Pan American Petroleum Corporation, FPC Gas Rate Schedule No. 310.

[2] Pan American also appears to rely on the decision of the Tenth Circuit in *Texaco Inc.* v. *F.P.C.*, Case No. 7217, *et al.*, 317 F. 2d 796 (CA10, decided May 20, 1963). This decision, from which the Commission also intends to file a petition for certiorari, is completely inapposite. The authority of the Commission to adopt, through the procedures of Section 4 of the Administrative Procedure Act, binding substantive rules, which are generally applicable to future applications for certificates of public convenience and necessity without further hearing, has nothing to do with its authority to grant temporary or permanent certificates upon conditions which, if they are accepted by the applicant or are otherwise lawful, will bind the grantee in future proceedings.

[3] Pan American points out that in its acceptance it had stated its opinion that the condition was illegal and that it was only accepting the authorization "under compulsion of business reasons". Whatever the relevance of this statement to the question of the binding character of its acceptance, it may be noted that it was only because of these "business reasons" that a temporary authorization was granted Pan American at all prior to the time consumer interests could have an opportunity to challenge the in-lineness of the 15.0¢ price set by the Commission.

The Commission orders:

The application for rehearing filed by Pan American Petroleum Corporation on July 18, 1963, is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

PENNSYLVANIA GAS COMPANY, DOCKET NO. CP63-274

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 16, 1963)

On April 5, 1963, as supplemented on April 22 ,1963, Pennsylvania Gas Company (Applicant) filed in Docket No. CP63-274 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of an additional 440-horsepower gas compressor unit and connecting facilities within an existing storage area in Summit Township, Erie County, Pennsylvania, all as more fully set forth in the application as supplemented.

Applicant is presently operating an underground storage facility and connecting pipeline system known as the "Summit Storage", where it has installed one 440-horsepower vertical gas-driven compressor presently used to inject volumes of natural gas into the reservoir. Because of the heavy consumer demand during the past winter season, the reservoir must be refilled so as to be at optimum capacity for the 1963-64 winter demands. The single compressor now installed at Summit Storage does not have sufficient capacity to refill the storage during the relatively short summer period when gas is available. Applicant seeks authority to install the additional 440-horsepower compressor unit and connecting facilities to achieve a greater utilization of the storage capacity during the injection and withdrawal seasons and to provide an emergency unit in case of a breakdown of the existing compressor.

The estimated total cost of construction is $140,000 to be financed from depreciation accruals and retained earnings.

On May 29, 1963, Applicant was granted temporary authorization for the construction and operation of the proposed facilities.

Pursuant to due notice, a public hearing as held in Washington, D.C., on July 31, 1963, respecting the matters involved in and the issues presented by the application, as supplemented. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Pennsylvania Gas Company, a Pennsylvania corporation having its principal place of business at 213 Second Avenue in the Borough of Warren, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and

the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) The maximum average storage pressure for the Summit storage reservoir should continue to be limited to a maximum of 800 psig.

(6) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(7) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Pennsylvania Gas Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) The maximum average storage pressure for the Summit storage reservoir shall continue to be limited to a maximum of 800 psig.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(D) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 4 months from the date on which this order issues.

OPINION NO. 381-A

PACIFIC POWER & LIGHT COMPANY, PROJECT NO. 2082

OPINION AND ORDER ON REHEARING AND DENIAL OF MOTION FOR STAY

Issued August 19, 1963)*

Syllabus

1. Recreational advantages which are by-products of Licensee's project of general public benefit, should not constitute an off-set to Licensee's responsibility to provide reasonable facilities to maintain fishery resource of river, in absence of prior agreement thereto or special circumstances. P. 501.

* Affirmed in part, *Pacific & Light Company* v. *F.P.C.*, 333 F. 2d 689; Cert. denied 379 U.S. 969 (1965). [See also opinion of the Court issued March 4, 1966 (CA9-No. 20435).]

2. As general rule, licensee is required to make full recompense for diminution of a natural resource resulting from power development on navigable stream. P. 501.
3. To eliminate any state participation in operating cost of Iron Gate Hatchery would be inconsistent with State's historical participation. P. 502.
4. To impose full cost of building and operating the hatchery on Licensee would assess costs that would over compensate for damage by project to fish population. P. 502.
5. Apportioning small share of operating costs to State will provide it with a financial incentive to insure economy of operation of fish facilities. P. 502.
6. Upon rehearing, Commission *denies* rehearing [except to extent prior order is amended] and *denies* motion for stay. PP. 502–504.

Commissioner O'Connor *concurring in result.*

Commissioner Ross *concurring in part; dissenting in part.*

Commissioner Morgan *dissenting in part.*

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

On April 10, 1963, Pacific Power & Light Company, licensee for Project No. 2082, applied for rehearing of the Commission's Opinion No. 381 and Order issued on March 14, 1963, 29 FPC 478, in the above-entitled proceeding. A second application for rehearing was filed April 12, 1963, by the Department of Fish and Game of the State of California. By order issued May 3, 1963, rehearing was granted for the limited purpose of affording opportunity for additional consideration. On examination of the rehearing applications we find that while the majority of points raised by Licensee and the Department are merely restatements of arguments raised in their exceptions which have been covered in our Opinion and Order and do not warrant further discussion here, certain aspects of our opinion require clarification.

Licensee urges that amended Article 49 of the license for Project No. 2082, as provided in ordering paragraph (A) of the order accompanying Opinion No. 381, is not in complete conformity with the July 20, 1962 stipulation and distorts the agreed upon provision limiting the number of king salmon eggs required to be accommodated at the Iron Gate hatchery in any one year. Item No. 1 of the stipulation provides in pertinent part:

> 1. If the Commission determines that fish hatchery facilities are required at Iron Gate, said facilities shall be sufficient to accommodate the incubation, hatching, and rearing of the following kinds and numbers of fish each year:
>
> (a) * * * *
>
> (b) * * * *
>
> (c) King salmon (*Oncorhynchus tshawytscha*) Rear up to 6,000,000 fingerlings to a total weight not to exceed 20,000 lbs., and release an additional 5,500,000 swim-up fry. Not more than 12,800,000 king salmon eggs are required to be accommodated in any one year by the Iron Gate hatchery facility; provided, however, if the total number of king salmon eggs taken at the Iron Gate egg collection facility in any one year is equal to or less than 15,800,000, the fish hatchery facilities described herein shall not be required to accommodate more than 81% of the total king salmon eggs taken during the year.

The clause omitted from Article 49 is the portion of Item No. 1(c) which provides that "if the total number of king salmon eggs taken at the Iron Gate egg collection facility in any one year is equal to or less than 15,800,000 the fish hatchery facilities described herein shall not be required to accommodate more than 81% of the total king salmon eggs taken during the year." The Department, in its application for rehearing, specifically acknowledged its responsi-

bility for the hatching and rearing of 19 percent of the king salmon eggs taken at the egg collection station up to 15,800,000 per year [1] as representing the number of eggs formerly reared by the Department in connection with the abandoned Fall Creek hatchery. It was not our intention, in determining the capacity of the hatchery to be constructed at Iron Gate and the number of king salmon eggs to be accommodated therein, to change or modify any of the provisions of the stipulation or to release the Department from a recognized responsibility. No finding was made that deletion of the proviso is required to effectuate the purposes of the Federal Power Act and no such finding could have been made on the record presented in this case. Accordingly, we shall amend our findings and Article 49 of the license to include all provisions contained in Item No. 1(c) of the stipulation.

The Department's exceptions raise objections to certain language in the Commission's opinion which we take this occasion to clarify. In our discussion of the reasons for assigning 20 percent of the operating and maintenance costs of the hatchery to the State, we commented as follows as to the impact of the construction of the Iron Gate Dam:

> * * * To this extent, the river and the enjoyment thereof by the people of the State of California will be enhanced over its original condition. Availability of the Iron Gate Reservoir to the public for lake fishing, boating, swimming, and other recreational activities likewise indicates that the advantages to be derived from Licensee's election to construct the Iron Gate Development are not all one-sided. [P. 485.]

The Department's exceptions suggest that the language carries implications which are far reaching and which go beyond our intentions. We therefore wish to restate the Commission's position on the questions raised in the above-quoted sentences to avoid any such misinterpretation.

We do not believe that recreational advantages such as lake fishing, boating and swimming, which are by-products of Licensee's hydroelectric project of general public benefit, should constitute an off-set to the Licensee's responsibility to provide reasonable facilities to maintain the fishery resource of the river, in the absence of prior agreement to that effect by all interested parties or special circumstances not present here. There is much to be said for cooperation by local, state and Federal agencies to provide non-power benefits from multi-purpose projects beyond those which could feasibly be imposed upon an applicant for a license, but this does not apply to the provision of facilities intended to correct for damage to existing resources created by the construction of a project.

As a general rule, a licensee is required to make full recompense for the diminution of a natural resource resulting from a power development on a navigable stream. The evidence presented by the parties established that the construction of Iron Gate Dam will result in a lessening of the anadromous fish resource in the upper Klamath River and that a hatchery is necessary to counter this effect. A licensee in such circumstances would normally be required to pay all costs involved in restoration of the fish resource, both as incurred in construction of the hatchery and in the yearly costs of operation and maintenance. In this case we shall require the licensee to construct the hatchery entirely at its cost, but there are special circumstances which persuade us that the State should assume 20 percent of the yearly cost of operation and maintenance of all fishery facilities at the development:

---

[1] The Department states that it will defray 100 percent of the cost of rearing any king salmon eggs in excess of 15,000,000 taken in any year.

(1) The history of this controversy cannot be ignored. The proper apportionment of the cost of operating and maintaining the hatchery should be considered in light of the prior relationship between the State and the licensee with respect to the operation of the Fall Creek Hatchery, in which the State assumed all the expenses of operation. In 1919 after construction was begun on COPCO 1 and COPCO 2, the Fall Creek Hatchery was conveyed to the State, and in 1925 the licensee added fish trapping and egg collecting facilities to the Fall Creek Station. The State operated the Hatchery at State expense until 1948 and the egg collection facility until 1961. Thus, to eliminate any State participation in the operating cost of the Iron Gate Hatchery would be inconsistent with this preexisting pattern.

(2) To impose the full cost of building and operating the hatchery on the Licensee would be to assess costs that would overcompensate for the damage by Licensee's project to the fish population. The evidence in the record suggests that the reregulation of the flow of Klamath River by the Iron Gate Dam combined with the construction and operation of the hatchery will result in a greater fish population than if Iron Gate had not been built. This would stem from the reduction or elimination of destruction of natural fluctuations and river levels which will follow from the construction of Iron Gate Dam and its operation in accordance with the year-round minimum releases required by Article 52 of the license. To impose on the Licensee the full costs of building and operating the hatchery would not merely restore the status quo but would actually require Licensee to pay for enhancing the fish production as compared with pre-Iron Gate conditions. Apportioning 20 percent of the operating costs to the State will more nearly result in restoring the status quo.

(3) Apportioning this small share of operating costs to the State will provide it with a financial incentive to insure economy of operation of the fish facilities.

The remaining assignments of error contained in the applications now before us do not convince us that we are incorrect in our determinations or, except for amending finding No. 4 and Article 49 to conform to the stipulation, that any further action is necessary on the rehearing other than to affirm our original decision and order.

Licensee had requested separately that it not be required to comply with the provision in the second sentence of Article 49 of the license for Project No. 2082 pending possible judicial review of the Commission's opinion and order. The sentence now provides: "Plans for the aforesaid facility shall be prepared by Licensee, in cooperation with the State of California Department of Fish and Game and the U.S. Fish and Wildlife Service, Department of the Interior, and shall be submitted to the Commission for approval within 60 days of the issuance of this order." In the alternative, Licensee requested that the time be extended for a short period, designating June 30, 1963. The 60-day period would have expired May 13, 1963, had the running thereof not been tolled by our decision to grant rehearing solely in order to afford additional time to consider the matters set forth in the applications. It does not appear that a brief stay will materially affect the time required for construction of the hatchery. Accordingly, we shall extend the time for Licensee's compliance with the requirements of the quoted provision to October 15, 1963, in line with the request made in the second part of the motion filed April 10, 1963. In all other respects, the motion will be denied.

The Commission further finds:

(1) The assignments of error set forth in the applications for rehearing present no new facts or principles of law which were not fully considered by the

Commission when it issued its Opinion No. 381 and Order, or which having now been considered, warrant any change in, modification, or rehearing of such Opinion and Order, except as stated above and specified below.

(2) There is no justification for, and the public interest would not be served by, granting a stay of the order accompanying Opinion No. 381, as herein amended, pending judicial review.

(3) Good cause exists for extending the time for compliance with the second sentence of Article 49, as amended, of the license for Project No. 2082 to October 15, 1963.

The Commission orders:

(A) The assignments of error set forth in the applications for rehearing in the above-entitled proceeding are hereby denied, except to the extent specified below.

(B) Finding No. 4 of Opinion No. 381 is amended to provide as follows:

(4) To compensate for the loss of the spawning areas described in Finding (3) hereof, a fish hatchery should be constructed, operated, and maintained at Iron Gate Development of a size and capacity to annually hatch and rear 200,000 yearling steelhead trout to a total weight not to exceed 20,000 pounds, 75,000 yearling silver salmon to a total weight not to exceed 5,000 pounds, 6,000,000 fingerling king salmon to a total weight not to exceed 20,000 pounds, and 5,500,000 king salmon swim-up fry; provided, not more than 12,800,000 king salmon eggs should be required to be accommodated in any one year at the Iron Gate hatchery facility; and provided further that if the total number of king salmon eggs taken at the Iron Gate egg collection facility in any one year is equal to or less than 15,800,000, the fish hatchery facilities described herein shall not be required to accommodate more than 81 percent of the total king salmon eggs taken during the year.

(C) Article 49 of the license for Project No. 2082, as amended by our opinion and order issued March 14, 1963, is further amended to provide as follows:

Article 49. The Licensee shall construct or arrange for the construction, at its expense, of a fish hatchery at Iron Gate Development, together with supplemental structures and ancillary equipment as detailed in the agreement filed with the Commission on August 17, 1962, by the State of California Department of Fish and Game and the Licensee, of a size and capacity to annually hatch and rear 200,000 yearling steelhead trout to a total weight not to exceed 20,000 pounds, 75,000 yearling silver salmon to a total weight not to exceed 5,000 pounds, 6,000,000 fingerling king salmon to a total weight not to exceed 20,000 pounds, and 5,500,000 king salmon swimup fry; provided not more than 12,800,000 king salmon eggs shall be required to be accommodated in any one year at the Iron Gate hatchery facility; and provided further that if the total number of king salmon eggs taken at the Iron Gate egg collection facility in any one year is equal to or less than 15,800,000, the fish hatchery facilities described herein shall not be required to accommodate more than 81 percent of the total king salmon eggs taken during the year. Plans for the aforesaid facility shall be prepared by Licensee, in cooperation with the State of California Department of Fish and Game and the U.S. Fish and Wildlife Service, Department of the Interior, and shall be submitted to the Commission for approval no later than October 15, 1963. The facility shall be constructed within one year from the date of approval of the plans by the Commission.

(D) The motion filed by Pacific Power & Light Company on April 10, 1963, is denied to the extent that stay is requested pending judicial review.

(E) In all other respects, the original opinion and order issued in these proceedings is affirmed.

Commissioner O'Connor *concurring* in result.

Commissioner Ross *concurring in part and dissenting in part.*

Commissioner Morgan *dissenting in part.*

Ross, *Commissioner, concurring in part and dissenting in part:*

I concur generally with the statement of Commissioner Morgan, and contend that California should defray only those costs to which it has agreed in the stipulation in this case. In view of the fundamental shift in the majority's approach to a licensee's obligation regarding comprehensive development, a few additional comments are required.

The majority is holding that construction and operation of the fish hatchery, which it alleges overcompensates for the damage inflicted by Licensee's project to the fish population, constitutes a basis for this Commission's imposition of user charges. This holding assumes that the Commission has the authority to allocate, and should allocate, a portion of the costs of these supposed benefits to the people of the State of California.

Such a position opens a Pandora's Box. It means that licensees hereafter have a legal basis for contending that the citizens of any state wherein a hydroelectric power project is constructed which produces nonpower benefits (e.g., flood control, recreation, irrigation, fish and wildlife) should bear some part of the costs of the project which are attributable to the associated nonpower benefits regardless of whether the citizens of a state desire or request such benefits. With the instant opinion as precedent, it is difficult to see how this contention could be rejected.

Adoption of this concept might well be required in the years ahead when relatively less economical hydro sites, from a power aspect, may be developed. However, in my opinion, this is an extremely important step and Congress must first act and provide a legislative basis for our imposing of part of the costs of such development upon anyone other than the licensee. Once Congress determines that comprehensive development of our water resources requires contributions from the users of nonpower benefits, than the Commission should make the required allocation.[1]

But in the absence of such legislation, we should continue to implement the policy, established by Congress, of requiring licensees to bear all the costs associated with the development of a navigable waterway. The Federal Power Act reflects the philosophy that any development must be consistent with a comprehensive plan of development, *i.e.*, that which provides the greatest benefits—power and nonpower alike. The framers of the Act wisely insisted on comprehensive development as the *quid pro quo* of granting the right to private parties to use our nation's water resources for commercial purposes. This Commission should not waive this hard fought concession to the public interest.

For these additional reasons, I respectfully dissent to the majority's decision to the extent that it allocates 20 percent of the operating costs of the Iron Gate fish facilities to the State of California.

Morgan, *Commissioner, dissenting in part:*

I dissent from my colleagues' denial of the remedial relief requested by the petition of the Department of Fish and Game of the State of California for

[1] In this connection, I believe that any user charges should be imposed upon a statewide or national basis, depending upon whether the benefits are limited to the residents of a particular state or are available to all citizens.

rehearing and, upon reconsideration, I must dissent from that portion of Opinion No. 381 which requires the Department to pay 20% of the total cost of operating and maintaining the Iron Gate fish facilities.

By its petition for rehearing the Department has made it clear that it only offered, in its stipulation with the Licensee, to bear the cost of rearing 19% of the king salmon eggs taken at the Iron Gate fish facilities; and not *an additional* 19% or 20% of the entire cost of operating and maintaining hatchery facilities for the rearing of the remaining 81% of the king salmon eggs plus the eggs of additional species. Yet this is what the majority has attempted to force the State of California to do.

I cannot say whether my colleagues' decision to order the Department to assume 19% (in round numbers, 20%) of the *full* cost of operating those facilities was based on the mistaken belief that the Department had volunteered to do so. But I must say that mine was. Nor can I say whether my failure to recognize the Department's specific limitation on that 19% was due to the truncated record in this case, or to failure by the Department to make its limitation clear, or to inadequate analysis of the Department's proposal and the record herein.[1]

I have never knowingly departed, as some of my colleagues here depart, from that principle of resource development (explicitly set forth as Section 18 of the Federal Power Act) which requires licensees to conserve or to compensate for all resource values impaired, damaged or diminished by their use of the Nation's streams for generating electric power. My apparent willingness to do so in Opinion No. 381 was based solely upon the belief that the State of California—by way of settlement and for reasons best known to itself and not shown upon the record—had agreed to pay 19% of the cost of offsetting the damage that Licensee's Iron Gate Dam caused to the fish resources of the Klamath River.

I considered and believed that the 20% figure selected by my colleagues and here reiterated by the majority was a departure of only a single percentile from an agreement entered into by the State of California with the Licensee and that the difference, while supported by no rational explanation whatsoever, was *de minimis*. Accordingly, and solely in order to reach a decision I believed to represent no significant departure from principle, I concurred in their arbitrary selection of that figure.

But, as the supplementary pleading filed by California now makes abundantly clear, my belief was mistaken. That pleading now leaves us with no alternative but to remedy our error by requiring the Licensee to compensate the public in full for the damage inflicted; and the majority's obdurate refusal to do so here requires my most respectful but total dissent. Although the amount of money involved is negligible, the majority's refusal to vindicate the principle involved is a policy aberration of alarming precedential significance.

[1] However self-evident the facts and the law on this point may have been to the Department, it is now clear that to obviate confusion in minds more hurried and less familiar with the background facts than their own, the Department should have continued the method of making the governing distinction that it used in its Reply Brief before the examiner. It there treated the matter as follows (at p. 23):

> Whenever maintenance and operation costs and hatchery costs have been mentioned in this brief, such expense excludes 19% of the king salmon eggs taken at Iron Gate. This was done for the sake of brevity, so that continual reference would not have to be made throughout this brief to the exception of 19%.

During its oral presentation before the full Commission, the Department did not similarly limit or qualify its response when asked if it maintained that Licensee should be required ". . . to pay the whole cost of this hatchery?" Although the limitation or qualification is implicit in the remainder of the Department's response, its reply nevertheless was specific: "We are only asking them to pay for 81 percent of it." (Tr., page 339.) It is now clear that this was mere ellipsis.

By themselves, the incidental flood control and recreation "benefits" that allegedly result from the existence of the Iron Gate Dam, although sharply disputed by the Department, essentially are nothing more than the inevitable results of the performance of licensee's duty to re-regulate stream flow fluctuations caused by its COPCO plant. As long as it was mistakenly assumed that the State had undertaken to defray a portion of the particular costs in question, the recital of those "benefits" in Opinion No. 381 (although objectionable to me) was in the nature of dicta and did not call for my dissent. However, those alleged, unsolicited "benefits"—"benefits" unwanted and unneeded prior to the building of Licensee's projects—are plainly no substitute for Licensee's duty to compensate for its impairment of Klamath *fish* resources; and I here dissent from any attempt to make them serve as such in law.[2]

The operative facts of this specific matter, the emergent issue, and the applicable law now are unmistakably clear. Since 1919 the existence of the barriers caused by Licensee's COPCO projects, together with Licensee's failure to shoulder its proper responsibility under Federal law, required the Department to maintain and pay the operating costs of an artificial hatchery facility to accommodate some 3 million king salmon eggs produced by Klamath River fish whose upstream passage had been blocked by those dams for more than 40 years. From 1919 until it was abandoned as uneconomical in 1948, the Department conducted this service at the Fall Creek hatchery. Since then, and by employing tank truck transport, the Department has utilized its hatchery at Mount Shasta to accommodate the eggs formerly propagated at Fall Creek, and it has voluntarily agreed to go on doing so. These eggs comprise an annual average of 19% of the king salmon eggs which will be taken below Iron Gate. However, the existence of the Iron Gate Dam (completed in 1962) now constitutes a barrier to the migration not only of the 3,000 king salmon which produce those eggs *but, in addition, some 12,800 additional king salmon as well as several other species!*

A new hatchery is needed to accommodate the eggs produced by these additional fish if the annual runs are to be preserved, and the State of California has no obligation whatever to pay any of the costs thereof. The obligation to defray *these* costs rests exclusively on the Licensee.

The record shows all this clearly, and because it does, we found and ordered that the Licensee must construct a hatchery to accommodate all fish runs impaired or blocked by Iron Gate, except those 3 million Fall Creek king salmon eggs that the Department historically has provided for and has voluntarily agreed to continue providing for. Responsibility for *operation* of this new Iron Gate fish hatchery follows a *fortiori* from the same reason and rule that compels us to require Licensee to *construct* that hatchery.

However, and intentionally or unintentionally, by distorting the Department's willingness to continue to provide for the 3 million Fall Creek king salmon eggs it has provided for historically—which comprise 19% of the total

[2] In Opinion No. 381 (at page 485) language appears which clearly shows that the Commission in that Opinion was balancing off alleged recreational "benefits" of Iron Gate to the State against the cost of remedial measures for the protection of fish resources to which the Licensee was obligated. In this present order the majority (at page 501) labors to assure us that it considers such a balancing to be improper and not to be contemplated under the Act. Yet here the majority reaches the same conclusion and the same division of costs between the parties as in Opinion No. 381! Can anyone explain these results? I think they can be explained, but it would be difficult to do so in a manner which lends stature to the majority's candor or objectivity.

The majority feels entirely free to abandon its original arguments. It does not feel at all free to abandon its original conclusion, even in the face of obvious difficulty in making that old conclusion square with the new or remaining arguments. We may be pardoned, I think, for asking what is going on here.

king salmon run impaired by Iron Gate—the majority rules that the State of California must pay 20% of the *entire cost* of operating the hatchery we have decided Licensee must build to accommodate the fish runs blocked by erection of Iron Gate. This, it is now clear, is *over and above* the outlay the State has voluntarily agreed to continue making in order to provide for the 3 million king salomn eggs discussed above.

No valid reason is given for this decision. The record before us cannot provide a reason for this decision—with the exception of the reason clearly illuminated by the briefs, arguments and petition of the State of California: that the terms, effect and purpose of the agreement entered into by the State of California and the License were misunderstood.

To misunderstand may be embarrassing, though it need not be so in this case: counsel for the State of California must bear some responsibility for the misunderstanding here. But to attempt to rationalize, defend and perpetuate a misunderstanding is inexcusable. And to do so in circumstances which produce a dangerous precedent adverse to a valuable principle is outrageous.

The majority now rests the conclusions it previously set forth in Opinion No. 381 on the following bases:

> 1. The history of this controversy cannot be ignored. The proper apportionment of the cost of operating and maintaining the hatchery should be considered in light of the prior relationship between the State and the licensee with respect to the operation of the Fall Creek Hatchery, in which the State assumed all the expenses of operation. In 1919 after construction was begun on COPCO 1 and COPCO 2, the Fall Creek Hatchery was conveyed to the State, and in 1925 the licensee added fish trapping and egg collecting facilities to the Fall Creek Station. The State operated the Hatchery at State expense until 1948 and the egg collection facility until 1961. Thus, to eliminate any State participation in the operating cost of the Iron Gate Hatchery would be inconsistent with this pre-existing pattern. [P. 502.]

Indeed we should not lose sight of the history of this controversy! But the use the majority opinion makes of that history in an attempt to justify its mistaken conclusions is little short of incredible.

"This controversy," Opinion No. 381 explains at page 479, involves the question of whether Licensee should be required "to erect and maintain a fish hatchery . . . to continue the runs of salmon and steelhead trout *which have been displaced by Licensee's construction of its Iron Gate Development on the Klamath River*" seven miles below COPCO No. 2 [emphasis added].

Iron Gate was licensed in 1957; its construction was completed in January 1962; and in Opinion No. 381 we found that it constitutes an impassable barrier to all fish that formerly spawned in the eight miles between Iron Gate and COPCO No. 2. There is no controversy here. Opinion No. 381 settled the matter.

Nor is there any controversy here over who will pay to hatch the eggs of the fish whose upstream passage was blocked by COPCO No. 2 in the past and which is now blocked eight miles downstream (along with the upstream passage of many other fish) by the new Iron Gate barrier. The State always paid to hatch the eggs of the fish formerly blocked by COPCO No. 2 and the State proposes to continue to do so. The eggs of the fish formerly blocked by COPCO No. 2 and now blocked by Iron Gate comprise 19% of the 15.8 million eggs of king salmon blocked by Iron Gate; so the State has volunteered to bear the expense of hatching 19% (or 3 million) of the 15.8 million eggs of king salmon blocked by Iron Gate. Plainly, the Federal Power Act never requested the State to defray the cost of hatching those 3 million eggs in the past: and plainly that Act does not require the State to do so now that the COPCO plants have been put

under license and made subject to the comprehensive development requirements of Section 10(a) and Section 18 of the Act. Nevertheless, the State has volunteered to pay the cost of hatching those 3 million eggs, and there is no question or controversy over that matter here.

This controversy only relates to who should bear the cost of operating and maintaining a hatchery big enough to hatch the eggs of only those fish that formerly spawned in the eight-mile stretch between Iron Gate and COPCO No. 2. There is not even any dispute as to the number and weight of fish that the hatchery must hatch: the parties have stipulated the size of a hatchery sufficient to hold the eggs of only those fish that previously spawned in "the lost spawning areas above Iron Gate" and below the COPCO No. 2 facilities (Examiner at pp. 490–491, Opinion No. 381 at pp. 482–483). We found that "since Licensee has created the situation which necessitates [a] fish hatchery" adequate to hold the eggs of (only) the stipulated number of fish that previously spawned in the gravels above Iron Gate, "it is no more than reasonable to require it to pay the cost of construction thereof." Thus there is no controversy with respect to construction of the hatchery.

Licensee argued that we should not require it to pay the cost of operating and maintaining the (stipulated) hatchery, because state law says the state will do so and because the state paid the cost of operating the old (3 million egg) COPCO hachery at another reach of the River. In Opinion No. 381 we said those historic matters are "wholly immaterial," because (a) "the Federal government, in its enactment of the Federal Power Act has occupied the entire field"; and (b) because "the Fish and Wildlife Coordination Act . . . contemplates that power companies operating under a federal license would be required to make adequate provision for fish conservation as a condition of the license." We did not feel it was necessary to explain that the comprehensive development standard of Section 10(a) of the Act means that if *Licensee's use* of the waters to develop electricity results in damage to fish or other resources, *Licensee* must pay for facilities to preserve them; and we did not feel it was necessary to point out that Section 18 of the Act says that "the Commission shall require the construction, maintenance and operation by a licensee at its own expense of . . . such fishways as may be prescribed . . ."

Now the majority contradicts itself. Contrary to its own exposition of the requirements of the Act, the majority now says that the State must help pay to preserve a resource damaged by a re-regulating hydroelectric plant licensed by us in 1957, because in the past and under a discredited, inapplicable state law, the State had to pay to preserve a different and separate fish resource impaired by an unlicensed plant, built before enactment of the Federal Power Act, in a different reach of the River.

I heartily dissent from this contradiction; and totally disassociate myself from the majority's attempt to obfuscate and conceal the operative facts of this controversy. The majority need not stoop to conquer.

The majority then proceeds to its next major point:

> 2. To impose the full cost of building and operating the hatchery on the Licensee would be to assess costs that would overcompensate for the damage of Licensee's project to the fish population. The evidence in the record suggests that the reregulation of the flow of Klamath River by the Iron Gate Dam combined with the construction and operation of the hatchery will result in a greater fish population than if Iron Gate had not been built. This would stem from the reduction or elimination of destruction of natural fluctuations and river levels which will follow from the construction of Iron

Gate Dam and its operation in accordance with the year-round minimum releases required by Article 52 of the license. To impose on the Licensee the full costs of building and operating the hatchery would not merely restore the status quo but would actually require Licensee to pay for enhancing the fish production as compared with pre-Iron Gate conditions. Apportioning 20 percent of the operating costs to the State will more nearly result in restoring the *status quo*. [P. 502.]

The stipulation entered into by the parties to this proceeding provides that: "(1) if the Commission determines that fish hatchery facilities are required at Iron Gate, said facilities shall be sufficient to accommodate . . ." the stated number of fish whose spawning grounds were blocked by Iron Gate.

The Commission, in Opinion No. 381, found that a fish hatchery was required at Iron Gate; and that a hatchery of the stipulated size will "preserve and maintain [the fish resources] *at a level approximately equal to that which existed prior to the construction of the Iron Gate Development*" [emphasis added].

The Commission failed to find that re-regulation of the River will improve the fish resource over its condition prior to Iron Gate, because the record contained no evidence whatsoever to support such a finding. It does not contain any now. Further, contrary to the majority's empty assertion here, the record does not even "suggest" that re-regulation and the hatchery combined "will result in a greater fish population than if Iron Gate had not been built."

Obviously, if the majority's present "reasoning" is to hold water, it must rest on findings of fact, and those findings in turn must be based on a preponderance of solid evidence in the record before us. Neither the findings nor the evidence upon which to base them can be pointed out.

Here again, therefore, the majority fails in its attempt to manufacture now a reason why—contrary to the record evidence, its own findings, and the requirements of the Federal Power Act—it ordered California to pay 20% of the cost of operating and maintaining the project facilities that the comprehensive development standards of the Federal Power Act require Licensee to maintain.

Finally the majority rests its order on the following:

> 3. Apportioning this small share of operating costs to the State will provide it with a financial incentive to insure economy of operation of the fish facilities. [P. 502.]

Here the majority discloses what it now insists was a central purpose underlying its imposition of 19% (rounded to 20%) of the O & M costs of the fish hatchery on the State of California. That purpose was to protect the Licensee from assumed extravagance on the part of the State. The question of the ethics of the State of California was not made an issue in the proceeding but apart from this the requirement that the State must pay 20% would *very likely* achieve the desired result. We may likewise assume that if the Commission were to require the State to pay 100% of the O & M costs it would *almost certainly* achieve the desired result. Better still, if the Commission were to require the State to pay the Licensee 200% of the O & M costs it would *certainly* achieve the desired result.

But this exhilarating vista of expanding Commission jurisdiction over the sovereign states (in order to protect Licensees from conjectural expense) evaporates when a simple question is asked: What is the statutory authority for the Commission to impose such a charge on the State? The answer is: No such authority exists in law.

I agree that the Licensee is entitled to protection against State extravagance, whether real or fancied. Such protection is afforded by the arrangement, which

has been operating successfully for years, between the Department of the Interior and California as well as a number of other States. Under this arrangement the Department builds hatcheries to correct damage to State fishery resources caused by its dams, turns those hatcheries over to the State and reimburses the State for operation and maintenance. Prior to the beginning of each fiscal year a budget conference between the State and the Department is held for the purpose of reaching agreement on operation of each hatchery during the coming year, and the hatchery is operated in accordance with that annual budgetary agreement.

Such an arrangement could properly be required as a license condition here, and the Commission could reserve the right to settle any dispute which prevents agreement in the unlikely event such a dispute were to occur. This is the pattern suggested by California during oral argument. It is the pattern we should have adopted here. It is equitable; it provides all the protection needed by the Licensee; and it does *not* require the Commission to exceed its statutory powers.

* * * * * * *

In sum, the majority defends its ruling that California should bear 19% (rounded to 20%) of the hatchery O & M costs by citing: (1) a history of the controversy which the majority clearly misunderstood and misapplied, (2) an hallucinatory claim that such costs would exactly balance an unproved "overcompensation" of the State by the Licensee, and (3) a claim that imposition of such costs is necessary to preserve California's virtue.

Let us examine item (2) at greater length, though the temptation is great to discourse further on all three.

If my reading of the majority's reason No. 2 is correct, it is as follows: The parties in this controversy have agreed upon the size of the hatchery to be built, but their agreement was in error. Further, the majority knows the nature and direction of the error: the hatchery agreed upon is not too small; it is too large. It is too large because that hatchery, in combination with future improved conditions in the spawning beds below Iron Gate will, in the course of time, result in the propagation of more fish in the future than before Iron Gate was built. Further, the majority knows exactly how many more fish will be propagated in the future than before Iron Gate was built, as well as the *value* of those additional fish. Therefore the majority feels able to correct, with precision, the error made by the parties to the agreement. It finds, on the basis of no evidence beyond the foregoing assertions, that experience *in future years* will demonstrate that Iron Gate re-regulation, plus a too-large fish hatchey, will overcompensate California by exactly the amount equal 19% (rounded to 20%) of the cost of operating and maintaining the stipulated fish hatchery!

I freely confess that I lack both the evidence and the expertise necessary to make such daring yet meticulous calculations involving the life and behavior of generations of fish yet unborn, and the operation of facilities yet unbuilt. If I possessed such expertise and evidence I might have been tempted to correct the (assumed) error of the parties by the simpler method of adjusting the size of the hatchery those parties had already agreed to.

If the majority really possessed this dazzlingly intuitive expertise I am confident they too would have made such a correction. But they did not. It matters little whether we conclude they failed to do so because they had neither the expertise nor the evidence on which to act, or because they are here merely attempting to rationalize a misunderstanding.

What is important is that they lacked the authority to do what they decided to do.

* * * * * * *

A clear understanding of and correct ruling on this matter can be achieved by the reading of a simple and undisputed statement of fact, plus the answers to two simple questions. The simple statement of fact is as follows: The fishery facility we have prescribed and have ordered Licensee to build is required in order to correct and repair damage inflicted on the fishery resource of the Klamath River in California by the Iron Gate Dam constructed by Licensee.

Question number one: How much of this damage resulted from activities of the people of the State of California? Answer: None.

Question number two: What proportion of the cost of repairing this damage should be borne by the people of the State of California? Answer: None.

The majority, by an indirect, oblique approach, attempts to lend the authority of this Commission to a new and alarming theory—that a Licensee, without the agreement or consent of a sovereign State, may impose charges on the State for asserted but disputed and unwanted "benefits" arising indirectly from Licensee's use of the Nation's rivers for the generation of electric power; and that this Commission, under the Federal Power Act, has the authority to force the State to bear those charges against its will.

If the majority seriously believes it lawfully has this power—which I maintain it does not—it should (attempt to) assert that power openly, citing statutory authority, rather than attempt to establish such power obliquely, as it does here, by entangling its new theory with a legitimate dispute over the proper responsibility of a Licensee to repair and correct damages it has inflicted upon a natural resource of the State of California.

I believe the majority's attempt to establish such a theory will fail, regardless of whether it is made openly or as in this proceeding, and I concur in the dissenting remarks of Commissioner Ross on this subject.

The one question properly before us is the responsibility of Licensee to protect and conserve the fishery resource of the Klamath River in California.

This Commission has committed a serious error, and in doing so has set a precedent dangerous to the rights of the several States and their citizens, by attempting to force the people of California to pay costs not rightly theirs, for damages not inflicted by them, upon a resource they have every right to enjoy unimpaired. There is an obligation to pay for correcting the damage inflicted on that resource by Licensee's project. But that obligation rests squarely on the Licensee. Not one iota of that responsibility rests upon the public.

If Licensee and the State of California *had* entered into an agreement to share the costs of meeting that responsibility in the manner mistakenly understood to be the case on first presentation of this matter before us, this Commission would have had adequate statutory authority to examine such an agreement and decide whether its impact *on Licensee's customers* did or did not serve the public interest. But, as is now clear, *there was no such agreement*, and we have not the slightest shred of statutory authority to concoct a substitute therefor and then proceed to force the State of California, against its determination of the public interest and against its will, *to accept it and require its taxpayers to pay for it.*

The majority's attempt to force the people of California to do more than they voluntarily agreed to do is wrong and cannot be supported by facts, by logic or by law. I am confident that on review their attempt will be struck down by the courts, as it should be.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

AREA RATE PROCEEDING, ET AL., DOCKET NO AR61–2, ET AL.

ORDER DENYING MOTIONS TO REVISE HEARING PROCEDURE

(Issued August 20, 1963)

Associated Gas Distributors (AGD), and Atlantic Seaboard Corporation, *et al.* (Atlantic),[1] filed on July 5, 1963, motions to revise the hearing procedure prescribed in the above-designated proceedings by order issued May 16, 1963, 29 FPC 981. The order prescribes simultaneous presentation of direct cases by all parties on December 3, 1963, followed by simultaneous presentation of rebuttal. Movants propose that the procedure be revised to permit the interveners to present their direct cases after the staff and Respondents have presented theirs. Answers and objections opposing the motions were filed by Newmont Oil Company and Continental Oil Company, Hunt Oil Company, *et al.*, Gulf Oil Corporation, Humble Oil & Refining Company, Shell Oil Company and Texaco Inc.

Movants contend that "fair procedure" dictates that they be permitted to see the staff's and Respondents' direct cases before presenting their own, claiming that they need more time because unlike the staff and most of the producer Respondents they do not have the benefit of prior experience under the area approach in the Permian proceeding. This argument is not persuasive. The movant interveners have been parties to this proceeding for over two years and have had ample opportunity to study the evidence in the Permian proceeding. Moreover, the basic data collected by the staff for use in the instant case were distributed in composite form to movants, as well as all other parties, on June 10, 1963, and the original data filings by individual Respondents were made available for examination at this time.

Movants also support their contention that their direct case should follow staff's by stating that this proceeding was instituted by the Commission on its own motion. However, it is not shown how this fact indicates that the staff should present its evidence before any other party even assuming *arguendo* that the Commission's action imposed a burden of proof on the staff.[2] The Commission unquestionably has the authority in discharging its duties to establish an appropriate hearing procedure. It has done so in this proceeding. Whether or not the staff or any of the parties has the burden of proof or the burden of going forward in no wise calls for any change in the requirement that simultaneous direct presentations be made.

The movants contend that *seriatim* presentation of the direct cases would further the announced goal of expeditious procedure by decreasing the likelihood of duplication of effort by the staff and interveners. There is no reason for such duplication under the prescribed procedures because staff will, within

[1] AGD and Atlantic represent groups of distribution and pipeline companies, respectively, which are interveners herein.

[2] The cases cited by AGD in its motion do not support the contention that, even in Section 5 proceedings, the staff should or must present its direct case before the interveners. The cited language from *Cities Service Gas Co.*, 14 FPC 134, 147 (which is dictum as a Section 7, not a Section 5 proceeding, was there involved), does not suggest that the staff precede the interveners in direct presentation. Neither are *Bel Oil Corp.* v. *Federal Power Commission*, 255 F. 2d 548 (CA5, 1958) or *Colorado Interstate Gas Company*, Docket No. G–1115, 11 FPC 324, any support for the contention. (See order issued July 24, 1963, Docket No. AR61–2, *et al.*, 30 FPC 400.)

the limits of its resources, keep the movants as well as the other parties advised as to the evidence it intends to present. The Examiner, we are sure, will exercise his broad pretrial powers to preclude any unnecessary withholding of information of this type by any of the parties. Surprise testimony obviously has no place in the proceeding.

Our prescription of simultaneous presentation of direct cases reflected our belief that, all things considered, it constituted not only the fairest but also the most expeditious procedure. It is argued by AGD that the revision in procedure which it seeks would not necessarily result in a prolongation of the entire hearing if the staff could present its direct case on an earlier date than December 3, and certain other changes might be made, all of which would reduce the periods for preparation of various presentations. However, the dates presently prescribed reflect the Commission's estimation of the time which all participants would require to prepare the direct, rebuttal and cross-examination presentations. The proposed change in the order of presentation of the evidence could therefore be made only at the expense of serious delay in the ultimate conclusion of the proceeding, which would be contrary to the public interest.

The subject motions set forth no new facts or points of law which were not considered by the Commission in issuing the order of May 16, 1963, or which, having been considered, require any modification of that order.

The Commission finds:

The motions filed by AGD and Atlantic to revise the hearing procedure prescribed for the proceeding Docket No. AR61–2, *et al.*, by order of May 16, 1963, should be denied.

The Commission orders:

The motions filed by AGD and Atlantic to revise the hearing procedure prescribed for the proceedings in Docket No. AR61–2, *et al.*, by order of May 16, 1963, are hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

HUGOTON PLAINS GAS AND OIL COMPANY, DOCKET NO. RI60–102

ORDER REJECTING OFFER OF SETTLEMENT

(Issued August 20, 1963)

Hugoton Plains Gas and Oil Company (Hugoton Plains) on July 25, 1963, tendered an offer of settlement in the above-entitled proceeding, proposing a 16.0¢ per Mcf settlement rate and agreeing to refund, with interest, any revenues collected in Docket No. RI60–102 in excess thereof.

The proceeding herein concerns the lawfulness of a rate increase from 9.2047¢ to 20.1626¢ per Mcf at 14.65 psia for the sale of gas by Hugoton Plains to Northern Natural Gas Company (Northern) from the Hugoton gas field in the States of Kansas and Oklahoma. The proposed rate was suspended by Commission order issued February 4, 1960, and became effective subject to refund as of April 7, 1960. Upon completion of hearing in this matter, the presiding examiner on March 12, 1962, issued his initial decision disallowing Hugoton Plains' increased rate. The matter is now pending before the Commission on exceptions by Hugoton Plains and Northern.

All of the parties involved in this proceeding, including staff, with the exception of Minnesota Valley Natural Gas Company (Minnesota Valley), have agreed to the proposed settlement. However, Minnesota Valley on August 5, 1963 filed an answer in opposition to the proposed settlement agreement requesting that the Commission reject the settlement proposal for various reasons set forth in its answer.[1]

Without determining the merits of the settlement agreement submitted by Hugoton Plains, we conclude that we must reject the offer of settlement in view of the lack of agreement among the parties to the proceeding. Our action herein is consistent with that taken by us in similar situations in the past. See, for instance, *American Louisiana Pipe Line Company, et al.*, Docket No. G–18419, *et al.*, 27 FPC 29.

The Commission orders:

For the reason set forth above, the offer of settlement tendered by Hugoton Plains on July 25, 1962 in the above-entitled proceeding is hereby rejected.

[1] Hugoton Plains filed a response to Minnesota Valley's answer on August 13, 1963.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

HUMBLE OIL & REFINING COMPANY, DOCKET NO. RI63–295

ORDER DENYING APPLICATION FOR REHEARING AND RECONSIDERATION

(Issued August 20, 1963)

Humble Oil & Refining Company (Humble) on July 17, 1963, filed an application for rehearing and reconsideration of the Commission's order issued herein on June 17, 1963. That order terminated the above-entitled suspension proceeding and permitted the proposed rate of 13.5¢ per Mcf contained in Supplement No. 4 to Humble's FPC Gas Rate Schedule No. 134 to become effective, without obligation to refund, as of June 17, 1963. Previously, the 13.5¢ per Mcf rate was suspended by order issued January 11, 1963, in Docket No. RI63–295 until June 19, 1963, and thereafter until such further time as the rate was made effective in the manner prescribed by the Natural Gas Act.

In its application for rehearing Humble contends that the Commission erred in the June 17 order in failing to vacate the suspension order and permit Humble's increased rate to become effective as of January 19, 1963. In support thereof, Humble claims that no valid reason was given for suspending the proposed increased rate.

Humble's FPC Gas Rate Schedule No. 134 contains a provision for maximum sulphur content of 500 grains total sulphur per 100 cubic feet of gas. If the gas sold under that rate schedule contained the maximum sulphur content permitted thereunder, the gas would be sour and would require treating before it might properly be considered as pipeline quality gas.[1] The cost of treating such gas would cause the proposed rate on a comparable basis to exceed the applicable increased rate ceiling of 14¢ per Mcf for the sale of pipeline quality gas as set forth in the Statement of General Policy No. 61–1, as amended.

Since Humble at the time it filed for an increased rate made no effort to advise the Commission as to the operative facts under its rate schedule, the sulphur

[1] The minimum standard proposed in Docket No. R–200 for pipeline quality gas is not more than 20 grains of total sulphur per one hundred cubic feet.

content of the gas sold by Humble was not known at the time of issuance of the suspension order. It was thus necessary to suspend Humble's rate because of the possibility that the gas was of non-pipeline quality, and, therefore, in excess of the applicable ceiling on a comparable basis. Thereafter, Humble presented additional information, not available to us at the time of suspension, which showed that the gas might properly be considered as pipeline quality gas. We, therefore, terminated the suspension proceeding in our order of June 17.

We did not determine in our June 17 order, as Humble contends, that there was no justification for suspending its rate. We merely decided on the basis of the additional information supplied by Humble subsequent to the suspension that there was no justification for continuing the suspension. In these circumstances there is no reasonable basis for vacating the suspension order.

The Commission finds:

The application for rehearing and reconsideration presents no new facts or principles of law which were not fully considered by the Commission in the order of June 17, 1963, or which, having been now considered, warrant any change in, vacation, or modification of that order.

The Commission orders:

The application for rehearing and reconsideration filed herein by Humble is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

KANSAS CITY POWER & LIGHT COMPANY, DOCKET NO. E-7111

ORDER AUTHORIZING ACQUISITION AND MERGER OR CONSOLIDATION OF FACILITIES

(Issued August 20, 1963)

Kansas City Power & Light Company (Applicant), incorporated under the laws of the State of Missouri and qualified to do business as a foreign corporation in the State of Kansas, with its principal place of business at Kansas City, Missouri (Kansas City), filed an application on July 5, 1963, as supplemented on July 30, 1963, for an order, pursuant to Section 203 of the Federal Power Act, authorizing it to acquire and to merge or consolidate with its own facilities certain electric facilities owned by the United States of America (Government).

Applicant is engaged in the generation, purchase, transmission, distribution, and sale of electric power and energy in Kansas City and portions of the surrounding territory in the counties of Cass, Carroll, Chariton, Clay, Howard, Jackson, Johnson, Lafayette, Pettis, Platte, Randolph and Saline, all in the State of Missouri, and in the counties of Anderson, Bourbon, Coffey, Douglas, Franklin, Johnson, Leavenworth, Linn, Miami, Osage, and Wyandotte, all in the State of Kansas. Applicant also furnishes steam heating services in Kansas City. More specifically, Applicant's electric service territory consists of the following areas:

(1) Kansas City District, which includes Kansas City and contiguous areas in Missouri;

(2) Kansas District, which is contiguous to the Kansas City District and includes an area in eastern Kansas, west and southwest of Kansas City; and

(3) East District, which includes an area in western Missouri approximately 50 miles east of Kansas City.

Applicant's Kansas City District is interconnected with its Kansas District and its East District by transmission lines.

The electric facilities which Applicant proposes to acquire from the Government are as follows:

(1) A 115 kv three phase line extending 28.9 miles southwestward from substation POL 17 at Kansas City to the eastern boundary of the Sunflower Ordnance Works near DeSoto, Kansas;

(2) A 115 kv three phase transmission line extending 11.2 miles southeastward from a tap on the Sunflower Ordnance line near Shawnee, Kansas, to substation POL 319 at the Naval Weapons Industrial Reserve Plant (Westinghouse Plant) south of Kansas City;

(3) Substation POL 17; approximately 0.44 mile of double circuit 13.2 kv cable from POL 17 to Applicant's Grand Avenue substation; Government facilities in Grant Avenue substation; and Government leasehold on land on which POL 17 stands; and

(4) Government transmission line equipment in substation POL 319.

The facilities proposed to be acquired by Applicant were constructed by the Government during World War II and were interconnected with Applicant's electric utility system to provide electric service to the Sunflower Ordnance Works and the Pratt-Whitney Plant (now the Westinghouse Plant). After World War II, control of these facilities was transferred to the Department of the Navy and in 1951 the facilities were leased by the Navy to applicant for operation by it for an initial term ending in 1965 with an option to extend the term for an additional 15 years. In 1962 the Navy declared the leased facilities to be surplus and transferred control of the facilities to the General Services Administration (GSA) for disposal. Applicant's lease of the facilities is still in effect and the invitation for bids for the purchase of the facilities issued by GSA, referred to hereinafter, provided that the disposition of the facilties by the Government would be made subject to such lease. The leased facilities are an integral part of Applicant's electric utility system and are operated and ultilized by Applicant to transmit electric power and energy within its service territory and to provide an emergency interchange interconnection with The Kansas Power and Light Company at the Sunflower Ordnance Works. The electric facilities which Applicant proposes to acquire include all the facilities leased by the Navy to Applicant except the facilities located on the site of the Sunflower Ordnance Works. Applicant will continue to operate such excluded facilities under the lease. Upon consummation of the proposed transaction, the facilities acquired by Applicant will be operated and utilized by it in the same manner as at present.

The aggregate purchase price to be paid to the Government by Applicant for the facilities which it proposes to acquire is $1,150,000, payable in cash, subject to the terms of an agreement evidenced by Invitation For Bids No. N–Mo–442B issued by GSA on behalf of the Government for the purchase of those facilities, as supplemented by Addendum No. 1, dated June 20, 1963, the bid submitted by Applicant pursuant to that invitation, and the acceptance of Applicant's bid by the Administrator of General Services, dated June 28, 1963 (Purchase Agreement). The Purchase Agreement was filed as an exhibit to the application.

The application indicates that the records and other data relating to the original cost of the electric facilities which Applicant seeks to acquire from the Government are not available to Applicant and that Applicant has no knowledge of the whereabouts of such records and data as may exist. The application

indicates further that Applicant proposes to ascertain or estimate the original cost of the aforementioned facilities and to file with the Commission journal entries recording such original cost or estimated original cost within six months from the date of consummation of the acquisition in accordance with the provisions of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees, effective January 1, 1961, particularly the provisions of Account 102, Electric Plant Purchased or Sold, Account 114, Electric Plant Acquisition Adjustments, and appropriate Electric Plan Instructions, thereof. In the pro forma balance sheet submitted as a part of its application, Applicant used $1,750,000 as representing the original cost of the subject facilities and $600,000 as representing the accumulated depreciation applicable to those facilities. Applicant's total utility plant is recorded at original cost, which as of April 30, 1963 is stated to be $337,732,524, with an applicable accumulated provision for depreciation in the amount of $73,548,383.

Applicant represents that if it does not purchase the electric facilities described above from the Government there is a possibility that such facilities will cease to be an integral part of Applicant's electric system because of possible extinguishment of easements granting use of certain lands by the facilities or possible termination of the aforementioned lease of the facilities. The easements were granted on the condition that the facilities be used in the interests of national defense and therefore use of the facilities for any other purpose may result in the extinguishment of the easements. The lease, by its terms, is subject to termination by the Government in the event of any national emergency. Ownership of the subject facilities by Applicant will enable it to exercise its power of eminent domain to obtain whatever easements may be necessary for the continued operation of the facilities and to avoid construction of new facilities which would be required if the Government terminated the lease and repossessed the existing facilities. In addition, ownership of the facilities will permit Applicant to make substantial changes in the facilities which may be necessitated in the future by operating conditions on Applicant's electric system, which changes Applicant may not presently undertake because of restrictive provisions in the existing lease covering the facilities.

Written notice of the application has been given to the Public Service Commission of Missouri and the State Corporation Commission of Kansas and to the Governor of each of those States. Notice of the application was also published in the Federal Register on July 23, 1963 (28 F.R. 7488), stating that any person desiring to be heard or to make any protest with reference to the application should on or before August 1, 1963, file with the Federal Power Commission, Washington 25, D.C., petitions or protests. No petition or protest or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued May 14, 1957, *Interstate Power Company, Kansas City Power & Light Company*, Docket No. E-6737 (17 FPC 663).

(2) By the proposed transaction, as described above, Applicant will merge or consolidate its facilities subject to the jurisdiction of the Commission with those of the Government, another person, within the meaning and subject to the requirements of Section 203 of the Act.

(3) The proposed acquisition and merger or consolidation of the facilities of the Government by Applicant, as recited above, upon the terms and conditions specified in the application and subject to the provisions of this order will be consistent with the interest as expressed in Section 203 of the Act for the reasons set forth above.

(4) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) The proposed acquisition and merger or consolidation of the facilities of the Government by Applicant, all as described above, is hereby authorized and approved upon the terms and conditions as set forth in the application, subject to the provisions of this order.

(B) This authorization is subject to the condition that Applicant shall determine the original cost and the amount of the applicable accumulated provision for depreciation of the electric plant involved in the proposed acquisition, as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees, and shall file appropriate journal entries based upon such original cost and accumulated provision for depreciation within six months from the date of consummation of the transaction herein authorized.

(C) Applicant shall record the transaction herein authorized and the facilities and properties described above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees, particularly the provisions of Account 102, Electric Plant Purchased or Sold, Account 114, Electric Plant Acquisition Adjustments, and appropriate Electric Plant Instructions, thereof.

(D) This authorization shall expire unless the transaction herein authorized is consummated within 90 days from the date of issuance of this order.

(E) This authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission or any other regulatory body, and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Charles R. Ross.

THE MONTANA POWER COMPANY, PROJECT NOS. 1501 AND 1676

ORDER ACCEPTING SURRENDER OF LICENSE

(Issued August 20, 1963)

Applications were filed on June 17, 1963 by The Montana Power Company (Licensee) of Butte, Montana, for Commission acceptance of surrender of its licenses for transmission line Project Nos. 1501 and 1676 affecting lands of the United States within the Helena National Forest and other lands of the United States.

The applications were filed pursuant to Commission order issued November 1, 1961, 26 FPC 671, approving the transfer, among others, of the licenses for Project Nos. 1501 and 1676 from Montana-New Jersey to the Licensee. The order recited that according to a staff study of the function of the lines, the lines

are not primary lines or parts of a "project" as defined in Section 3(11) of the Federal Power Act.

Project No. 1501 consists of the Galena Mine 4,000 volt, three-phase, single circuit transmission line extending in a generally southwesterly direction from a point on the Licensee's existing Madison-Butte transmission line in the NW¼ NW¼ Sec. 9, T. 3 S., R. 1 W., to the Galena Mine in the SW¼NE¼, Sec. 19., T. 3 S., R. 1 W., Montana Principal Meridian, in Madison County, Montana, a distance of 2.72 miles, 0.22 mile of which crosses lands of the United States.

Project No. 1676 consists of a 3,800 volt, three-phase transmission line extending from a point in the NE¼ Sec. 26, T. 8 N., R. 3 W., to a point in the SE¼ Sec. 30., T. 8 N., R. 2 W., Principal Meridian, in Jefferson County, Montana, occupying a 25-foot wide right-of-way for a distance of 2.39 miles across lands of the United States within the Helena National Forest.

According to the staff study referred to above: (1) the line comprising Project No. 1501 was constructed by Lake View Gold Mine, Inc. to serve its needs at the Galena Mine. The Licensee acquired title to the line on June 12, 1936. No information is available to indicate which line the project line taps from, but in any event the voltage was stepped down to the 4,000 volts to serve the needs, as a distribution line, of the Galena Mine; and (2) the line comprising Project No. 1676 was constructed by the Newburgh Mining & Milling Company and was acquired by the Licensee on February 1, 1937. The source of power for the line is from the Licensee's 69 kv subtransmission line and the voltage of the project line was stepped down to 3.8 kv to serve the needs, as a distribution line, of the Newburgh Mining & Milling Company.

A right-of-way for Project No. 1501 was issued to the Licensee by the Bureau of Land Management, Department of the Interior, effective as of December 3, 1962. A special use permit for Project No. 1676 was issued to the Licensee by the Forest Service, Department of Agriculture, effective as of January 3, 1962.

Annual charges under the licenses for Project Nos. 1501 and 1676 have been paid through the calendar year 1962, and both license instruments have been returned by the Licensee.

The Commission finds:

(1) Transmission line Project Nos. 1501 and 1676 are not primary lines or parts of a "project" as defined in Section 3(11) of the Federal Power Act.

(2) Acceptance of surrender of the licenses for Project Nos. 1501 and 1676 is appropriate, as hereinafter provided.

The Commission orders:

Surrender of the licenses for Project Nos. 1501 and 1676 is hereby accepted effective as of December 31, 1962.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

PACIFIC POWER & LIGHT COMPANY, DOCKET NO. E-7109

ORDER AUTHORIZING ACQUISITION AND MERGER OR CONSOLIDATION OF FACILITIES

(Issued August 20, 1963)

Pacific Power & Light Company (Applicant), incorporated under the laws of the State of Maine and doing business as a qualified foreign corporation in

the States of California, Oregon, Washington, Wyoming, Montana and Idaho, with its principal place of business at Portland, Oregon, filed an application on June 17, 1963, for an order, pursuant to Section 203 of the Federal Power Act, authorizing it to acquire and to merge or consolidate with its own facilities certain electric facilities of the United States Bureau of Reclamation (USBR).

Applicant is engaged principally in the business of generating, purchasing, transmitting, distributing, and selling electric energy in California, Oregon, Washington, Wyoming, Montana and Idaho. Applicant also supplies water, steam-heating and telephone service in various communities in its service area.

The facilities which Applicant proposes to acquire from the USBR are as follows:

(1) The Rawlins substation and a 34.5 kv transmission line from Rawlins to the Sinclair substation, all in Carbon County, Wyoming.

(2) A Seminoe-Bairoil 34.5 kv line and metering facilities and the Lamont and Bairoil substations, all in Carbon and Sweetwater Counties, Wyoming.

An "Invitation for Bids" to purchase the property was issued by Government Services Administration (GSA) on April 5, 1963. A price of $60,000 for the Rawlins substation and the Rawlins-Sinclair line, and a price of $150,000 for the Seminoe-Bairoil line were negotiated between GSA and Applicant after the submission of a bid by the latter. Sale of Item 2 is subject to a requirement that Applicant will transmit for the USBR, through December 31, 1966, up to 15 kw of power to an REA customer at Miller Estate Tap 4 miles west of Seminoe Dam at the rate of one mill per kwh transmitted, plus seven percent of the power and energy transmitted to cover transmission losses.

The lines which are proposed to be bought by Applicant were constructed and have been operated and maintained by the USBR to supply electric energy to its customers. The Rawlins-Sinclair line and the Rawlins substation are at present used by Applicant, under a contract expiring December 31, 1965, to transmit energy to its customers. The Seminoe-Bairoil line is similarly used by Applicant, under a contract expiring December 31, 1965. The USBR decided to dispose of these lines and declared them surplus subject to the rights of the parties under the contracts. GSA, after offering to sell the facilities to preference parties, issued an "Invitation for Bids" as referred to above.

The acquisition of the lines will enable Applicant to make greater use of them. It plans to reinsulate the Seminoe-Bairoil line for 57 kv operation to take care of its anticipated increases in loads. Since the lines are in its service areas, it will be able to tap them or make extensions to serve customer loads without entering into special arrangements with the USBR in each case. The terms of the sale provide that the REA customer referred to above will contine to get service from the Seminoe-Bairoil line till the end of 1966 when the REA contract expires.

The USBR has informed the Applicant that the facilities have a total original cost of $414,065 but that the USBR records do not contain an amount for accrued depreciation. The Applicant, however, has made an estimate of $113,673 for accrued depreciation. On the basis of this estimate, the original cost less accrued depreciation ($414,065–$113,673) will be $300,392. The consideration of $210,000, which Applicant will pay for these facilities plus $3,000 for estimated expenses incidental to the acquisition will result in a total acquisition cost of $213,000. Thus, the total acquisition cost of $213,000 will be $87,392 less than the $300,392 for original cost less estimated accrued depreciation.

The Applicant proposes to record the transaction as follows:

	Debit	Credit
Account 101, Electric Plant in Service	$414,065	
Account 108, Accumulated Provision for Depreciation of Electric Plant in Service		$201,065
Account 131, Cash		213,000

The credit of $201,065 to Accumulated Provision for Depreciation of Electric Plant in Service will include $113,673 for the Applicant's estimate of accrued depreciation plus $87,392 for the difference between $300,392 for original cost less estimated accrued depreciation and the total acquisition cost of $213,000.

Written notice of the application has been given to the California Public Utilities Commission, the Public Utility Commissioner of Oregon, the Washington Public Service Commission, the Public Service Commission of Wyoming, the Board of Railroad Commissioners of Montana, and the Idaho Public Utilities Commission, and to the Governor of each of those States. Notice of the application has also been given by publication in the Federal Register on July 3, 1963 (28 F.R. 6841), stating that any person desiring to be heard or to make any protest with reference to the application should on or before July 17, 1963, file with the Federal Power Commission, Washington 25, D.C., petitions or protests. No petition or protest or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued March 28, 1962, *Pacific Power & Light Company*, Docket No. E-7025 (27 FPC 620).

(2) By the proposed transactions, as described above, Applicant will acquire and merge or consolidate its facilities subject to the jurisdiction of the Commission with facilities of the USBR, another person within the meaning and subject to the requirements of Section 203 of the Act.

(3) The proposed acquisition and merger or consolidation of facilities of the USBR with its own facilities by Applicant will be consistent with the public interest for the reasons set forth in the recital above.

The Commission orders:

(A) The proposed acquisition and merger or consolidation of the facilities of the USBR with those of its own by Applicant, as described above, is authorized and approved upon the terms and conditions set forth in the application, subject to the provisions of this order.

(B) Applicant shall account for the proposed transaction in accordance with the provisions of this Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) This authorization shall expire unless the transactions herein authorized are consummated within 90 days from the issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuations, estimates or determinations of cost, or any other matter whatsoever which is now pending or may come before this Commission, and nothing in this order shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

PACIFIC POWER & LIGHT COMPANY, DOCKET NO. E-7110

ORDER AUTHORIZING ACQUISITION AND MERGER OR CONSOLIDATION OF FACILITIES

(Issued August 20, 1963)

Pacific Power & Light Company (Applicant), incorporated under the laws of the State of Maine and doing business as a qualified foreign corporation in the States of California, Oregon, Washington, Wyoming, Montana and Idaho, with its principal place of business at Portland, Oregon, filed an application on June 17, 1963 for an order, pursuant to Section 203 of the Federal Power Act, authorizing it to acquire and to merge or consolidate with its own facilities certain electric facilities of Eastern Oregon Electric Cooperative, Inc. (Eastern Oregon).

Applicant is engaged principally in the business of generating, purchasing, transmitting, distributing, and selling electric energy in California, Oregon, Washington, Wyoming, Montana and Idaho. Applicant, also supplies water, steam-heating and telephone service in various communities in its service area. Eastern Oregon is an electric cooperative which serves a large part of the rural areas of the northeastern Umatilla County in Oregon.

Pursuant to an agreement entered into on April 4, 1963 between Applicant and Eastern Oregon, the facilities which Applicant proposes to acquire are distribution facilities including transformers and service drops but not meters, in two areas, in Umatilla County, near the city of Pendleton, Oregon, designated in the agreement as Areas C and D, in which Eastern Oregon serves 19 customers. The consideration which Applicant will pay for these facilities is $68,812. The depreciated original cost of these facilities is $66,506.

The agreement between Applicant and Eastern Oregon, referred to above, is for the purpose of eliminating the duplication of facilities by Applicant and Eastern Oregon in Umatilla County, Oregon in which they both have the right to supply electric service and thereby avoid future unnecessary construction of facilities. In this connection the agreement also provides for the sale by Applicant to Eastern Oregon of distribution facilities in Areas designated in the agreement as Areas A and B in which Applicant serves 73 customers, for a consideration of $26,303. The depreciated original cost of these facilities is $17,960. However, the disposition of these facilities by Applicant does not require approval by the Commission by virtue of the exemption pursuant to Section 203 of the Act.

The proposed exchange of properties will result, after Applicant's estimated cost in connection with the transaction of $5,000, in Applicant acquiring net plant of $48,546 for a net consideration of $47,509, a net different of $1,037, which Applicant proposes to eliminate by a credit to Account 108, Accumulated Provision for Depreciation of Electric Plant in Service.

Applicant represents that after it has acquired the aforementioned facilities of Eastern Oregon there will be no change in the use of these facilities, and that such acquisition will not, to the Applicant's knowledge, have any affect upon any contract for the purchase, sale or interchange of any electric energy.

Written notice of the application has been given to the California Public Utilities Commission, the Public Utility Commissioner of Oregon, the Washington Public Service Commission, the Public Service Commission of Wyoming, the Board of Railroad Commissioners of Montana, and the Idaho Public Utilities Commission, and to the Governor of each of those States. Notice of the applica-

tion has also been given by publication in the Federal Register on July 3, 1963 (28 F.R. 6842), stating that any person desiring to be heard or to make any protest with reference to the application should on or before July 24, 1963, file with the Federal Power Commission, Washington 25, D.C., petitions or protests. No petition or protest or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued March 28, 1962, *Pacific Power & Light Company*, Docket No. E–7025, (27 FPC 620).

(2) By the proposed transactions, as described above, Applicant will acquire and merge or consolidate its facilities subject to the jurisdiction of the Commission with facilities of Eastern Oregon, another person within the meaning and subject to the requirements of Section 203 of the Act.

(3) The proposed acquisition and merger or consolidation of facilities of Eastern Oregon with its own facilities by Applicant will be consistent with the public interest for the reasons set forth in the recital above.

The Commission orders:

(A) The proposed acquisition and merger or consolidation of the facilities of Eastern Oregon with those of its own by Applicant, as described above, is authorized and approved upon the terms and conditions set forth in the application, subject to the provisions of this order.

(B) Applicant shall account for the proposed transaction in accordance with the provisions of this Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) This authorization shall expire unless the transactions herein authorized are consummated within 90 days from the issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuations, estimates or determinations of cost, or any other matter whatsoever which is now pending or may come before this Commission, and nothing in this order shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Charles R. Ross.

SOUTH CAROLINA ELECTRIC & GAS COMPANY, PROJECT NO. 1894

ORDER APPROVING REVISED PROJECT EXHIBIT

(Issued August 20, 1963)

On June 27, 1963, South Carolina Electric & Gas Company, licensee for Project No. 1894, filed for Commission approval, pursuant to Commission order issued May 9, 1962, 27 FPC 926, revised Exhibit M describing the automatic, remote controls which have been installed on the Parr Shoals Hydro Plant. Also filed was a revised Exhibit Q requiring no Commission approval.

The Commission finds:

Revised Exhibit Exhibit M, in two sheets, filed June 27, 1963, and entitled "General Description of Mechanical and Electrical Equipment", conforms to

the Commission's rules and regulations and should be approved as part of the license for the project, and Exhibit M filed September 14, 1942, now part of the license, and which has been susperseded, should be eliminated from the license.

The Commission orders:

The revised Exhibit M described in the above finding is hereby approved as part of the license for Project No. 1894, and the exhibit described in the same finding as being superseded is hereby eliminated from the license for the project.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

DUKE POWER COMPANY, DOCKET NO. E-7122

ORDER TO SHOW CAUSE

(Issued August 21, 1963)

Duke Power Company, Charlotte, North Carolina (Duke), a corporation organized under the laws of the State of New Jersey, has been determined to be a public utility within the meaning of the Federal Power Act, Order issued August 1, 1962, Duke Power Company, Docket No. E-7041, (28 FPC 255), and has filed with the Federal Power Commission, from time to time, rate schedules for service to investor owned electric utilities, cooperatively-owned electric utilities, and municipalities, including those listed below and in the attached appendices.

Some of those filed rate schedules embody contracts containing one or more provisions which may have the effect of restricting the investor owned and cooperatively owned electric systems and municipalities from reselling to certain classes of potential customers or for particular uses, power purchased from Duke under the filed rate schedules.

Rate schedules providing for service under Duke's "Standard Schedule No. 10, Class 1, Municipal Resale Service"—entire power requirements—contain the following restrictions limiting the uses for which power may be purchased, and, in many cases, the size of load which may be served by the customer:

> The electric power delivered hereunder shall be delivered for the purpose of its being used by the Consumer for lighting the streets and public buildings, and for furnishing electricity for lighting, heating, and motive power to the inhabitants of the [name of city or town], and vicinity, and for other municipal purposes at said [name of city or town].[1]
>
> None of said power to be resold to any one customer in excess of ——— kilowatts:[2]

[1] The wording of this provision varies slightly in each rate schedule.

[2] The following restriction is included in Rate Schedule FPC Nos. 28 and 29, City of High Point, North Carolina:

> The electric power delivered hereunder shall be delivered for the purpose of its being used by the Consumer for lighting its streets and public and private buildings and for other municipal purposes and for resale to the inhabitants of the Consumer and its customers along West Burton Street outside of the municipal limits for residential and commercial purposes, and the Consumer agrees not to use or apply said electric power or any part thereof, in any place, or in any manner, or for any purposes other than as provided for in this contract; and agrees not to sell or deliver said electric power to any one customer for any one motor in excess of 5 horsepower capacity, except by written agreement of the parties hereto.

Rate schedules containing the restriction on use and the kilowatt limitation are listed in Appendix A.

In addition the following provisions are contained in rate schedules on file with the Commission, as designated in Appendix B.

Standard Schedule No. 11–A, Rural Resale Service (cooperatives);
Standard Schedule No. 11, Rural Resale Service (cooperatives with high load factor).

ARTICLE FOURTH

. . . The electric power delivered hereunder . . . shall not be . . . sold or offered for sale by the consumer to anyone who is receiving electric service or whose premises are capable of being served by the existing facilities (including additional secondary lines not exceeding 300 feet in length) of any municipal or other distribution system to which the Power Company sells electric power for resale, except where such municipality or other distributor refuses to furnish such service.

These provisions of the 11 and 11–A rate schedules may not be unduly restrictive. They are included as a part of this proceeding to permit Duke to submit a written explanation of those provisions for further Commission consideration of the purpose and effect thereof.

The provisions set out above may have the effect of restricting the investor owned and cooperatively owned electric utilities and municipalities from reselling to certain classes of potential customers or for certain uses power purchased from Duke under the rate schedules. They constitute rates, charges or classifications or rules, regulations, practices or contracts affecting rates, charges or classifications within the meaning of Sections 205 and 206 of the Federal Power Act and may be unjust, unreasonable, and, therefore, unlawful.

The Commission further finds:

(1) It is necessary and appropriate for the purposes of the Federal Power Act, particularly Sections 205, 206, 307, 308 and 309 thereof, that Duke Power Company be directed to show cause in writing why the Commission should not find and determine the above-mentioned provisions in Duke Power Company's filed rate schedules to be unjust or unreasonable.

(2) In the event that the above-mentioned provisions are found to be unjust or unreasonable it may be appropriate for purposes of the Federal Power Act, particularly Sections 205, 206, 304, 307, 308 and 309 thereof, for the Commission to order a hearing to determine and fix the just and reasonable rates, charges, classifications, rules, regulations, practices or contracts to be thereafter observed and in force for service by Duke Power Company to investor owned and cooperatively owned electric utilities and municipalities.

The Commission orders:

(A) On or before September 30, 1963, Duke Power Company shall respond to this order through Answer as provided in Section 1.9(c) of the Commission's Rules of Practice and Procedure, 18 CFR 1.9(c).

(B) Notices of intervention or petitions to intervene in this proceeding may be filed with the Commission on or before September 13, 1963, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8).

APPENDIX A

Rate schedule FPC No.	Customer	Kilowatt limitation
13	City of Albemarle, North Carolina	none
14	Town of Bostic, North Carolina	none
15	Town of Cherryville, North Carolina	75
16	Board of Light and Water Commissioners of the City of Concord, North Carolina.	300
17	Town of Cornelius, North Carolina	40
18	Town of Dallas, North Carolina	none
19	Town of Drexel, North Carolina	none
20	Town of Davidson, North Carolina	none
21	Town of Forest City, North Carolina	150
22, 23, 24, 25	City of Gastonia, North Carolina	400
26	Town of Granite Falls, North Carolina	50
27	Town of Huntersville, North Carolina	40
30	City of Kings Mountain, North Carolina	100
31	Town of Landis, North Carolina	80
34	Town of Lincolnton, North Carolina	none
35	Town of Maiden, North Carolina	50
36	City of Monroe, North Carolina	none
37	Town of Morganton, North Carolina	800
38	Town of Newton, North Carolina	75
39	Town of Pineville, North Carolina	none
40, 41, 42, 43	City of Shelby, North Carolina	200
44	City of Statesville, North Carolina	none
45	Town of Clinton, South Carolina	200
46	Town of Due West, South Carolina	100
47	Commissioners of Public Works of the City of Easley and the City of Easley, South Carolina.	800
48	Board of Commissioners of Public Works of the City of Gaffney and the City of Gaffney, South Carolina.	none
49	Commissioners of Public Works of the City of Greer and the City of Greer, South Carolina.	1,000
50	City of Newberry, South Carolina	none
51	Town of Prosperity, South Carolina	75
52	City of Rock Hill, South Carolina	none
54	Commissioners of Public Works of the Town of Seneca and the Town of Seneca, South Carolina.	200
55	Commissioners of Public Works of the Town of Westminster, South Carolina	100
57	The Clemson Agricultural College of South Carolina	50
126	Ruth Meacham and Mrs. Esther Meacham McAlhaney, Partners, doing business under the firm name and style of The Electric Company.	none
127	Heath Springs Light and Power Company, (South Carolina)	200
128	Kershaw Oil Mill	none

APPENDIX B

Customer	Delivery point	Rate schedule FPC No.
Blue Ridge EMC	Granite Falls	58
Blue Ridge EMC	Lenoir EMC	59
Blue Ridge EMC	N. Wilkesboro	*60
Blue Ridge EMC	Saw Mills	61
Blue Ridge EC	Anderson	95
Blue Ridge EC	Central	96
Blue Ridge EC	Liberty	97
Blue Ridge EC	Marietta	98
Blue Ridge EC	Newry	99
Blue Ridge EC	Pickens	100
Blue Ridge EC	Seneca	101
Blue Ridge EC	Tigersville	102
Blue Ridge EC	Walhalla	103
Broad River EC	Blacksburg	104
Broad River EC	Draytonville	105
Broad River EC	Gaffney	106
Broad River EC	Inman	107
Broad River EC	New Prospect	108
Broad River EC	Whitmire	109
Burke-McDowell EMC	Marian	62
Burke-McDowell EMC	Morganton	63
Cornelius EMC	Cornelius	64
Cornelius EMC	Mooresville	65
Cornelius EMC	Statesville	66
Davidson EMC	Healing Springs	67
Davidson EMC	Lexington	68
Davidson EMC	Pine Hall	69
Davidson EMC	Stoneville	70
Davidson EMC	Thomasville	71
Davie EMC	Mocksville	72
Davie EMC	Statesville	73
Davie EMC	Stony Point	74
Davie EMC	Taylorsville	75
Davie EMC	Vashti	76
Haywood EMC	Rosman	77
Laurens EC	Enoree	110
Laurens EC	Fork Shoals	111
Laurens EC	Fountain Inn	112
Laurens EC	Mauldin	113
Laurens EC	Moore	114
Laurens EC	Woodruff	115
Little River EC	Donalds	116
Little River EMC	Latimer	117
Little River EMC	Starr-Iva	118
Pee Dee EMC	Norwood	78
Piedmont EMC	Carrboro	79
Piedmont EMC	Durham	80
Piedmont EMC	Hillsboro	81
Rutherford EMC	Cherryville	82
Rutherford EMC	Dallas	83
Rutherford EMC	Fallston	84
Rutherford EMC	Gastonia	85
Rutherford EMC	Maiden	86
Rutherford EMC	Mill Spring	87
Surry-Yadkin EMC	Dobson	88
Surry-Yadkin EMC	Elkin	89
Surry-Yadkin EMC	Rockford	90
Surry-Yadkin EMC	Ronda	91
Union EMC	Monroe	92
Union EMC	Mt. Pleasant	93
Union EMC	New London	94
York County EC	Bethany	119
York County EC	York	120
York County EC	Fort Mill	121
York County EC	Leslie	122
York County EC	Catawba	123

*This contract embodies rate schedule No. 11. All other rate schedules are for service under rate schedule No. 11-A.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

NEW YORK STATE NATURAL GAS CORPORATION, DOCKET NO. CP63-302

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 21, 1963)

On May 10, 1963, New York State Natural Gas Corporation (Applicant) filed in Docket No. CP63-302 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of 15 additional wells and 3,000 additional compressor horsepower at the existing Sabinsville Storage Field, Tioga County, Pennsylvania, all as more fully set forth in the application.

The existing Sabinsville storage facilities include a 7,500 horsepower compressor station and 25 active wells. Applicant proposes to drill 15 additional wells and to supercharge 5 engines at the compressor station which will increase the horsepower of each of the engines by 200. Applicant also proposes to add a new 2,000 horsepower engine. The resulting total horsepower will be 10,500.

The proposed facilities will not increase the total capacity of the storage field but will enable Applicant to cycle approximately 5,500 MMcf of gas now required to be maintained as cushion gas. Applicant estimates that this will reduce its investment in cushion gas by $2,065,250.

The storage field has been operating at a maximum inventory of 33,450 MMcf and has been drawn down to an inventory of 22,500 MMcf. Additional withdrawal of gas is prevented by the inability of the present facilities to maintain the desired deliverability levels at a lower inventory. The proposed facilities will enable Applicant to meet the normal growth in its market requirements for the 1963-64 heating season by withdrawing gas down to an inventory of 17,000 MMcf, thus enabling Applicant to cycle an additional 5,500 MMcf of stored gas.

The estimated cost of the proposed facilities is $1,900,000 which will be financed from company funds and funds obtained from Applicant's parent company, Consolidated Natural Gas Company.

Pursuant to due notice, a public hearing was held in Washington, D.C., on August 8, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, New York State Natural Gas Corporation, a New York corporation having its principal place of business in Pittsburgh, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 27, 1942, in Docket No. G-312 (3 FPC 844).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necesity be and the same is hereby issued authorizing Applicant, New York State Natural Gas Corporation, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), and (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The construction authorized by paragraph (A) above shall be completed and the facilities placed in actual operation within three months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Charles R. Ross.

KENNETH J. BOLLES, PROJECT NO. 1815

ORDER ISSUING NEW LICENSE (MINOR)

(Issued August 22, 1963)

Application was filed on October 25, 1962, by Kenneth J. Bolles (Applicant), of Troy, Montana, for a new license under the Federal Power Act (Act) for constructed minor Project No. 1815, located on a creek commonly known as Mahoney Springs, tributary to the Kootenai River in Lincoln County, Montana, and affecting lands of the United States within the Kootenai National Forest.

The second and last 10-year license for the project was issued to Applicant, without charge, and expired March 23, 1962.

The Department of the Interior has advised that it has no objection to the issuance of a new license for the project, and that no fishways or license conditions are necessary for the protection of fish and wildlife resources.

The Forest Service, Department of Agriculture, has advised that it has no objection to the issuance of a new license for the project.

Although we invited the Department of Fish and Game of the State of Montana to comment respecting the application for new license, no comments have been received to date.

The Commission finds:

(1) Applicant is a citizen of the United States and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effect the purposes of a new license for the project.

(2) No conflicting application is before the Commission.

(3) The project does not affect any Government dam, nor will the issuance of a new license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(4) The issuance of a new license for the project, as hereinafter provided, will not interfere or be inconsistent with the purposes for which the Kootenai National Forest was created or acquired.

(5) The installed capacity of the project is 5 horsepower and the energy generated thereby is used for domestic purposes.

(6) The exhibit described in paragraph (B) below conforms to the Commission's rules and regulations and should be approved as part of the new license for the project.

(7) It will be in the public interest to waive the terms and conditions contained in the following sections of Part I of the Act:

> Section 4(b), except the second sentence thereof; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(a); 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 11; 12; 14, except insofar as the power of condemnation is reserved; 15; 18, except insofar as it relates to fishways; 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

The Commission orders:

(A) This new minor license is hereby issued to Kenneth J. Bolles of Troy, Montana, without charge, under Sections 4(e) and 15 of the Federal Power Act, for a period of 10 years, effective as of March 24, 1962, for the operation and maintenance of Project No. 1815 on Mahoney Springs, a tributary to Kootenai River, and effecting lands of the United States within the Kootenai National Forest, subject to the terms and conditions of the Act insofar as not expressly waived herein, which Act is hereby incorporated by reference as a part of this license.

(B) The project consists of:

(i) All lands constituting the project area and inclosed by a project boundary or the limits of which are otherwise defined;

(ii) Project structures, consisting of a diversion dam, 4 feet wide and 2 feet high, 730 feet of 3-inch pipe line, a 6x12-foot frame powerhouse having a 5 horsepower Pelton wheel, operating under a static head of 250 feet, an electric generator, and a 300-foot transmission line;

(iii) All other structures, fixtures or facilities used or useful in the maintenance and operation of the project and located on the project area, and all rights and interests, the possession of which is necessary or appropriate in the maintenance and operation of the project; which lands and project works are more specifically shown and described by a certain map which formed a part of the application for license, and which is designated and described as follows:

Exhibit C (FPC No. 1815–1), a map in one sheet entitled "Mahoney Springs Minor Power Project," filed with the Commission December 27, 1940.

(C) This license is also subject to the terms and conditions set forth in Form L–7, December 15, 1953, entitled "Terms and Conditions of License for Minor Project Affecting Lands of the United States", which terms and conditions are attached hereto and made a part thereof.

(D) The terms and conditions contained in the sections of Part I of the Act set forth in finding (7) above are hereby waived.

(E) The exhibit described in paragraph (B) above is hereby approved as part of this new license.

(F) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed by the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

COMMUNITY PUBLIC SERVICE COMPANY, DOCKET NO. E–7116

ORDER AUTHORIZING ISSUANCE OF PREFERRED STOCK

(Issued August 22, 1963)

Community Public Service Company (Applicant), incorporated under the laws of the State of Texas and doing business as a qualified foreign corporation in the State of New Mexico, with its principal place of business at Fort Worth, Texas, filed an application on July 22, 1963, and amendments thereto on August 9 and August 12, 1963, for an order pursuant to Section 204 of the Federal Power Act, authorizing the issuance of 60,000 shares of 4.65% Cumulative Preferred Stock, Series B, par value $100 per share or an aggregate par value of $6,000,000. Applicant requests that the proposed issuance of Preferred Stock be exempted from the Commission's competitive bidding requirements.

By Commission letter dated May 13, 1963, Docket No. IN–960, the Applicant was authorized to engage in negotiations for the sale or underwriting of the Preferred Stock. Pursuant to that authorization, Applicant employed Stone & Webster Securities Corporation (Stone & Webster) for the purpose of engaging in negotiations for the placement of the proposed Preferred Stock. The application states that Stone & Webster discussed the possible sale of the Preferred Stock with 29 prospective institutional purchasers. As a result of such discussions, informal commitments have been obtained from 18 institutions to purchase the 4.65% Preferred Stock at $100 per share pursuant to a Purchase Agreement dated July 31, 1963. Applicant proposes to pay a finder's fee of 65¢ per share or .65% of the sale price, which is $39,000, in the aggregate, in payment for Stone & Webster's services in finding buyers for the new Preferred Stock.

The net proceeds from the sale of the new Preferred Stock, estimated at $5,931,050 after provision for all issuance expenses, will be used for the redemption of Applicant's outstanding 30,000 shares of 5.72% Preferred Stock, Series A, at a redemption cost of $3,244,200, and the balance will be used to finance in part Applicant's 1963 construction program. The redemption of the 5.72% Preferred Stock and replacing it with the new 4.65% Preferred Stock will result in an annual decrease in dividends of $32,100.

Applicant, pursuant to the Purchase Agreement proposes to issue and sell the 60,000 shares of the 4.65% Preferred Stock in two lots. The first lot of 30,000 shares, called "First Delivery Preferred Stock", is to be issued and sold on or about the week of August 18 or 25, 1963; the remaining lot of 30,000 shares, called the "Second Delivery Preferred Stock", is to be issued and sold on or about the week of October 20 or 27, 1963. Immediately after the sale of the First Delivery Preferred Stock, Applicant will call for redemption of all of its outstanding 30,000 shares of 5.72% Preferred Stock, Series A.

Because of the time that will elapse between the commitment date and the date of the Second Delivery Preferred Stock, the Applicant will pay to the purchasers a commitment fee of ½ of 1% (on an annual basis) of the purchase price for those shares from the date of the purchase agreement to the date of the sale. The commitment fee is estimated at $3,125, and when adjusted for taxes, the net cost will be about $1,500.

Applicant's estimates of cost of proposed additions to its utility properties during 1963 are $5,745,000 for electric facilities and $94,000 for gas facilities. The expenditures for electric facilities include $100,000 toward the construction of a 12,500 kw gas turbine electric generating unit for installation in the Lordsburg plant of its Silver City, New Mexico system, the total cost of which is estimated at $1,250,000; $839,000 for transmission facilities; $3,963,000 for distribution facilities and $843,000 for general facilities.

Applicant states that the sale and issuance of 60,000 shares of the New Preferred Stock in a single transaction presents a special situation which is not adaptable to competitive bidding. Redemption of the outstanding 5.72% Preferred Stock with proceeds of the First Delivery 4.65% Preferred Stock is desirable. Applicant has negotiated for the sale of the entire 60,000 shares of the New Preferred Stock, but issuance of the Second Delivery Preferred Stock will depend on approval by the necessary ⅔ds of common and preferred stockholders as classes. Applicant states that it could hardly be justified in calling the necessary special meetings of stockholders on any basis other than a negotiated confirmed sale and purchase. Furthermore, the issuance of the 30,000 shares of Second Delivery Preferred Stock is desirable to continue Applicant's construction program in a manner which will not increase Applicant's debt capital.

Written notice of the application has been given to the Texas Railroad Commission and to the New Mexico Public Service Commission and to the Governor of each of those States. Notice of the application was also published in the Federal Register on July 31, 1963 (28 F.R. 7800), stating that any person desiring to be heard or to make any protest with reference to the application should on or before August 15, 1963, file with the Federal Power Commission, Washington 25, D.C., petitions or protests. No petition or protest or request to be heard in opposition to the granting of the application has been received.

The New Mexico Public Service Commission by order issued August 6, 1963, authorized Applicant to issue the 60,000 shares of Cumulative Preferred Stock, Series B, bearing a dividend rate of 4.65%.

The Commission finds:

(1) Applicant, a Texas corporation, is a public utility within the meaning of Section 204 of the Federal Power Act subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued April 24, 1963, *Community Public Service Company*, Docket No. E–7084, 29 FPC 829.

(2) The proposed issuance and sale of 4.65% Cumulative Preferred Stock, Series B, as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issue here involved is regulated by a State commission within the meaning of Section 204(f) of the Act, and the proposed issuance of securities, is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(4) The price per share of the 4.65% Cumulative Preferred Stock, Series B to be received by Applicant, the dividend rate, the finder's fees to be paid Stone & Webster, and the commitment fee to be paid the purchasers, all as described above, are not unreasonable.

(5) There is no affiliation, direct or indirect, through directors, officers or stockholders, or otherwise between Applicant and Stone & Webster.

(6) Under the circumstances set forth above, sufficient cause has been shown for exempting the proposed issuance and sale of 4.65% Cumulative Preferred Stock, Series B from the competitive bidding requirements of Section 34.1a(b) and (c) of the Commission's Regulations under the Federal Power Act.

(7) The proposed issuance of 4.65% Cumulative Preferred Stock, Series B, as hereinafter authorized, will be for a lawful object, within the corporate purpose of the Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by the Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

The Commission orders:

(A) The proposed issuance and sale of 4.65% Cumulative Preferred Stock, Series B, upon the terms and conditions and for the purposes specified in the application, as described above, is hereby authorized, subject to the provisions of this order.

(B) The proposed issuance and sale of 4.65% Cumulative Preferred Stock, Series B, as described above, are hereby exempted from the competitive bidding requirements of Section 34.1a(b) and (c) of the Commission's Regulations under the Federal Power Act.

(C) This authorization shall expire unless the transaction hereby authorized is consummated within 120 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of costs, or any other matter whatsoever which is now pending or which hereafter may come before this Commission.

(E) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect of any securities to which this order relates.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

GULF PACIFIC PIPELINE COMPANY, DOCKET NO. CP63-223

ORDER ON MOTIONS TO EXPEDITE HEARINGS

(Issued August 22, 1963)

On June 7, 1963, Gulf Pacific Pipeline Company (Gulf Pacific) filed a "Motion For Commission Order Giving Public Notice and Request For Early Hearing On Certificate Application" in this Docket. This motion was renewed as a part of the "Motion of Gulf Pacific Pipeline Company For Prompt Consolidated Hearing and Continuance" filed on June 21, 1963, in this Docket and in *Trans-*

western Pipeline Company, Docket No. CP63–204, and *El Paso Natural Gas Company*, Docket No. CP63–296.

On July 12, 1963, we issued Opinion No. 393 in *El Paso Natural Gas Company, et al.*, Docket No. G–16235, *et al.*, 30 FPC 77, where we announced that "we shall institute a proceeding to determine how the long term needs for natural gas deliveries to Southern California may be met in manner which is most desirable from the standpoint of the public interest" (p. 92). We there indicated that the Gulf Pacific application in this Docket will be made a part of that proceeding and will be consolidated "with any other applications for major pipeline construction for the supply of gas to the Southern California a market filed within three months * * * of July 12, 1963 (*Ibid*).

On August 2, 1963, Gulf Pacific filed its most recent motion, a "Motion to Expedite Procedure" in Docket Nos. CP63–204, CP63–223, and CP63–296. That motion requested us to issue immediately an order giving public notice of Docket No. CP63–223 and fixing an early date for the filing of petitions to intervene and also requested that we concurrently, or promptly thereafter, issue an order consolidating Docket Nos. CP63–204, CP63–223, and CP63–296 for hearing. We were also requested to issue concurrently an order specifying procedure in the consolidated dockets which would declare that applications, amendments, or supplements in these or other competitive dockets must be filed on or before September 16, 1963; that no application, amendment, or supplement to these or competitive dockets be considered until after final decision in Docket No. CP 63–223; that direct evidence in support of the three dockets be in the hands of all interested parties by October 1, 1963; that a pre-hearing conference be held no later than October 10, 1963, to fix procedure for hearings on the consolidated dockets; and that no evidence be admitted regarding methods or plans to render service competitive with any of the consolidated dockets unless made part of an application, amendment, or supplement filed on or before September 16, 1963. Answers opposing this motion were filed on August 12, 1963, by El Paso Natural Gas Company; jointly by Pacific Lighting Gas Supply Company, Southern California Gas Company and Southern Counties Gas Company of California; and by Transwestern Pipeline Company.

Gulf Pacific's latest motion does not provide adequate basis for us to depart from our deadline of October 12, 1963, for the filing of all applications to be considered in the consolidated proceedings. That date was selected as a result of our deliberations in *El Paso Natural Gas Co., et al.*, Docket No. G–16235, *et al.*, Opinion No. 393, where we rejected the applications for the Rock Springs project primarily upon grounds that California's needs for gas could be met by existing supplies through 1968 and that other potential means of providing the additional service necessary after that date (which did not include that of Gulf Pacific, which had not been referred to in the Rock Springs record) showed promise of providing gas at substantial savings in price.

However, in the light of these determinations, and our conclusions based on our experience with the Rock Springs and Pemex (*Southern California Edison Co., et al.*, Docket No. CP61–172, *et al.*) proceedings that separate hearings in several major proceedings to serve the same area had led to greater delays than if they had been consolidated, it appears that the fastest way of bringing the question of new service to Southern California to a proper conclusion, as well as the best way of insuring that we reach the best resolution of these difficult matters, would be to provide a limited period of time for the filing of applications by other interested groups and then consolidating those applications for early and expedited hearing with the pending application of Gulf Pacific. We believed, and still believe, that the three months afforded to other parties for filing such

applications was, on balance, a reasonable one, i.e. it was the shortest feasible period in which to file completed applications of the type we had referred to in the Rock Springs Opinion.

We are in full agreement with Gulf Pacific that any such comparative proceeding must be conducted according to a firm schedule, subject to deviation only in extraordinary circumstances, and that such schedule should be geared to bringing the proceeding to a conclusion at the earliest possible moment. We consider, however, some of the scheduling dates proposed by Gulf Pacific (even if they are set back to allow for the October 12 date we are adhering to for filing competing applications) to be unrealistic if potential competitors are to have a real opportunity to prepare an adequate case. We shall now announce for the benefit of all present and potential participants the hearing schedule and basic procedures.

1. At the time Gulf Pacific and any other competitive applications are noticed for hearing we will provide a period of 15 days for filing petitions to intervene and notices of interventions. Such notice of hearing will be issued as soon after October 12, 1963, as we can determine what applications, if any, acceptable for filing are to be consolidated with Gulf Pacific's. Applications not substantially complete within the meaning of our Regulations will be rejected.

2. In the notice we will also provide that the consolidated hearing is to commence, within the meaning of Section 157.11 of our Regulations under the Natural Gas Act, at a date approximately 10 days after the expiration of the period within which petitions or notices of intervention may be filed, at which time the examiner will convene a hearing conference looking toward the expedition of further proceedings in accordance with the provisions of Section 1.18 (b) of our Rules.

3. All direct testimony and exhibits in support of, or in opposition to, an application by any applicant, intervener or the staff will be required to be served in writing on all participants, including 10 copies to staff counsel of record, and the presiding examiner within 90 days from the date of termination of the hearing conference. All testimony and exhibits on rebuttal will be required to be served in writing on the same persons within 45 days thereafter.

4. The oral portion of the hearing (which the Commission expects will start not later than June 1, 1964) will be scheduled to commence forty-five days after receipt of the rebuttal and will be limited to cross-examination, plus the introduction of such additional evidence as the examiner may permit upon being satisfied that it was not reasonably available to the offerer at the time of submitting his direct case, or is in response to material submitted on rebuttal and could not properly be anticipated at the time of introduction of the submitter's direct case, and would be of substantial value in resolving the issues in the proceeding. Cross-examination of direct or rebuttal witnesses should be scheduled to continue to the extent possible without hearing recesses between witnesses and/or parties.

5. Parties should be advised that except in extraordinary circumstances and for good cause shown the Commission will not look with favor upon the filing of any substantive amendments to their applications within five days of the commencement of, or during the hearing, and that the Commission may, if in its judgment to do so would be in the interest of orderly procedure and fairness to all parties, accept such amended applications only for consideration subsequent to the disposition of the remaining applications in the proceeding (see Section 1.11(a) and 157.11 of our Regulations).

6. Gulf Pacific has asked that we now rule that evidence as to any alternate means of bringing service to Southern California not part of a filing made

prior to the last date for filing, be excluded from the record. We cannot so foreclose parties in interest from introducing relevant evidence which they might believe shows that none of the applications should be granted. See, e.g., *El Paso Natural Gas Co., et al.*, Docket No. G–16235, *et al.* Opinion No. 393, issued July 12, 1963.

7. Many of the issues which will be involved have already been presented in two recent lengthy proceedings, the Rock Springs and the Pemex proceedings, in which most of the participants who will be actively involved in the consolidated proceedings were active participants. While we recognize that the issues in the consolidated proceeding will not be identical and that some new issues will be involved, we nonetheless expect that the familiarity of the major participants with the presentations in the two previous proceedings will be a significant factor in expediting hearings.

The Commission orders:

Except to the extent set forth above, the motions of June 7, 1963, June 21, 1963 and August 2, 1963 filed by Gulf Pacific in the above docket are hereby dismissed.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

IOWA PUBLIC SERVICE COMPANY, DOCKET NO. E–7115

ORDER AUTHORIZING THE ISSUANCE OF FIRST MORTGAGE BONDS

(Issued August 22, 1963)

Iowa Public Service Company (Applicant), incorporated under the laws of the State of Iowa and qualified to do business as a foreign corporation in the States of South Dakota and Nebraska, with its principal place of business in Sioux City, Iowa, filed an application on July 19, 1963, for an order pursuant to Section 204 of the Federal Power Act authorizing the issuance and sale at competitive bidding of $12,000,000, principal amount of First Mortgage Bonds, Series due 1993.

Applicant proposes to issue the Bonds under its Mortgage and Deed of Trust, dated as of June 1, 1946, as heretofore supplemented, and as to be further supplemented by a Ninth Supplemental Indenture to be dated as of September 1, 1963.

On or about August 27, 1963, Applicant proposes to invite sealed written bids for the purchase of the proposed issuance. All bids, whether from a single bidder or group of bidders, must be for the purchase of all the Bonds and must be submitted on the Form of Bid furnished by Applicant. Each bid for the proposed issuance of Bonds must specify (1) the interest rate to be borne by the Bonds, which rate shall be a multiple of ⅛th of 1% and (2) the price to be paid to Applicant for the Bonds, which price shall be not less than 97¼% nor more than 102¾% of the principal amount thereof, plus accrued interest on the Bonds from September 1, 1963, to the date of payment therefor and delivery thereof.

Unless postponed, all bids for the proposed issuance of Bonds must be presented to Applicant before 11 a.m., New York Time, on September 5, 1963, at the Office of Chemical Bank New York Trust Company, 10th Floor, 20 Pine Street, New York, N.Y. Unless Applicant shall reject all bids for the proposed issuance of securities (which it reserves the privilege to do) or shall exclude

a bid or bids for reasons specified in the statement of terms and conditions, it will accept the bid for purchase of the Bonds which results in the lowest annual cost of money to it. Each bid for the proposed issuance must be accompanied by a certified or official bank check or checks, payable in New York Clearing House funds, in the aggregate amount of $300,000.

Applicant states that the proceeds to be obtained from the proposed issuance of Bonds will be utilized to (1) repay temporary bank loans incurred and to be incurred prior to the sale of the new Bonds to secure funds for construction purposes (which are not expected to exceed $4,100,000) and (2) to provide a portion of the funds required for the construction or acquisition of permanent improvements, extensions and additions to the Applicant's property. Present plans, as indicated in the Company's application call for the expenditure of approximately $17,200,000 in 1963 for the construction or acquisition of property additions. The 1963 expenditures include an estimated $10,573,000 on the first unit of 138,700 kw rated capacity of the George Neal electric generating station now under construction along the Missouri River near Sioux City and scheduled for operation in May 1964 (total estimated cost $23,727,000); $1,529,000 for electric transmission line and substation additions; $2,725,000 for electric distribution line and substation additions; $1,183,000 for additions to gas properties; and $1,190,000 for miscellaneous additions.

Written notice of the application has been given to the South Dakota Public Utilities Commission, the Nebraska State Railway Commission, and the State Corporation Commission of Iowa, and to the Governor of each of those States. Notice has also been given by publication in the Federal Register on July 30, 1963 (28 F.R. 7736), stating that any person desiring to be heard or to make any protest with reference to the application should file a petition or protest on or before August 15, 1963, with the Federal Power Commission, Washington 25, D.C. No protest, petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant is a corporation organized and existing under the laws of the State of Iowa. It owns and operates facilities, among others, for the transmission and sale at wholesale of electric energy which is generated in Iowa and consumed in Nebraska, for the transmission of electric energy generated in Iowa and consumed in South Dakota, and for the transmission and sale at wholesale of electric energy generated in South Dakota and Nebraska and consumed in Iowa. All of these facilities are in addition to and do not include facilities used for the generation of electric energy, facilities used in local distribution or only for the transmission of electric energy in intrastate commerce or facilities for the transmission of electric energy consumed wholly by the transmitter; and Applicant is, therefore, a public utility within the meaning of that term as used in Section 204 of the Act.

(2) The proposed issuance and sale of Bonds, as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issue here involved is regulated by a State Commission within the meaning of Section 204 (f) of the Act; and the proposed issuance of securities, therefore, is not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(4) The proposed issuance and sale of Bonds, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by Applicant of service as a public utility and which will

not impair its ability to perform that service, and is reasonably appropriate for such purposes.

The Commission orders:

(A) The proposed issuance and sale of Bonds, upon the terms and conditions and for the purposes specified in the application, all as described above, are authorized subject to the provisions of this order.

(B) The proposed issuance and sale of Bonds at competitive bidding shall not be consummated until:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h) of those Regulations relating to affiliations, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations;

(ii) The Commission, by a further order, shall have approved the price to be received by Applicant for the proposed issuance of Bonds and the interest rate thereof.

(C) The authorization contained herein to issue Bonds shall expire unless the transaction thus authorized is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any matter whatsoever which is now pending or may come before this Commission.

(E) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect of any securities to which this order relates.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

IROQUOIS GAS CORPORATION, DOCKET NO. CP61-276

ORDER GRANTING EXTENSION OF TIME FOR COMPLETION OF FACILITIES

(Issued August 22, 1963)

The order of the Commission issued August 31, 1961, 26 FPC 451, in Docket No. CP61-276 granted a certificate of public convenience and necessity to Iroquois Gas Corporation (Iroquois) authorizing the construction and operation of facilities necessary for the development of underground natural gas storage in the Perrysburg Storage Field in western New York State. Said authorization was conditioned upon the completion and placing in operation of the subject facilities within twenty-eight months of the issuance of the order, or by the limiting date of December 31, 1963.

On July 5, 1963, Iroquois filed a petition for modification of the subject order by extending the prescribed completion date from December 31, 1963, to December 31, 1964, showing that construction of the authorized facilities has proceeded but that it is now apparent that the full development will not be needed during the year 1963.

The storage project is stated to be approximately 50 percent completed at this time and will be approximately 80 percent completed by December 31, 1963. The remaining work consists mainly of well drilling, reconditioning and reclaiming

operations and connecting pipe lines. It is stated that the extension of time proposed herein will enable the balance of the work to be completed in an orderly manner as needed.

The Commission finds:

It is appropriate in carrying out the provisions of the Natural Gas Act and the public interest will be served by granting the extension of time for completion of facilities as hereinafter ordered.

The Commission orders:

(A) An extension of time of one year, from December 31, 1963, to December 31, 1964, within which all facilities authorized by the Commission's order issued August 31, 1961, in Docket No. CP61–276 shall be completed and placed in actual operation be and the same is hereby granted.

(B) In all other respects, said order issued August 31, 1961, in Docket No. CP61–276 shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

THE OHIO FUEL GAS COMPANY, DOCKET NO. CP63–266

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 22, 1963)

On March 26, 1963, as supplemented on April 12, 1963, The Ohio Fuel Gas Company (Applicant) filed in Docket No. CP63–266 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of transmission facilities necessary to provide additional points of delivery for rendition of service to new industrial customers, during the calendar year 1963, all as more fully set forth in the application, as supplemented.

The application states that normally, industrial customers are served from distribution systems, but that from time to time Applicant is requested to serve additional industrial customers where transmission facilities provide the most economical and desirable source of supply. In order to expedite planning, reduce time and related expense of extending service, and to reduce the volume of applications, Applicant seeks authority herein for the installation of routine budget-type facilities such as main line taps or valve settings, lateral lines, and measuring and regulating equipment, all for the extension of service to miscellaneous directly-connected industrial customers.

The application further states that no facilities constructed as a result of authorization in this docket will be used to furnish boiler fuel service to any electric power company for the generation of electricity.

The cost of the proposed facilities will be limited to a maximum of $100,000 for any one project, with a maximum of $425,000 covering the entire construction. Deliveries will be limited to a maximum of 600,000 Mcf annually for any individual customer, and 1,200,000 Mcf annually for all customers connected hereunder.

Pursuant to due notice, a public hearing was held in Washington, D.C., on August 1, 1963, respecting the matters involved in and the issues presented by the application herein. No protest to the granting of the application or petition

to intervene has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, The Ohio Fuel Gas Company, an Ohio corporation having its principal place of business in Columbus, Ohio, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit prior to March 1, 1964, a statement showing by projects: (a) a description of the facilities constructed pursuant to this authorization, (b) the location of said facilities, including delivery points, (c) actual final costs of facilities, (d) names of customers served, (e) volume of gas sold and revenues from each customer and (f) nature of use of gas.

(6) The authorization hereinafter granted should be limited to construction during the calendar year 1963, and the total expenditures for facilities constructed thereunder should be limited to $425,000, with no single project to exceed a cost of $100,000, and the total deliveries of natural gas thereunder should be limited to a maximum of 1,200,000 Mcf annually, with deliveries to any individual customer limited to a maximum of 600,000 Mcf annually.

(7) The sales and deliveries of natural gas through the facilities herein authorized should be subject to curtailment and interruption if required to meet the existing or future contract demands of The Ohio Fuel Gas Company's customers for firm resale service.

(8) A request during the public hearing by Staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30 (c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, The Ohio Fuel Gas Company, to construct during the calendar year 1963, the facilities hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, and to operate such facilities only to deliver natural gas to new direct industrial customers along or in the vicinity of Applicant's existing pipeline system.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general

terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(C) Applicant shall submit, prior to March 1, 1964, a statement showing by projects: (a) a description of the facilities constructed pursuant to this authorization, (b) the location of said facilities, including delivery points, (c) actual final costs of facilities, (d) names of customers served, (e) volume of gas sold and revenues from each customer and (f) nature of use of gas.

(D) The authorization granted in paragraph (A) above is hereby limited to maximum total expenditures of $425,000, with no single project to exceed a cost of $100,000, and total deliveries of natural gas thereunder are hereby limited to a maximum of 1,200,000 Mcf annually, with deliveries to any individual customer limited to a maximum of 600,000 Mcf annually. Further, none of the facilities constructed pursuant to this authorization shall be used for the delivery of natural gas for use as boiler fuel for the generation of electricity.

(E) The sales and deliveries of natural gas through the facilities herein authorized shall be subject to curtailment and interruption if required to meet the existing or future contract demands of The Ohio Fuel Gas Company's customers for firm resale service.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

AMENDING REGULATIONS TO GOVERN THE PRESERVATION OF RECORDS OF PUBLIC UTILITIES AND LICENSEES AND PRESCRIBING REGULATIONS TO GOVERN THE PRESERVATION OF RECORDS OF NATURAL GAS COMPANIES, DOCKET NO. R-195

ORDER NO. 258-A

ORDER AMENDING REGULATIONS TO GOVERN PRESERVATION OF RECORDS OF PUBLIC UTILITIES AND LICENSEES

(Issued August 22, 1963)*

On December 12, 1962, after notice of proposed rule making and consideration of comments submitted in response thereto, the Commission issued Order 258, in this docket, amending regulations to govern preservation of records of public utilities and licensees, Part 125—Preservation of Records of Public Utilities and Licensees, of Subchapter C—Accounts, Federal Power Act, of Chapter I of Title 18 of the Code of Federal Regulations, which became effective December 12, 1962 (27 F.R. 12241).

That order inadvertently omitted a paragraph from Section 125.2—General instructions. The omitted paragraph, (d) is similar to paragraph 225.2(d) of the Regulations to Govern the Preservation of Records of Natural Gas Companies, also promulgated in Order 258.

The Commission finds:

It is necessary and appropriate for the purposes of the Federal Power Act that Section 125.2—General instructions, of Part 125—Preservation of Records of Public Utilities and Licensees, of Subchapter C—Accounts, Federal Power Act, of Chapter I, Title 18 of Code of Federal Regulations be amended as hereinafter provided.

---

*Published in the Federal Register on August 29, 1963 (28 F.R. 9477).

The Commission acting pursuant to the Federal Power Act, as amended, particularly Sections 301, 304 and 309 thereof (49 Stat. 854, 855 and 858; 16 U.S.C. 825, 825c and 825h) *orders:*

(A) Section 125.2—General instructions, of Part 125—Preservation of Records of Public Utilities and Licensees, of Subchapter C—Accounts, Federal Power Act, of Chapter I of Title 18 of the Code of Federal Regulations is amended to include, following Paragraph (c) of Section 125.2, the following Paragraph (d):

(d) *Index of records.* At each office of the public utility or licensee where records are kept or stored, such records as are herein required to be preserved shall be so arranged, filed and currently indexed that they may be readily identified and made available to representatives of the Commission.

(B) This order shall be effective upon the date of issuance thereof.

(C) The Secretary of the Commission shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

PUGET SOUND POWER & LIGHT COMPANY AND PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, WASHINGTON, PROJECT NO. 943

ORDER FURTHER AMENDING LICENSE

(Issued August 22, 1963)

Joint application was filed March 18, 1963, under Section 6 of the Federal Power Act, by Puget Sound Power & Light Company and Public Utility District No. 1 of Chelan County, Washington, joint licensees for Project No. 943, for amendment of Article 27 of their license for the project and to render inapplicable to such license amortization reserve Regulation 17 in effect when the license was issued under the Federal Power Act.

The purpose of the amendment is to make the license subject to the current regulations of the Commission with respect to the establishment and maintenance of a reserve for amortization.

The Commission finds:

(1) Public notice of the application has been given. No protests have been received.

(2) The license for Project No. 943, amended as hereinafter provided, is in the public interest.

The Commission orders:

(A) The license for Project No. 943 is hereby amended, effective as of January 21, 1930, the effective date of the license, as follows:

PARAGRAPH I. The paragraph of the license beginning "NOW, THEREFORE" is amended by inserting the words "except Regulation 17" after the phrase "being subject to all the terms and conditions of the Act and of the rules and regulations of the Commission pursuant thereto as amended and made effective on the first day of May, 1928".

PARAGRAPH II. Article 27 of the license is amended to read as follows:

ARTICLE 27. After the first 20 years of operation of the project under the license, namely, July 31, 1952,[1] six (6) percent per annum shall be the spec-

[1] In its order decided July 28, 1952, in the *Matter of Puget Sound Power & Light Company*, EF 943 (3 FPC 231, 235) the Commission fixed July 31, 1932, as the end of the construction period for the entire project, including the transmission lines.

ified rate of return on the net investment in the project for determining surplus earnings of the project for the establishment and maintenance of amortization reserves, pursuant to section 10(d) of the Act; one-half of the project surplus earnings, if any, accumulated after July 31, 1952, in excess of six (6) percent per annum on the net investment, shall be set aside in a project amortization reserve account as of the end of each fiscal year, provided, that, if and to the extent that there is a deficiency of project earnings below six (6) percent per annum for any fiscal year or years after July 31, 1962, the amount of such deficiency shall be deducted from the amount of any surplus earnings accumulated thereafter until absorbed, and one-half of the remaining surplus earnings, if any, thus cumulatively computed, shall be set aside in the project amortization reserve account; and the amounts thus established in the project amortization reserve account shall be maintained therein until further order of the Commission.

(B) This amendment in the manner set out above shall not operate to alter or amend the license in any other respect, and shall not in any way constitute a waiver of any other part, provision or condition of the license.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgment of the acceptance of this license amendment, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP63-136; UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP63-137

FINDINGS AND ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 22, 1963)

On November 19, 1962, as supplemented on March 8, 1963, Transcontinental Gas Pipe Line Corporation (Transco) in Docket No. CP63-136 and on November 19, 1962, as supplemented on February 15, 1963, United Gas Pipe Line Company (United) in Docket No. CP63-137, filed applications pursuant to Section 7(c) of the Natural Gas Act for certificates of public convenience and necessity authorizing the construction and operation of certain facilities on their respective transmission systems in Terrebonne Parish, Louisiana, in order to deliver gas purchased by Transco and United from various fields in southern Louisiana, to the North Terrebonne Gas Processing Plant, Terrebonne Parish, Louisiana, for the extraction of liquid hydrocarbons, all as more fully set forth in the respective applications.

The plant, to be built in the Gibson Field, Terrebonne Parish, will be owned by many of the independent producers supplying Transco and United. Shell Oil Company will be the plant operator. The applications indicate that the gas purchased and transported by Transco and United from these producers in various fields will be processed in said plant by the producers who will keep the liquids and return the gas to United and Transco, as provided in the gas purchase contracts between United and Transco and the independent producers.

United and Transco request authorization to install valves and pipe necessary to deliver gas to said plant. The estimated costs of facilities for Transco and

United are $25,500 and $16,618, respectively. Applicants will be reimbursed for all costs by the plant owners.

Pursuant to due notice, a public hearing was held in Washington, D.C., on August 12, 1963, respecting the matters involved in and the issues presented by the applications, as supplemented, herein. No petition to intervene or protest to the granting of the applications has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 18, 1948, in Docket No. G–1143 (7 FPC 139).

(2) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 20, 1942, in Docket No. G–216 (3 FPC 3).

(3) The facilities hereinbefore described, as more fully described in the applications, as supplemented, in these proceedings, are to be used for the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission and the construction and operation thereof by Transco and United are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) Transco and United are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) The construction and operation of the proposed facilities are required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

(6) Public convenience and necessity require that the certificates issued hereinafter and the rights granted thereunder be conditioned upon Transco's and United's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(7) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Certificates of public convenience and necessity be and the same are hereby issued authorizing Applicant, Transcontinental Gas Pipe Line Corporation, and Applicant, United Gas Pipe Line Company, to construct and operate the proposed facilities in order to transport and deliver natural gas as hereinbefore described, all as more fully described in the applications, as supplemented, in Docket Nos. CP63–136 and CP63–137, upon the terms and conditions of this order.

(B) The certificates issued by paragraph (A) above and the rights granted thereunder are conditioned upon Transco's and United's compliance with all

applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP63-330

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 23, 1963)

On May 31, 1963, Panhandle Eastern Pipe Line Company (Applicant) filed in Docket No. CP63-330 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a new delivery point and the necessary metering and regulating facilities for delivery of natural gas to the Indiana Gas and Water Company, Inc. (Indiana Gas), all as more fully represented in the application in this proceeding.

Applicant proposes to construct the new facilities in Clay Township, Hamilton County, Indiana, to sell natural gas for resale for residential and commercial general and space heating purposes in Clay Township. The third year annual requirement is estimated to be 149,319 Mcf of natural gas, and no change is contemplated in Indiana Gas' presently authorized contract demand. Indiana Gas informed Applicant that it maintains and operates LPG peak-shaving with substantial storage, equipment sufficient to render satisfactory service to its present and future customers without an increase in contract demand. The total estimated cost of the facilities proposed by Applicant is $20,000, to be financed from funds on hand.

Pursuant to due notice, a public hearing was held in Washington, D.C., on August 8, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to be the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof as well as the sale of natural gas by Applicant, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the related sale of natural gas are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the authorization hereinafter granted that Applicant submit a statement showing the total cost of its installed facilities within 90 days after completion thereof and showing the initial date of service by means of such facilities.

(6) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), and (e) of Section 157.20 of such Regulations.

(7) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Panhandle Eastern Pipe Line Company, to construct and operate natural gas facilities, to sell and deliver natural gas to Indiana Gas and Water Company, Inc. as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), and (e) of Section 157.20 of such Regulations.

(C) Applicant shall submit a statement showing the total cost of the installed facilities within 90 days after completion and showing the initial date of service by means of such facilities.

(D) The facilities hereby authorized shall be constructed and placed in actual operation and the sale of natural gas shall commence as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within one year from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

SINCLAIR OIL & GAS COMPANY, DOCKET NO. G-9291 AND G-9292, ET AL.

ORDER GRANTING REHEARING FOR PURPOSES OF RECONSIDERATION

(Issued August 23, 1963)

On July 26, 1963, a joint petition for rehearing was filed by Long Island Lighting Company and The United Gas Improvement Company of this Commission's order, issued July 1, 1963, 30 FPC 5, conditionally approving a settle-

ment proposal filed by Sinclair Oil & Gas Company (Sinclair) on April 8, 1963. On July 31, 1963, the Public Service Commission of New York filed a similar petition. Each of said petitions requested this Commission to reconsider the manner by which it ordered Sinclair in said order of July 1, 1963, to distribute refunds to its pipeline purchasers. In its settlement proposal, Sinclair set forth three alternative methods of distribution of the agreed amount of refunds. It would appear that the petitioners object to this Commission not having adopted one of the three proposed methods. In our order of July 1, 1963, we said that the three alternative methods of distribution did not appear to be feasible or proper in the circumstances. However, petitioners aver that reconsideration of said alternative methods may cause us to reach a different conclusion. Accordingly, because of said averments, and to allow further time for reconsideration of the proposed methods of distribution of refunds in the light of any comments which might be filed by the other parties, it is appropriate that we grant rehearing in these proceedings.

The Commission orders:

Rehearing is hereby granted in these proceedings to permit reconsideration of Sinclair's settlement proposal, and the issues raised by the petitions for rehearing filed herein.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP63-111

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 23, 1963)

On October 31, 1962, Tennessee Gas Transmission Company (Applicant) filed in Docket No. CP63-111 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to sell and deliver an additional 539 Mcf of natural gas per day to Lynn Gas Company (Lynn), an existing customer of Tennessee, all as more fully set forth in the application.

It appears that the proposed additional service will increase Lynn's natural gas supply from 10,906 Mcf to 11,445 Mcf per day (at 14.73 psia) and will enable Lynn to meet the peak day requirements of its customers, particularly during the Winter months. The proposed additional service can be rendered on a long term basis through utilization of a portion of the unallocated pipeline capacity that the Commission authorized Applicant to construct and operate in Docket No. CP63-247.

Pursuant to due notice, a public hearing was held in Washington, D.C., on August 13, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Tennessee Gas Transmission Company, a Delaware Corporation having its principal place of business in Houston, Texas, is a "natural-gas

company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The sale and delivery of natural gas hereinbefore described, as more fully described in the application in this proceeding, are to be made in interstate commerce, subject to the jurisdiction of the Commission, and will, therefore, be subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The sale and delivery proposed by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Tennessee Gas Transmission Company, to sell and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b) and (e) of Section 157.20 of such Regulations.

(C) The sale and delivery hereby authorized shall be undertaken, as provided by paragraph (b) of Section 157.20 of the Commission Regulations, within six months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP63-328

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 23, 1963)

On May 28, 1963, Tennessee Gas Transmission Company (Applicant) filed in Docket No. CP63-328 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and the sale and delivery of additional volumes of natural gas to four existing general service customers and to one new contracted demand customer, all as more fully set forth in the application.

The proposed service is as follows:

Type of service	*Proposed additional service Mcf/day at 14.73 psia*
General Service customers:	
Clarksville, Tennessee (City of)	880
North Shore Gas Company:	
Gloucester Service area	281
Pennsylvania Gas & Water Company	2,033
Western Kentucky Gas Company:	
Danville service area	335
Lebanon service area	42
Contracted demand customers:	
T. W. Phillips Gas and Oil Co.	2,040
Total proposed additional service	5,611

The proposed service is required to enable the foregoing customers to meet their estimated natural gas requirements commencing with the 1963–64 winter heating season. The increased requirements of the four existing customers are a result of recent market studies that reflect requirements in excess of those shown in Applicant's application in Docket No. CP63–247. The proposed service can be rendered by Applicant through utilization of a portion of the unallocated annual average day delivery capacity provided in Docket No. CP63–247.

Applicant proposes to construct and operate a 4-inch flow control meter tube in an existing meter station building at the terminus of Applicant's Pittsburgh spur at an estimated cost of $9,500 to serve T. W. Phillips Gas and Oil Company, a new customer. T. W. Phillips' major source of supply has heretofore been from local producers; however, due to the decline in deliveries from these fields, it is necessary for T. W. Phillips to purchase a firm supply from Applicant.

Pursuant to due notice, a public hearing was held in Washington, D.C., on August 8, 1963, respecting the matters involved in and the issues presented by the application herein. No protest to the granting of the application has been received. Pennsylvania Gas and Water Company filed a petition to intervene in support of the application which states that petitioner does not object to the hearing and disposition of the subject application under the abridged hearing procedure but that petitioner desires to preserve its rights to appear and to participate fully in the event that the subject application is considered in a formal hearing. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of July 15, 1947, in Docket No. G–910 (6 FPC 777).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof and the sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the sale of natural gas by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c) (1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Tennessee Gas Transmission Company, to construct and operate the proposed facilities and to sell natural gas, as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4), and (e) of Section 157.20 of such Regulations.

(C) The construction authorized in paragraph (A) above shall be completed and the facilities placed in actual operation, as required by Section 157.20(b) of the Commission's Regulations under the Natural Gas Act, within six months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G–13221, ET AL.; AGNES CULLEN ARNOLD, ET AL., DOCKET NO. G–17207; SOUTHERN NATURAL GAS COMPANY, DOCKET NO. G–18129; ZAPATA OFF-SHORE COMPANY, DOCKET NO. G–18369; ISAAC ARNOLD, ET AL., DOCKET NO. CI60–237; SUNRAY DX OIL COMPANY, DOCKET NO. CI60–250; C. H. LYONS, SR., ET AL., DOCKET NO. CI60–329; HARVEY PELTIER, DOCKET NO. CI60–505; UNION TEXAS PETROLEUM, A DIVISION OF ALLIED CHEMICAL CORPORATION, DOCKET NO. CI61–462; M. F. MCCAIN, ET AL., DOCKET NO. CI62–582

ORDER SEVERING PROCEEDINGS, CONDITIONALLY APPROVING SETTLEMENT AGREEMENTS AND CONDITIONALLY ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 23, 1963)

Motions for severance, for approval of settlement proposals and issuance of certificates in their respective dockets were filed in the above-captioned proceedings on May 10, 1963, by Harvey Peltier, (Peltier) on June 27, 1963, by Union Texas Petroleum, a Division of Allied Chemical Corporation (Union Texas), M. F. McCain, *et al.* (McCain), C. H. Lyons, Sr., *et al.* (Lyons), Agnes Cullen Arnold, *et al.* (A. Arnold) and Isaac Arnold, *et al.* (I. Arnold), on June 28, 1963

by Sunray DX Oil Company (Sunray), on July 15, 1963, by Southern Natural Gas Company (Southern) and on August 1, 1963, by Zapata Off-Shore Company (Zapata).

The settlement proposals are similar to those previously approved by the Commission[1] and provide for the following:

(1) Effective April 1, 1963, the rates under Peltier's Rate Schedule No. 7 (Docket No. CI60-505), A. Arnold's Rate Schedule No. 3 (Docket No. G-17207), I. Arnold's Rate Schedule No. 1 (CI60-237), Union Texas' Rate Schedule No. 57 (CI61-462), Lyons Rate Schedule No. 14 (CI60-329) and Sunray's Rate Schedule No. 196 (CI60-250) will be 20.625¢ per Mcf. Effective August 1, 1963, the rate under Zapata's Rate Schedule No. 1 (Docket No. G-18369) will be 19.0¢ per Mcf.[2] The presently effective rate under McCain's Rate Schedule No. 4 (CI62-582) and Southern's Rate Schedule No. F-4 (G-18129) will remain at 20.25¢ per Mcf.[3]

(2) A moratorium on rate increase filings from April 1, 1963, through March 31, 1968, inclusive in all dockets except Southern's Docket No. G-18129 in which case the moratorium runs from the date of initial delivery, May 22, 1959, through July 31, 1968, and Zapata's Docket No. G-18369 in which case the moratorium is proposed to run from August 1, 1963 through July 31, 1968.

(3) Extension of make-up periods for gas paid for but not taken to 4 years in Docket Nos. CI60-237, CI60-250, and CI60-505.[4]

The settlement rates are subject to prospective changes during the moratorium periods according to any applicable area rate determined in the South Louisiana Area Rate Proceeding, AR61-2.

Rate increase filings may be made (1) prior to the end of moratorium periods to the extent that the maximum suspension period under Section 4(e) of the Natural Gas Act may be extended beyond 5 months or the Commission may hereafter be authorized to lengthen such suspension period, and (2) at any time for reimbursement of one-half the amount of increased State and Federal taxes or payments in lieu of taxes, provided that such increase does not exceed the reimbursement to which the applicant is entitled by contract.

Each of these applicants is presently selling under a temporary authorization without refund condition and none of these applicants proposes to make refunds for amounts above the settlement rates collected for deliveries made prior to April 1, 1963, or in Zapata's case, August 1, 1963.

Since payments for gas delivered by each of the applicants except Zapata subsequent to March 31, 1963, have been made at rates above the settlement rates the differences will be refunded by each of said applicants to the various pipeline purchasers within 30 days from the date of this order.[5]

We note one additional problem. Zapata proposes to make its reduced rate effective August 1, 1963 and to extend its moratorium period from August 1, 1963 through July 31, 1968. The various settlement proposals presented by

[1] See orders in *Union Texas Petroleum et al.*, Docket No. G-13221, *et al.*, issued June 24, 1963, 29 FPC 1279 and 1283, concerning Union Oil Company of California and Tenneco Corporation and order issued August 7, 1963, 30 FPC 456, concerning Humble Oil & Refining Company.

[2] All prices expressed inclusive of tax reimbursement and all volumes expressed at 15.025 psia.

[3] See Appendix for further details.

[4] The contracts in Docket Nos. G-17207, G-18129, and CI62-582 do not contain take-or-pay-for provisions. The contract in Docket No. CI61-462 contains a provision for make-up of gas not taken for the life of the contract. The contracts in Docket Nos. CI60-329 and G-18369 provide for a 5-year make-up period.

[5] Except in Docket Nos. G-18129 and CI62-582 in which the settlement rates are the presently effective rates.

producers in these consolidated proceedings have progressively extended the effective date of the reduced settlement rates until, in this case, Zapata has sought an August 1, 1963, effective date. The effect is that those producers who have filed settlement proposals at a later date stand to obtain an advantage not enjoyed by those producers who have, in good faith, filed earlier, since refunds would be made only in those instances where the temporary authorizations contained refund conditions. We recognize that although Zapata and the producers filing later propose to extend the moratorium periods to five years in any event, the Area Rate Proceeding, Docket No. AR61–2, will certainly be completed prior to that time. The extended moratorium period therefore will have little value.

Accordingly, we hereby limit our approval of the Zapata settlement proposal so as to make the reduced rates effective no later than April 1, 1963. Consistent therewith, we hereby provide that the moratorium period shall extend from April 1, 1963 through March 30, 1968 for Zapata. Since payments for gas delivered subsequent to March 30, 1963 may have been made at rates above the settlement rate, the differences will be refunded to Transcontinental Gas Pipe Line Corporation within 30 days from the date of this order.

Answers were filed by the Pennsylvania Public Utility Commission (Pennsylvania) opposing the settlement proposals of Lyons (July 10, 1963), Union Texas (July 10, 1963) and Peltier (May 17, 1963). However, on July 31, 1963, Pennsylvania withdrew its objections to these settlement proposals. No other party filed an answer to any of these motions.

We find these settlement proposals, as herein modified, in the public interest.

In keeping with our present policy we shall require that the applicants pay interest on the amounts to be refunded at 7 per cent per annum, such interest to accrue through the last day of the month in which the respective settlement proposals were filed.

The settlement provisions for adjustments in rates according to our order or orders in Area Rate Proceeding, Docket No. AR61–2, seek to anticipate in part the nature of our final determinations in that matter. It is clear that we shall make no determinations in this matter which will control our conclusions in Docket No. AR61–2. The settlement proposal also provides that adjustments in price growing out of the Area Rate Proceeding, Docket No. AR61–2, should go into effect upon conclusion of judicial review of our final order. However, we cannot now commit the Commission to conditionally staying the effectiveness of its final order in Docket No. AR61–2. These matters should be decided at the conclusion of that proceeding and our approval of the settlement will be so conditioned.

In accordance with the above we shall sever these individual dockets from the consolidated proceeding Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*, omit the intermediate decision in regard to these dockets [6] and issue certificates of public convenience and necessity in accordance with the applications, settlement proposals and conditions of this order.

The Commission finds:

(1) Each of the applicants herein is a natural-gas company within the meaning of the Natural Gas Act, and is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

---

[6] The hearings in the Union Texas Petroleum, *et al.* consolidated proceeding concluded July 25, 1963.

(2) The proposed sales of natural gas are subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Each of the applicants herein is able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, are required by the public convenience and necessity and are in the public interest upon the conditions set forth below, and certificates should be issued as ordered below.

(5) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

(6) No party has opposed the waiver of the intermediate decisions in these proceedings.

The Commission orders:

(A) The motions for waiver of the intermediate decisions are granted.

(B) The matters in the Docket Nos. G–17207, G–18129, G–18369, CI60–237, CI60–250, CI60–329, CI60–505, CI61–462, CI62–582 are hereby severed from the consolidated proceeding, Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*

(C) Certificates of public convenience and necessity are hereby issued upon the conditions set forth herein to the applicants for the sales of natural gas in interstate commerce for resale as proposed and as modified by the settlement proposals and this order, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in the applications and settlement proposals herein.

(D) The certificates issued by paragraph (C) above, are granted upon the express condition that the applicants comply fully with the terms of the settlement proposals which settlements are expressly approved, as modified by this order.

(E) Within 30 days after making the refunds required by the terms and conditions of this order and the settlement proposals the applicants shall report to the Commission, in triplicate, the amount of the refunds made to each pipeline purchaser, showing separately the amount of principal and interest so paid and the bases used for such determinations, together with releases from the purchasers showing receipt of the refunds in conformity to the settlements and the conditions of this order.

(F) Upon full compliance of the applicants with all the terms of this order and of the settlement proposals as modified, the applicants shall be relieved of any further refund obligations in these certificate proceedings and the proceedings in Docket Nos. G–17207, G–18129, G–18369, CI60–237, CI60–250, CI60–329, CI60–505, CI61–462 and CI62–582 shall terminate.

(G) The certificates herein issued are not transferable and shall be effective only so long as the applicants continue the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(H) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or Part 154 of the

Regulations thereunder; *Provided, however*, that the 30-day notice provision of Part 154.94(b) and the detailed submittal requirements of Part 154.94(f) are hereby waived insofar as they apply to the filing of reductions in rates as required by this order and the settlement proposals.

(I) The grant of certificates herein and approval of the settlement proposals is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the applicants, particularly any proceeding under Section 5 of the Natural Gas Act and is without prejudice to claims or contentions which may be made by the Commission, applicants, the Commission staff, or any affected party herein in any other proceeding.

(J) Interest on amounts to be refunded to the pipeline purchasers shall accrue through the last day of the month in which the respective settlement proposals were filed, May 31, 1963 in Docket No. CI60–505, June 30, 1963 in Docket Nos. G–17207, CI60–237, CI60–250, CI60–329 and CI61–462 and August 31, 1963 in Docket No. G–18369.

APPENDIX

Seller	R.S. No.	Docket No.	Purchaser	Current rate (¢/Mcf)	Proposed settlement rate (¢/Mcf)
Agnes Cullen Arnold, *et al*...	3	G–17207	United Gas Pipe Line Company.	23.55	20.625
Southern Natural Gas Company.	F–4	G–18129	United Gas Pipe Line Company.	20.25	20.25
Zapata Off-Shore Company...	1	G–18369	Transcontinental Gas Pipe Line Corporation.	21.4	19.0
Isaac Arnold, *et al*.....	1	CI60–237	Tennessee Gas Transmission Company.	22.8333	20.625
Sunray DX Oil Company...	196	CI60–250	United Gas Pipe Line Company.	22.25	20.625
C. H. Lyons, Sr., *et al*.....	14	CI60–329	Transcontinental Gas Pipe Line Corporation.	22.15	20.625
Harvey Peltier.....	1	CI60–505	Transcontinental Gas Pipe Line Corporation.	23.25	20.625
Union Texas Petroleum.....	57	CI61–462	Transcontinental Gas Pipe Line Corporation.	21.15	20.625
M. F. McCain, *et al*.....	4	CI62–582	United Gas Pipe Line Company.	20.25	20.25

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

UNITED FUEL GAS COMPANY, DOCKET NO. CP61–21

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 23, 1963)

On April 22, 1963, United Fuel Gas Company (Applicant) filed in Docket No. CP61–21 an application to amend the Commission's order issued October 14, 1960, in said docket to operate an experimental 1,050 horsepower turbine driven centrifugal compressor unit on a permanent basis at Applicant's Spencer compressor station, Roane County, West Virginia, and to retire three 500 horsepower compressor units at said station, all as more fully set forth in the application to amend.

The order issued October 14, 1960, 24 FPC 885, authorized Applicant to install and operate for test purposes the experimental 1,050 horsepower unit and to retire three 1000 horsepower units of the 4,500 horsepower then installed at the Spencer station. Applicant states that the test operating period has been

completed and that the manufacturer has completed its final inspection and tested and re-installed the new unit at Spencer station. Applicant states that the new unit has operated satisfactorily, and, therefore, requests authorization to operate said unit on a permanent basis and to retire the three remaining 500 horsepower units.

Applicant states further that the annual operating costs for the new unit are estimated to be $46.122, or approximately $57,000 less each year than operation with the three old 500 horsepower units.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on July 16, 1963 (28 F.R. 7270). No protest, petition to intervene or request for hearing has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order, issued October 14, 1960, in Docket No. CP61–21 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order, issued October 14, 1960, in Docket No. CP61–21 be and the same is hereby amended to authorize Applicant to operate an experimental 1,050 horsepower turbine driven centrifugal compressor unit on a permanent basis at Applicant's Spencer station and to retire three 500 horsepower compressor units at said station, all as hereinbefore described and as set forth in the subject application to amend.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY, DOCKET NO. CP63-312

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued August 26, 1963)

On May 20, 1963, Central Illinois Public Service Company (Applicant) filed in Docket No. CP63–312 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Natural Gas Pipeline Company of America (Natural) to establish physical connection of its transmission facilities with the proposed facilities of and to sell natural gas to Applicant for resale and distribution in the Villages of Strasburg and Stewardson, and environs, Shelby County, Illinois, all as more fully set forth in the application.

Applicant proposes to construct and operate lateral transmission facilities from a proposed metering and regulating station of Natural to the villages. Applicant will also construct and operate the necessary distribution facilities to provide the proposed service.

The application shows the combined estimated third year annual and peak day natural gas requirements for the two villages are 89,975 Mcf and 858 Mcf, respectively.

The total estimated cost of transmission and distribution facilities to be constructed by Applicant for the proposed service is $239,240, which cost will be financed from internal funds.

Applicant has received appropriate authorization from the two villages and from the Illinois Commerce Commission.

On May 29, 1963, Natural filed an answer to the subject application stating that it is willing to provide the proposed service and the new point of connection. Natural estimates its cost of installing facilities at the new delivery point at $18,060.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on July 13, 1963 (28 F.R. 7238). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

(1) Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 13, 1942, in Docket No. G-235 (3 FPC 830).

(2) Applicant, Central Illinois Public Service Company, is a public utility duly organized and existing under the laws of the State of Illinois and is authorized to engage in the business of distributing and selling natural gas within said State.

(3) It is necessary and desirable in the public interest that Natural be directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to sell and deliver up to 858 Mcf of natural gas per day to Applicant, as set forth in the application and as hereinafter ordered and conditioned.

(4) Applicant should be prepared to receive natural gas from Natural within one year from the date of issuance of this order.

(5) The requirement that Natural serve Applicant, as proposed, will not place any undue burden upon Natural nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Natural Gas Pipeline Company of America be and it is hereby directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to sell and deliver up to 858 Mcf of natural gas per day to Applicant, all as hereinbefore described and as more fully set forth in the application.

(B) Applicant shall be prepared to receive natural gas from Natural within one year from the date of issuance of this order.

(C) Natural shall report to the Commission in writing the date of commencement of service to Applicant within ten days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP63-288

FINDINGS AND ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 26, 1963)

On July 23, 1963, the Commission issued a certificate in Docket No. CP63-288 to El Paso Natural Gas Company (Applicant) authorizing the construction and

operation of a measuring and regulating station and the delivery of natural gas to Moon Lake Electric Association, Inc. (Moon Lake), for use in Moon Lake's electric generating plant located near Rangely, Colorado. Paragraph (2) of the findings appearing on page 390 of the subject order recites that the measuring and regulating facilities ". . . are to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission . . ." Inasmuch as the sale of natural gas by Applicant to Moon Lake is a direct sale, rather than a sale for resale, it is not subject to the jurisdiction of the Commission and is not subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

The Commission orders:

(A) Findings paragraph (2) of the Commission's order issued July 23, 1963, 30 FPC 389, in Docket No. CP63–288 be and the same is hereby amended to read as follows:

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(B) In all other respects the order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

MONTANA-DAKOTA UTILITIES CO., DOCKET NO. CP63–310

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 26, 1963)

On May 17, 1963, Montana-Dakota Utilities Co. (Applicant) filed in Docket No. CP63–310 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities necessary to render natural gas service to the U.S. Government and its employees at the government-owned townsite of Riverdale, McLean County, North Dakota, all as more fully set forth in the application.

Applicant proposes to construct and operate approximately 11.7 miles of 2-inch and 3-inch lateral pipeline extending from its existing lateral serving Underwood, North Dakota, to the city gate station at Riverdale. Applicant will also construct and operate a distribution system and a city gate station for Riverdale.

The application indicates that the third year estimated peak day and annual requirements for Riverdale are 550 Mcf and 53,420 Mcf, respectively.

The proposed service will be rendered pursuant to a contract dated January 14, 1963, between Applicant and the U.S. Government.

Applicant states that a central steam plant is presently being utilized to supply the heating requirements at Riverdale and that the Government will abandon said plant when natural gas service commences.

The application shows the total estimated cost of the proposed facilities is $176,700, which cost will be financed through internally generated funds and a $48,825 contribution in aid of construction by the Government.

By letter dated June 7, 1963, Applicant was granted a temporary certificate authorizing the subject proposals.

Pursuant to due notice, a public hearing was held in Washington, D.C., on August 6, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Montana-Dakota Utilities Co., a Delaware corporation having its principal place of business in Minneapolis, Minnesota, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 22, 1946, in Docket Nos. G–220 and G–402 (5 FPC 64).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the subject facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Montana-Dakota Utilities Co., to construct and operate the subject facilities necessary to render natural gas service for Riverdale as hereinbefore described, all as more fully described in the application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. G-19461

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 26, 1963)

On May 24, 1963, Panhandle Eastern Pipe Line Company (Applicant) filed in Docket No. G-19461 an application to amend the Commission's order, issued May 25, 1961, in said docket to renew and extend for one year the certificate authorization granted by said order, all as more fully set forth in the subject application to amend.

The subject order, among other things, authorized Applicant to construct and operate facilities to test and develop by May 25, 1963, the Waverly Storage Field, located in Morgan and Sangamon Counties, Illinois. Applicant was authorized to inject and withdraw up to 6,000,000 Mcf of natural gas.

To meet a portion of the increased 1963-64 winter requirements of its utility customers, for which Applicant is preparing a substantial expansion application, Applicant seeks a one year extension of renewal of the testing and developmental authorization. The application indicates that it is essential that storage cycling be continued while the said expansion application is being prepared and also during the period in which such application is pending before the Commission. Applicant states further that it has not yet injected the full 6,000,000 Mcf of gas authorized by the subject order. Further, it appears that Applicant has the capacity to provide the injection volumes.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on July 9, 1963 (28 F.R. 6998). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order, issued May 25, 1961, in Docket No. G-19461 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued May 25, 1961, in Docket No. G-19461 be and the same is hereby amended to renew and extend to May 25, 1964, the certificate authorization to test and develop the subject storage field, all as hereinbefore described and as set forth in the subject application to amend.

(B) The extension and renewal authorized by paragraph (A) above is granted subject to the same conditions heretofore imposed by the order of May 25, 1961, issued in this docket.

(C) In all other respects said order shall remain in full force and effect.

OPINION NO. 401

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP62-161

OPINION AND ORDER REVERSING IN PART AND ADOPTING IN PART INITIAL DECISION OF PRESIDING EXAMINER DETERMINING JURISDICTIONAL ISSUES

(Issued August 26, 1963)*

Syllabus

1. Section 2(7) provides no clear or adequate test for determining whether *present* sales in Jackson District are in interstate commerce. P. 563.
2. Most important consideration leading to conclusion that sales are in interstate commerce is that gas sold is part of a single, uniform stream flowing through United's interstate pipeline from point of purchase in Louisiana to United's customers in other states. P. 563.
3. Removal of a portion of the gas thus flowing in interstate commerce does not change such gas to intrastate gas. P. 563.
4. Conclusion that instant sales are in interstate commerce reflects substantial impact these sales can have on United's interstate operations. P. 565.
5. Commission *discusses* implications on its certificate jurisdiction should it lack rate jurisdiction over instant sales. P. 565.
6. *Distinguishing Shreveport Rate Case*, Commission *observes* that until gas reaches point of separation there is no way of knowing which part will not continue into other states—stream once having acquired interstate character, a part of it cannot be said to lose same by virtue of being sold within state of production. P. 566.
7. In interpreting intent of Congress, Commission *concludes* that had Congress considered instant sales it would have treated these as "in interstate commerce". P. 568.
8. Commission *determines* jurisdictional issues in proceeding arising under Section 16 of the Natural Gas Act and Section 1.7(c) of the Regulations thereunder. P. 568.

Vernon W. Woods, C. Huffman Lewis, and *W. O. Crain* for United Gas Pipe Line Company

Thomas M. Knebel for Willmut Gas and Oil Company

George J. Meiburger, Christopher T. Boland, Robert O. Cook, William Feldhaus, and *Daniel O'Connell* for Texas Gas Transmission Corporation

Joseph H. Kavanaugh and *Jack Gremillion* for Louisiana Attorney General and Louisiana Public Service Commission

Walter J. Suthon, II, and *Andrew P. Carter* for Louisiana Gas Service Company

Tom H. Matheny for Hammond Baton Rouge Brick Company, et al.

Harwood G. Martin for the Staff of the Federal Power Commission

Commissioner O'Connor, with whom Commissioner Woodward *joins, concurring in part; dissenting in part*

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

Ross, *Commissioner:*

The question presented by this case is whether this Commission has jurisdiction over certain sales of natural gas for resale made by United Gas Pipe Line Company (United) to 21 Louisiana communities in United's Jackson District,

*Initial decision appears on p. 580. Rehearing granted on October 24, 1963, 30 FPC 1073. See Opinion No. 401-A, denying rehearing, 31 FPC 1152. Petition to Review pending in CA5, No. 21705, *Louisiana Public Service Commission* v. *F.P.C.*

which encompasses northern Louisiana and Mississippi. The communities involved are located in that part of Louisiana lying north of Lake Pontchartrain and east of the Mississippi River known as the Florida Parishes area.[1]

This Commission has exercised jurisdiction over sales to the communities at issue since inception of federal regulation of United under the Natural Gas Act. The problem arises by virtue of an order issued June 8, 1961, by the Louisiana Public Service Commission which directed United to publish and apply intrastate rates prescribed by the Louisiana PSC to the sales at issue. These rates substantially differ from those presently in effect and United was granted a court order staying the effectiveness of the Louisiana PSC order. United also filed a Petition for Declaratory Order under Section 16 of the Natural Gas Act requesting the Commission to determine whether or not it has jurisdiction over the sales to the aforementioned 21 communities. In the petition, United takes no position on the issue but indicates that it is faced with conflicting orders of two regulatory Commissions, which forecast the possible imposition of severe penalties because of its obvious inability to comply with both orders.

Pursuant to our order of April 13, 1962, a hearing on United's petition was held. The uncontroverted evidence reveals that United is engaged in the transportation and sale for resale of natural gas in interstate commerce. By means of a fully integrated pipeline system, it transports and sells natural gas from fields in Texas, Louisiana and Mississippi to industrial and distribution purchasers in the foregoing states and in Alabama and Florida, and to other pipelines in Louisiana and Texas. We officially note that United also operates intrastate pipeline facilities which are completely separate from its interstate system and which are not under our jurisdiction.

Most of the Louisiana communities here involved are located on a line extending southward from Mississippi to a point northward of Lake Pontchartrain where it curves westward and later northward, forming a loop connected at both ends to United's 30-inch interstate Kosciusko line. United's line from Lirette in southern Louisiana to Mobile, Alabama is connected to the bottom of the loop by means of a short lateral. United's more recently constructed Kosciusko line extends northeasterly from the offshore producing areas south of Louisiana and forms part of the loop. See appended map, page 569.

Prior to 1951, United's Florida Parishes customers were served with gas, a portion of which was produced in Mississippi. Since the loss of a large sale in the Bogalusa area, most—but not all—of the gas to the communities located on the eastern part of the loop originates in Southern Louisiana. The evidence shows that the six communities having short laterals to the Kosciusko line (Port Vincent, Livingston, Doyle, Greensburg, Kentwood and Roseland) are served with gas, part of which is produced in offshore fields. In addition, gas from this line serves some of the communities located on the southern and western part of the loop extending possibly as far east as Slidell. Thus the communities of Amite, Independence, Natalbany, Hammond, Pontchatoula, Madisonville, Mandeville, Abita Springs, Covington and Slidell can receive, and, to some extent do receive service from the Kosciusko line.[2]

As stated above, the customers on the eastern part of the loop receive gas which is produced principally in on-shore southern Louisiana. But they have also received, at times, gas which flowed back across the Mississippi line. Here

[1] The communities are Abita Springs, Amite, Bogalusa, Covington, Doyle, Franklinton Greensburg, Hammond, Independence, Kentwood, Livingston, Madisonville, Mandeville Montpelier, Natalbany, Pearl River Pontchatoula, Port Vincent, Roseland, Slidell, and Walker.

[2] It was impossible for United's Chief Engineer to estimate the extent of the flow from Kosciusko towards Slidell because United's system is automated and gas automatically flows through its interstate lines depending on the pressures in the various lines.

again it was not possible to determine with accuracy the extent of the backflow in view of the automated nature of United's interstate system. The record also shows that these customers possibly still receive Mississippi produced gas from the north-south line extending to Louisiana and Mississippi and gas flowing westerly from Mississippi in United's Lirette-Mobile line.

Following the submission of briefs, the Examiner issued his initial decision in which he divided his consideration of the issue into two parts. He held that sales made from United's Lirette-Mobile line are not subject to this Commission's jurisdiction and that sales made from its Kosciusko line are subject to our jurisdiction.

With respect to the former conclusion, the Examiner reasoned that United's Lirette-Mobile sales represent gas which is produced, transported and sold within a state and are not in interstate commerce as defined in Section 2(7) of the Natural Gas Act. He further relied on the Shreveport case [*Houston, E. & W.T.R. Co.* v. *U.S.*, 234 U.S. 342, (1914) and *North Carolina* v. *U.S.*, 325 U.S. 507 (1945).] The Examiner rejected the argument that these sales are interstate in character because some of the Louisiana produced gas sold within the state is associated in an interstate pipeline with gas destined for use beyond the State. Finally, the Examiner concluded that Congress did not intend to give this Commission the fullest power possible under the Commerce Clause of the Constitution, but intended only to "plug the gap" comprising the area which certain early Supreme Court decisions had held the states constitutionally powerless to regulate.[3] The Examiner therefore determined that the Act provides no basis for the exercise of jurisdiction by this Commission over sales which have an impact on interstate commerce.

With respect to sales made from the Kosciusko line, the Examiner considered these sales in interstate commerce because some of the gas in the line originated at a point outside the state, i.e., offshore fields.

The case is now before us on exceptions to the Examiner's decision. Louisiana Gas Service Company, the Louisiana Public Service Commission, and Hammond-Baton Rouge Brick Company generally agree with the reasoning of the Examiner in his findings of lack of jurisdiction but disagree with his finding of jurisdiction regarding Kosciusko sales. The Commission's Staff and Willmut Gas and Oil Company contend that the Commission has jurisdiction over all the sales in question.

For the reasons discussed hereinafter, we conclude that the Commission has jurisdiction over all the sales to the communities here in issue. In our opinion, the Examiner fundamentally erred in segregating the issue into sales characterized as being made from the Lirette-Mobile line or the Kosciusko line. As the evidence shows, such a dichotomy is illusory and fails to give due recognition to the fully integrated nature of United's interstate pipeline operation.

At the outset, we point out that we have previously held in *United Gas Pipe Line Company*, Docket No. G–1142, *et al.*, 13 FPC 398, 405 (1954), that "the sales and service rendered in United's . . . Jackson districts are subject to the jurisdiction of this Commission." We have not deviated from this holding. The rate issues involved in that case were, however, substantially disposed of within the framework of the settlement process so that the question of jurisdiction was not discussed in detail. Therefore, we deem it appropriate in this proceeding to set forth fully the reasons for holding the disputed sales to be jurisdictional.

---

[3] The familiar "Attleboro gap", see *P.U.C.* v. *Attleboro Steam and Electric Co.*, 273 U.S. 83 (1927), *Missouri* v. *Kansas Gas Co.*, 265 U.S. 298 (1924), cited conspicuously in the legislative history of the Act. And see *P.U.C.* v. *Landon*, 249 U.S. 236 (1919).

Section 1(b) of the Act provides:

> The provisions of this act shall *apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale* for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distriubtion or to the facilities used for such distribution or to the production or gathering of natural gas. [Emphasis added.]

Since these sales are admittedly for resale, the only issue before us is whether the gas sold is "in interstate commerce", as that term is defined in Section 2(7) of the Act.[4] However, that section provides no clear or adequate test for determining whether the *present* sales are in interstate or intrastate commerce.

Various tests are proposed by the examiner and the parties for determining the intra or interstate character of the onshore gas involved in the disputed sales. The examiner found the gas to be intrastate in nature because it was produced, transported and sold all within the confines of Louisiana. That the gas never left the state was, to the examiner, conclusive. Willmut argues that the fact of the indistinguishable mixing of all the gas in a single stream going outside of the state is determinative. Finally, Staff applies an "interdependence-substantial impact" test, emphasizing the interdependence of the disputed sales with, and their impact on, United's *integrated*, interstate operation.

In reaching the conclusion that the gas here in question is "in interstate commerce," we feel that narrow "tests" should be avoided and instead, that the entire spectrum of pertinent factors should be examined.[5]

The most important consideration leading to the conclusion that these sales are in interstate commerce is that the gas sold is part of a single, uniform stream flowing through United's interstate pipeline from the point of purchase in Louisiana, whether onshore or offshore, to United's customers in other states. Thus, the entire gas stream is, in the most literal sense, "in interstate commerce". The removal of a portion of the gas thus flowing in interstate commerce does not change the gas removed from the stream into intrastate gas. This conclusion is buttressed by the fact that the transactions between United and the producers who sold the gas in question are clearly within our jurisdiction. Underlying the decisions which establish our jurisdiction over such sales is the assumption that once gas has been sold by a producer to an interstate pipeline "it had commenced its journey in interstate commerce", even though some of that gas was sold in the states in which it was produced. [*Deep South Oil Co.*, v. *F.P.C.*, 247 F. 2d 882, 888 (CA5, 1957)] Thus, in *Deep South Oil Co.* v. *F.P.C.*, *supra*, the court held that Deep South's sales to an interstate pipeline were sales for resale in interstate commerce. The court noted that the pipeline might resell some of the gas within the state in which it was purchased. 247 F. 2d at 887–88. So too, in *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672 (1954), the Supreme Court held that Phillips' sales to interstate pipelines

---

[4] Section 2(7) of the Act provides:

> "Interstate Commerce" means commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof, but only insofar as such commerce takes place within the United States.

[5] In *Atlantic Coast Line Railroad Co.* v. *Standard Oil Co.*, 275 U.S. 257 (1927), the Court said, per Taft, J. (268–269), that "The question whether commerce is interstate or intrastate must be determined by the essential character of the commerce . . . "and" . . . the determination of the character of the commerce is a *matter of weighing* the whole group of facts in respect to it." [Emphasis added.]

were sales for resale in interstate commerce. The Court wrote (347 U.S. at 692):

> . . . [T]he legislative history [of the Natural Gas Act] indicates a Congressional intent to give the Commission jurisdiction over the rates of all wholesales of natural gas in interstate commerce, whether by a pipeline company or not and whether occurring *before, during, or after transmission by an interstate pipe line company.* [Emphasis added.]

The Court was apparently untroubled by the fact that some of the purchasing pipelines resold the gas bought from Phillips within the state in which it was purchased. Finally, we held in *Lo-Vaca Gathering Co.*, Docket No. CI60-693, 26 FPC 606 (1961), petition for review filed February 8, 1962, No. 19478 (CA5) [Commission reversed Sept. 24, 1963, 323 F. 2d 190, petition for certiorari filed March 13, 1964, pending], that sales by producers to an interstate pipeline under contracts which expressly provided that the gas would be sold intrastate were sales for resale in interstate commerce, since they entered the stream of interstate commerce at the point of sale. It follows that the gas United sells here is "in interstate commerce".

Secondly, as we have pointed out above, at times some of these communities have received gas from points outside the state of Louisiana. Thus gas from offshore Louisiana moves through the Kosciusko line, serving customers along that line. In addition, gas flows from that line into the lateral which serves the remaining Florida Parishes communities. That lateral is also connected to the Lirette-Mobile line. Thus, as United states in its exceptions:

> Increasing volumes of gas automatically flow from the Kosciusko line into lines in the Florida Parishes as the pressure values in those Florida Parishes lines decline. This circumstance will cause some towns normally receiving gas transported through the Lirette-Mobile line occasionally to receive gas transported through the Kosciusko line. In addition, the distance gas from the Kosciusko line flows into the Florida Parishes lines will vary from time to time, as the automatic result of changes in demand and operating conditions, so that the number of Florida Parishes towns receiving some Kosciusko line gas does not remain constant.

This statement is supported by the record. (Tr. 134–136)

The Examiner recognized that communities served with gas from the Kosciusko line received gas that had moved in interstate commerce, but he apparently did not realize how many communities received such gas from time to time.

In addition, some gas has flowed back from Mississippi and reached towns along the eastern portion of the loop for brief periods during 1958, 1959, and 1960.[6] The location of United's check meters makes it impossible to say how far the backflow reached, Tr. 148–49, but it may well have gone beyond Bogalusa. Tr. 87–88. Conceivably, the gas could have flowed back to any or all of the communities lying east of United's 6-inch lateral extending from the Kosciusko line to Amite, thus including most or all of the Florida Parishes area.

Since the frequency and extent to which Florida Parishes customers receive gas from outside the state depend upon pressure changes along United's line, it seems clear that these sales are within the stream of interstate commerce. *Cf. Kentucky Natural Gas Corp.* v. *Public Service Commission*, 28 F. Supp. 509, 511 (1939). These changes in the direction of the flow of gas, moreover, illustrate the extent to which the sales in question are an integral part of United's interstate operations.

---

[6] Tr. 87–88, 125, 126–27, 129–30, 132–33.

Though the amount of gas involved in these occurrences was small,[7] they serve to point out the possible hotchpot which could occur by allowing two different and completely independent authorities to regulate sales of gas coming from the same pipeline. Because United's system is fully integrated, there is nothing to prevent gas flowing from different sources each day to the towns involved. This result would necessarily require the changing of jurisdiction at the same time. The consumers and the pipe line company should not be subjected to such contingencies which can be caused, as was the fact in one instance, by the mere loss of one customer.[8]

Our conclusion that these sales are in interstate commerce reflects the substantial impact sales such as those in dispute here can have on United's interstate operations. The gas used in making such sales is purchased by United under producer rate schedules subject to FPC jurisdiction, for its overall system supply without distingnishing between the Louisiana markets and the out-of-state markets. There is also an inter-relation between the rates for these sales in Louisiana and United's sales outside the state, for if Louisiana sets rates that are too low, and United's return is consequently reduced, its capital costs may rise.[9] Increased capital costs would normally be reflected in higher interstate rates.

In concluding as we have that the sales in question are in interstate commerce we are mindful of the implications of a contrary holding for our certificate jurisdiction—which also extends to sales and transportation "in interstate commerce". If we lack rate jurisdiction over these sales, we would also apparently lack power to require that they be certificated. Absent such authority, we might be powerless to prevent United from selling gas in the producing state even though, as here, that gas has been dedicated to the interstate market by a certificate of public convenience and necessity and even though we relied upon the availability of that gas in authorizing sales for resale to customers in other states. In this case, Louisiana has set rates below the level we think just and reasonable.[10] Consequently, there is no incentive to United to divert interstate gas to the Louisiana market. But it is certainly conceivable that in the future Louisiana might feel impelled to direct United to increase deliveries to these communities even though United would then be required to deliver gas already dedicated to the interstate market. In the light of these considerations, and because we think the gas United sells is clearly in the stream of interstate commerce, we conclude that the sales in question are subject to our jurisdiction.

Our view is supported by two court decisions almost directly in point. One, *Kentucky Natural Gas Corporation* v. *Public Service Commission*, 28 F. Supp.

---

[7] In *Connecticut Light & Power Co.* v. *Federal Power Commission*, 324 U.S. 515, 535–536 (1945) "only about one-fifth of one per cent of all the energy received and generated by the Company throughout the State of Connecticut was transmitted out of the State." The Court disposed of the company's contention that this volume was insignificant as follows: "We do not find that Congress has conditioned the jurisdiction of the Commission upon any particular volume or proportion of interstate energy involved, and we do not think it would be appropriate to supply such a jurisdictional limitation by construction." See also *Wisconsin-Michigan Power Co.* v. *F.P.C.*, 197 F. 2d 472, 478 (1952), cert. denied, 345 U.S. 934 (1953).

[8] Tr. 133.

[9] The rate set by the Louisiana Commission for the gas involved in the disputed sales is almost 9¢ per Mcf lower than that set by this Commission. This will result in a revenue loss to United of about $304,000 annually.

[10] See footnote 9, *supra*.

509 (D. Ky. 1939) aff'd. *per curiam*, 119 F. 2d 417 (CA6), was handed down shortly after the Natural Gas Act was passed. In that case the gas company argued that its sales for resale in Kentucky were not subject to state regulation, even though it sold gas produced in Kentucky. Instead, it argued, the sales were subject to the exclusive jurisdiction of this Commission because the company was an *interstate* pipeline. The state argued:

> (1) that in transporting gas from fields in Kentucky to purchasers within the state, the complainant is engaged in intrastate commerce;
>
> (2) that such transactions are and should be treated as separate and distinct, notwithstanding their relation to interstate business, and as such are subject to regulation and control by the Kentucky Commission . . . . [28 F. Supp. 512.]

The Court rejected these contentions, noting that the Company's fully integrated character and predominant interstate features required federal regulation.[11] We completely agree with the Court's conclusion set forth at page 513: "The established course of business being predominantly interstate, the mere fact that some gas from the interstate stream is sold and delivered in the state of its origin affords that state no superior power to regulate or control the transaction." [12]

Kentucky Natural Gas Corp. was followed by the Kentucky Supreme Court on similar facts in *Columbian Fuel Corp.* v. *Public Service Commission*, 333 S.W. 2d 945 (Ky. Sup. Ct., 1959).

We do not accept the view that because the gas did not leave the State, it cannot be "in interstate commerce". In placing substantial reliance upon this factor, the examiner cited as his authority *Houston, E. & W.T.R. Co.* v. *United States* (the *Shreveport Rate Case*), 234 U.S. 342 (1914) and *North Carolina* v. *United States*, 325 U.S. 507 (1945). In those cases passengers who embarked and disembarked from a train before that train had crossed a state boundary were said to have "an admittedly intrastate character". *Wickard* v. *Filburn*, 317 U.S. 111, 123 (1942). There is a sharp distinction between these cases and the present one. Those cases involved passengers who from the outset had interstate or intrastate identities. From the very moment a ticket was purchased, it could be determined whether the passenger was interstate or intrastate. But in the instant case there is only one uniform and indistinguishable flow of gas, a very small portion of which is siphoned off before leaving the state. Until the gas reaches the point of separation, there is no way of knowing which part of the gas will not continue into other states.[13] The stream of gas

---

[11] In structure and operation, such continuity exists throughout the system that regulation at one point or control of a single activity would necessarily affect the whole structure. The sale and delivery of gas at wholesale from the interstate pipeline to local distributing companies is an integral part of the major enterprise, commerce between the states. Under such circumstances, regulation in the public interest is national rather than local demanding a standard of uniformity unattainable except through a single paramount authority. [28 F. Supp. 512–13.]

[12] In the present case, less than 3% of the gas flowing through United's interstate pipeline is sold in Louisiana. This figure is derived from an exhibit in a pending United rate case, Docket No. RP62–161. The exhibit shows United Sales in the Florida Parishes for the twelve months ended November 30, 1959. The net flow into Florida Parishes was 282,759,136 Mcf while the line flow at the Louisiana-Mississippi State lines is 278,933,384 Mcf.

[13] Therefore, a case where two different gases were contractually separated by the producer at the time of sale to the pipe line, so that the gas which was designated "intrastate" was at all times identifiable and determinable despite the physical commingling, even if correctly decided, is inapposite here. *State of North Dakota* v. *F.P.C.*, 247 F. 2d 173 (CA8, 1957).

once having acquired an interstate character, a part of it cannot be said to lose that character by virtue of being sold within Louisiana.

As noted earlier, whether or not the disputed sales are subject to this Commission's jurisdiction cannot be determined from the language of the Act alone. In addition, we feel that the legislative history of the Natural Gas Act is also inconclusive. We agree that Congress' primary purpose in enacting the Natural Gas Act was to "plug the regulatory gap" created by a series of Supreme Court decisions prohibiting the states from regulating wholesale sales in interstate commerce while leaving them free to regulate retail sales to local consumers. Thus in House Report No. 709, 75th Cong., 1st Sess., April 28, 1937, the Committee on Interstate and Foreign Commerce stated at p. 2–3:

> The States have, of course, for many years regulated sales of natural gas to consumers in intrastate transactions. The States have also been able to regulate sales to consumers even though such sales are in interstate commerce, such sales being considered local in character and in the absence of Congressional prohibition, subject to state regulation. There is no intention in enacting the present legislation to disturb the States in their exercise of *such jurisdiction*. However, in the case of sales for resale, or so-called wholesale sales, in interstate commerce (for example, sales by producing companies to distributing companies) the legal situation is different. Such transactions have been considered to be not local in character and, even in the absence of Congressional action, not subject to State regulation. See *Missouri* v. *Kansas Gas Co.*, 265 U.S. 298 (1924) and *Public Utilities Commission* v. *Attleboro Steam and Electric Co.*, 273 U.S. 83 (1927). The basic purpose of the present legislation is to occupy this field in which the Supreme Court has held that the States may not act. [Emphasis added.]

The state jurisdiction which the report says was not to be disturbed was jurisdiction over intrastate consumer sales and sales by interstate pipelines *directly* to consumers. But the report does not state whether the Committee considered gas sold for resale by interstate pipelines in the states in which it was purchased—intrastate or interstate—although federal regulation of such sales would clearly be within Congress' power.

In the absence of a direct statement of what Congress intended, we must attempt to determine what Congress would have said about this particular problem if it had been brought to its attention.[14] We do not think it is sufficient to ask simply whether the states could constitutionally have regulated the sales at issue here.[15] Rather we are compelled to ask whether a statutory scheme which would include wholesale sales at one end of a pipeline[16] but would exclude the same sales, from a common stream, if made at the other end of a pipeline,

---

[14] The "divination of legislative design" requires "an effort to penetrate imaginatively into an assumed mind of an assumed collectivity called Congress in order to conceive what that assemblage would have thought about this particular detail had it thought in such particularity rather than in categories considerably more general". Powell, *Physics and Law-Commerce in Gas and Electricity*, 58 Harv. L. Rev., 1072, 1092 (1945).

[15] See *Illinois Natural Gas Co.* v. *Central Illinois Public Service Co.*, 314 U.S. 498, 504–06, 509 (1942); *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672 (1954); *Northern Natural Gas Co.* v. *State Corporation Commission of Kansas*, 372 U.S. 84 (1963). The Supreme Court has said:

> . . . the Court, in determining the validity of state regulations, has been less concerned to find a point in time and space where the interstate commerce in gas ends and intrastate commerce begins, and has looked to the nature of the state regulation involved, the objective of the state, and the effect of the regulation upon the national interest in the commerce. [*Illinois Natural Gas Co.* v. *Central Illinois Public Service Co.*, *supra*, at 505.]

[16] See H.R. Rep. No. 709, *supra*, and cases cited therein.

would make sense. We think it would not. The impact of federal regulation over all of these sales on interstate and local consumers, as well as on the distribution of regulatory power between the states and the federal government, is identical. We conclude that had Congress considered the sales here in question, it would have treated them as "in interstate commerce". See *Illinois Natural Gas Co. v. Central Illinois Public Service Co., supra.*

Other Matters

The matters raised and argued in the parties' briefs and exceptions are, we think sufficiently disposed of by the foregoing discussion. United requested in its exceptions that, if we adopt the examiner's decision, we designate specifically which of the twenty-one disputed sales are jurisdictional because some of them are made on some occasions by gas from the Lirette-Mobile line and on other occasions by gas from the Kosciusko line. However, in view of our decision, the above facts no longer present any problem.

The Commission orders:

(A) The Federal Power Commission has jurisdiction under the Natural Gas Act, and particularly Sections 2(7) and 1(b) thereof, over the transportation and sales for resale of natural gas by United Gas Pipe Line Company by means of and from its interstate facilities within that part of United's Jackson District located within the Florida Parishes area of the State of Louisiana.

(B) The presiding examiner's initial decision issued February 25, 1963, in this proceeding is reversed in part and affirmed in part as more fully set forth hereinabove. Except to the extent hereinabove granted, the exceptions to the said examiner's decision are denied.

Commissioner O'Connor, with whom Commissioner Woodward joins, *concurring in part* and *dissenting in part.*

Commissioner O'CONNOR, with whom Commissioner WOODWARD *joins, concurring in part* and *dissenting in part:*

[The map attachment appears on page 569.]

I respectfully dissent from the majority's decision that all of United's sales for resale in the Florida Parishes of Louisiana to the 21 communities in issue are subject to Federal Power Commission jurisdiction. As to United's sales in issue from its Kosciusko line, I conclude that, although the question is not without doubt, those sales are jurisdictional. Accordingly, I would affirm the examiner's decision. The discussion which follows is confined principally to the sales by United from its Lirette-Mobile line.

I am convinced that, under the law and on the facts, United's Lirette-Mobile sales in issue are not interstate under Section 2(7) of the Natural Gas Act but are intrastate and, accordingly, are not subject to Commission regulation under Section 1(b) of the Act.[1] Since they are intrastate, these sales are subject to regulation by the State authorities, which indeed have regulated sales of this character for many years.

The majority's error is of grave importance, for it expands Commission jurisdiction to embrace a whole new, broad class of sales heretofore considered subject to State and not federal regulation. Thus, it will have a national impact with consequences far transcending the importance of this particular case, effecting a fundamental change in the distribution of authority between the federal and State governments in the regulation of the natural gas industry. I firmly believe that due and proper regard for law compels vigorous regulation of the matters committed by law to Commission jurisdiction. By the same token, due and proper regard for principles of law, for the legal process and for the

[1] Sections 2(7) and 1(b) of the Act are quoted *infra*, footnote 5, p. 571.

distribution of law making power between the branches of our government compels my opposition to the assertion of Commission power over matters which the law has not made subject to Commission jurisdiction.

I. *Source of Gas for the Disputed Sales*

It is clear from the record that United's sales in issue fall into two distinct categories which differ materially as to the facts. First, United makes sales to certain of the 21 Louisiana communities from its Lirette-Mobile line. The Lirette-Mobile line originates in an *onshore* production field in Louisiana. It transports gas from those fields and delivers it for the disputed sales, after

which it proceeds outside the State to serve certain out-of-state markets not here in issue. Thus, the gas for these disputed sales is *produced solely* in Louisiana, is *transported solely* in Louisiana and is, of course, *sold solely* in Louisiana. En route to Louisiana markets, the gas for these sales is commingled in the Lirette-Mobile line with other gas destined for out-of-state markets; but none of the gas for the disputed sales *ever* leaves the State of Louisiana. These sales the examiner held are intrastate on their face; indeed, it is difficult to conceive of sales that are more clearly intrastate.

Second, United makes sales for resale to some communities in the Florida Parishes from its Kosciusko line. The gas for these sales is produced, in part, from fields some 15 to 38 miles off the Louisiana coast. En route to Louisiana markets, it also is transported in a large, high-pressure line which ultimately goes outside the State, the Kosciusko line, and is commingled with gas destined for out-of-state markets. These sales the examiner correctly held are interstate and jurisdictional because a significant portion of the gas involved is produced outside Louisiana.

The majority concludes that *all* the above sales are interstate and jurisdictional on the theory, among others, that United's system is "fully integrated." And seeking to substantiate this theory, the majority rejects the examiner's analysis of the sales in issue in the above two categories involving different facts and separate questions. Instead, the majority implies that all the sales are materially alike factually, in that all do, or did, or possibly can at times receive service with offshore gas. However, it is clear from the record that the sales to the 21 Louisiana communities in issue include one group of sales involving onshore gas transported through the Lirette-Mobile line, and another group involving offshore gas transported through the Kosciusko line.

Considering the latter group first, the record shows that offshore gas transported through the Kosciusko line is delivered to Kentwood and Roseland (Tr. 97, 134), and also to Doyle, Livingston, Port Vincent and Walker (Tr. 109). In addition, substantial offshore gas is delivered to Amite and Independence, which also receive onshore gas from the Lirette-Mobile line (Tr. 92–93). Under the principles of law discussed and applied by the examiner, the record supports a holding that these sales are interstate and jurisdictional.

In contrast, the record shows that as a matter of regular operation, onshore gas transported through the Lirette-Mobile line is used to supply Abita Springs, Bogalousa, Covington, Franklinton, Hammond, Madisonville, Mandeville, Natalbany, Pearl River, Ponchatoula and Slidell. Although there was testimony that on peak days some offshore gas from the Kosciusko line flows south of Independence a distance *toward* some of the above towns in accordance with demands and operating conditions, it was stated that the quantities of such gas could not well be determined (Tr. 135). And there was no evidence establishing which of these towns, if any, receive such offshore gas, or the quantities, if any, they receive. Thus, the compelling inference from the record is that these eleven towns receive no significant quantities of offshore gas. And this, in substance, was the conclusion of the presiding examiner who heard the testimony

A careful reading of the majority opinion (pp. 564–565) will reveal the rather surprising basis upon which it finds that these eleven towns were sold interstate gas and that the sales therefore are jurisdictional. There is no finding that significant amounts of interstate gas are regularly delivered to the towns.[2] There is not even a finding that *any* amounts have *ever in fact* been

[2] If such a finding could be made, I would agree that sales to these towns, like the sales discussed *supra*, would be jurisdictional.

delivered under present operating arrangements. Piecing together the critical findings, the strongest case assembled by the majority is that "for brief periods during 1958, 1959 and 1960" (meaning five occasions in a four-year test period), a "small amount of gas" (meaning 2 to 10 hours service on each occasion) "conceivably" "could have" flowed (meaning the evidence did not establish that this *de minimus* amount of gas *in fact* flowed or even *probably* flowed [3]) to these eleven towns. Stated more directly, the majority grounds its jurisdiction on a *remote possibility* (the word "conceivably" was well chosen) that during the four-year period covered by the testimony, an infinitesimal amount of interstate gas *might have* gotten to these towns on five brief occasions. It hardly seems necessary to draw the conclusion that this theory in support of jurisdiction does not merit serious consideration.[4]

II. *Statutory Provisions*

Whether or not the Commission has jurisdiction over United's sales of Louisiana-produced gas delivered from the Lirette-Mobile line—the question in dispute here—is to be determined on the basis of Sections 1(b) and 2(7) of the Natural Gas Act.[5] Section 1(b) gives the Commission jurisdiction over "the sale in interstate commerce of natural gas for resale," with "interstate commerce"

[3] The quotation from United's *brief* (Mimeo p. 7) is erroneously relied upon by the majority. It is not evidence upon which findings can be based, it was not subject to cross-examination and it is factually inconsistent with the carefully worded testimony in the record.

[4] The majority's quotation from *Connecticut Light & Power Co.* v. *F.P.C.*, 324 U.S. 515 (1945), like others used in its opinion, seems impressive only if taken out of context. Significantly (and consistently—see Part IV, *infra*), the majority does not explain the issues and holding of the case. The case presented a question arising under the Federal Power Act, not the Natural Gas Act. Moreover, it dealt with the jurisdictional basis for accounting regulation, not with jurisdiction over sales. At issue was the status of a primarily intrastate electric system which included facilities in a small town which *actually received* interstate electricity and received it exclusively for 24 hours per day and 365 days per year—not one that "conceivably" "could have" received it on five brief occasions in a four-year period. The Court held that if this town's facilities were not solely for "local distribution" (an issue it remanded to the Commission), then the company owned facilities for the transmission of electricity in interstate commerce and was therefore a jurisdictional company for accounting purposes, notwithstanding the fact that the rest of the system was intrastate in character.

Therefore, even if an analogy can be drawn between these two different jurisdictional issues (a highly questionable matter which need not be resolved here), the case relied upon by the majority *at most* supports only the proposition that jurisdiction attaches where a gas stream consists primarily of intrastate volumes but includes a small interstate portion which is *actually* and *regularly* present. On this much the Commission is unanimous, for this is the case in several of the towns discussed on page 570, *supra*. However, as the majority's own carefully worded findings clearly show, the evidence here does not establish that *any* interstate gas was in fact delivered or even probably delivered to the 11 towns listed above; and the evidence flatly contradicts the possibility that whatever deliveries "conceivably" "could have" occurred were regular. Thus, the majority's decision finds no real support in *Connecticut Light & Power Co.*

[5] Section 1(b) of the Act provides:

> The provisions of this act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution or to the facilities used for such distribution or to the production or gathering of natural gas.

Section 2(7) of the Act provides:

> "Interstate commerce" means commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof, but only insofar as such commerce takes place within the United States.

defined by Section 2(7) as "commerce between any point in a State and any point outside thereof." Section 1(b) further *excludes* from coverage "any other . . . sale of natural gas," i.e. any intrastate sale.

These clear and unambiguous provisions standing alone are sufficient to establish that United's Lirette-Mobile sales are *not* in interstate commerce, and so are excluded from our jurisdiction by the last clause of Section 1(b). For as described above, the gas for these sales moves *solely within one State*, the State of Louisiana, being produced in Louisiana fields, transported solely within Louisiana and sold solely in the Florida Parishes area, still in Louisiana. Clearly, therefore, these sales do not involve "commerce between any point in a State and any point outside thereof" within the terms of Section 2(7), but only commerce between two points in the same State.

The majority finds that our jurisdiction "cannot be determined from the language of the Act alone" (pp. 566–567). But Congress felt exactly the opposite. The reports from the House and Senate Committees both stated that the provision defining interstate commerce was "*self-explanatory*." H.R. Rep. 709, 75th Cong. 1st Sess., p. 4; S. Rep. 1162, 75th Cong., 1st Sess., p. 4. Obviously the only self-explanatory interpretation of "commerce between any point in a State and any point outside thereof" is one which is confined to exactly those events—and which patently excludes the disputed sales involving only commerce between two points in the same State.

Conspicuously absent from the majority opinion is *any* interpretation of the words with which Congress carefully defined interstate commerce, much less an explanation of how that interpretation could be "self-explanatory." Instead, the majority attempts to delete this inconvenient provision from the statute by stating that "narrow 'tests' should be avoided" (p. 563).

Even United Gas—contrary to the majority's suggestion that it has taken no position on the issues before us—finds this question so clear as to be indisputable. "Certainly gas sold by the United Gas Pipe Line Company which is produced, transported, sold and consumed all within one state does not come within the definition of interstate commerce contained in the Natural Gas Act." Original Brief of Petitioner, p. 33.

III. *Intent of Congress*

The legislative history of the Natural Gas Act emphatically confirms the conclusion that the Congress meant what it said in limiting this Commission's jurisdiction to gas flowing "between any point in a State and any point outside thereof."

The predominant theme of the legislative history is that Congress by this Act did not intend to give the Commission the fullest power possible under the Commerce Clause of the Constitution, but explicitly intended only to "plug the gap" left by certain Supreme Court decisions prior to 1938.[6] As stated in the Senate Interstate Commerce Committee report, "the basic purpose of the present legislation is to occupy this field in which the Supreme Court has held that the States may not act. . . . The bill takes *no authority* from State commissions, and is so drawn as to complement and *in no manner usurp* State regulatory authority." S. Rep. 1162, 75th Cong., 1st Sess., p. 2. (Emphasis added.) The House Committee report, H.R. Rep. 709, 75th Cong., 1st Sess., p. 2, included identical language. This explicit purpose not to interfere in any way with

[6] H.R. Rep. 709, 75th Cong., 1st Sess., pp. 1–2. S. Rep. 1162, 75th Cong., 1st Sess., pp. 1–2. The relevant decisions are *Pennsylvania Gas Co.* v. *Public Service Commission*, 252 U.S. 23 (1920); *Missouri* v. *Kansas Natural Gas Co.*, 265 U.S. 298 (1924); *Public Utilities Commission* v. *Attleboro Steam & Electric Co.*, 273 U.S. 83 (1927).

constitutional State regulation is recognized by numerous decisions of the Supreme Court stating that the Act had "no purpose or effect to cut down State power," but was to "aid in making State regulation effective" and was "drawn with meticulous regard for the continued exercise of State power, not to handicap or dilute it in any way."[7]

The gap referred to was a regulatory vacuum created by Supreme Court decisions holding that in certain circumstances the States were constitutionally powerless to regulate sales of gas. Each of these cases reversed an attempted regulation by a State of gas which came from beyond that State or which was destined beyond its borders. This and this only was the regulatory gap which Congress intended to fill and beyond which Congress explicitly stated our power was not to extend. These and these only were the cases discussed by Congress in considering this legislation.

The case before us plainly does not involve regulation of gas which originated outside of Louisiana or which is destined beyond that State's borders. Therefore, *prima facie*, the case does not fall within the class of cases to which Congress directed its attention and to which its legislation was specifically limited.

The majority argues, however, that while this gas is produced, transported and sold within one State, it is sold from an interstate pipeline to a distributor for resale and because of this characteristic is subject to our limited jurisdiction (pp. 566, 567). This flies directly in the face of the decision in *Peoples Natural Gas Co.* v. *Public Serv. Comm.*, 270 U.S. 550 (1926). There West Virginia gas was fed into an interstate pipeline system which carried it across the border into Pennsylvania, where Pennsylvania-produced gas was added to the stream. The commingled West Virginia and Pennsylvania gas was then sold for resale to a distributor further down the line in Pennsylvania.[8] A unanimous Court, which included Justices Holmes, Brandeis and Stone, stated that the West Virginia-produced gas was of interstate character and could not be regulated by the Pennsylvania Commission. However, it held that the Pennsylvania-produced gas, which was fed into part of the interstate pipeline system and commingled with the interstate West Virginia gas, could be identified in quantity and could be regulated by Pennsylvania.

Thus, the very circumstance cited by the majority to distinguish the instant sales—that they are made from an interstate pipeline system for resale—was focused upon by the Supreme Court which held that this fact does not make an interstate transaction. This dissolves the theory relied upon by the majority that the transmission in part of an interstate pipeline system of intrastate gas converts it to interstate gas or somehow changes its nature.

Second, and equally important, this decision establishes in a clear and unambiguous holding that a State commission can regulate wholesale sales of gas produced, transported and delivered solely within that State notwithstanding its transmission in part of an interstate pipeline system. Therefore, wholesale sales of this nature do not fall within the regulatory gap which defines and delimits our jurisdiction. Rather, these wholesale sales are subject to State regulation and are precisely the type of sales which Congress explicitly excluded from this Commission's realm.

---

[7] See *e.g.*, *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672 (1954), erroneously relied on by the majority; *Panhandle Eastern Pipe Line Co.* v. *P.S.C.*, 332 U.S. 507 (1947); *F.P.C.* v. *Hope Natural Gas Co.*, 320 U.S. 591, 610 (1944).

[8] The West Virginia portion of the system was owned by a different corporation, unaffiliated with the Pennsylvania portion. However, the Court treated the fact of divided ownership as immaterial, stating that "the passing of custody and title [of the gas] at the state boundary without arresting the movement to the destinations intended are minor details which do not affect the central nature of the business." 270 U.S. at 554.

But the majority contends that its regulatory powers would be more logical and complete if the Commission had jurisdiction over all wholesale sales (pp. 567–568). However, unlike the majority of this Commission, the Congress which enacted the Natural Gas Act was not striving to create a complete and comprehensive plan of federal regulation which readily pre-empted State regulatory authority in an urge for a consistent "statutory scheme." Instead, Congress made crystal clear its purpose was to set up a commission with limited jurisdiction created only to fill the regulatory gap and not to displace any constitutional State regulation. This was manifest in the statutory provisions,[9] explicitly stated in both Committee reports[10] and reaffirmed in the clearest of language in the debates before both houses of Congress. In his introductory remarks the House sponsor of the bill, Congressman Lea, stated "The primary purpose of the pending bill is to provide Federal regulation, in those cases where the State commissions lack authority, under the interstate commerce law. *This bill takes nothing from the State commissions; they retain all the State power they have at the present time.*" 81 Cong. Rec. 6721 (1937). The Senate sponsor, Senator Wheeler, was equally clear: "[A]nd let me say to the Senator that, as a matter of fact, *the bill does not interfere with the State regulation, in any way, shape, or form.*" 81 Cong. Rec. 9312 (1937). (Emphasis added.) It is difficult to understand the majority's willingness to cast aside these repeated and unanimous expressions of intent to preserve constitutional State regulation in favor of its own concept of logical regulatory power which is nowhere mentioned in the Act or reports or debates, which contradicts the statutory definition of interstate commerce and which usurps State regulatory authority.

In conclusion, it is an instructive observation, although not a surprising one, that the intent of Congress as revealed by the legislative history independently supports and exactly explains the jurisdictional limitation contained in the statutory definition of interstate commerce. As stated by the Committee reports and the sponsors of the bill, Congress intended to fill a regulatory gap but not to displace any constitutional State regulation. The gap was created because the States were held powerless to regulate gas which flowed in more than one State. Thus, the Act was deliberately worded to apply only to gas flowing "between any point in a State and any point outside thereof," a standard which Congress considered self-explanatory. At the same time the Act explicitly excluded authority to regulate "any other . . . sale of natural gas."

The sales disputed here do not involve gas which flows between two States. They involve only gas produced, transported and sold solely within Louisiana. Its transmission in part of an interstate pipeline system does not make it "interstate," nor is Louisiana powerless to regulate it. I submit, therefore, that consideration of the legislative history compels the conclusion that regulation of these sales is not within our jurisdiction.

IV. *Judicial Decisions defining Interstate Commerce*

The distinction between interstate and intrastate commerce based on actual movement between States has been recognized and maintained by the courts. The Supreme Court as long ago as 1914 noted that commerce in principle identical to that involved in this case is intrastate. In the familiar *Shreveport Rate Cases, Houston, E. & W. T. R. Co.* v. *U.S.*, 234 U.S. 342, the Court accepted as seemingly self-evident the principle that railroad traffic between two points in Texas was intrastate, although the trains and railroad lines which carried the intrastate

[9] See Part II, *supra*.
[10] See pp. 572–573, *supra*.

traffic went to and served markets outside the State. And as recently as 1945 the Court, in *North Carolina* v. *U.S.*, 325 U.S. 507, accepted the same principle that rates concerning passengers traveling within the State of North Carolina on trains going outside the State were intrastate. These authorities clearly establish that United's disputed sales are intrastate and non-jurisdictional, as the examiner held.

The majority attempts to avoid the otherwise controlling effect of these decisions by observing that intrastate train passengers are more easily identifiable than intrastate gas molecules. This is true but irrelevant, for it ignores two determinative facts: that the critical event with which we are concerned is the sale by United to the local communities; and that at the time and place of sale, *each and every* cubic foot of gas delivered by United is both identifiable and identified as gas produced, transported and sold solely within Louisiana. Like the passengers in *Shreveport*, all the gas involved in the disputed sales is unquestionably known to be exclusively intrastate.

Indeed the *Shreveport* principle has been applied specifically to natural gas in the *Peoples* case, *supra*. As noted in Part III, the unanimous Court there held that gas produced, transported and sold solely within Pennsylvania, yet carried in part of an interstate pipeline system and commingled with interstate gas, maintained its intrastate character. With clarity that can be ignored but not distinguished, the Court stated:

> As respects the Pennsylvania gas we think it must be held to be in intrastate commerce only. Feeding it into the same pipelines with the West Virginia gas works no change in this regard. Of course after the commingling the two are undistinguishable. But the proportions of both in the mixture are known and that of either readily may be withdrawn without affecting the transportation or sale of the rest. So for all practical purposes the two are separable, and neither affects the character of the business as to the other. [270 U.S. at 554–55.]

Similarly, in *State of North Dakota* v. *F.P.C.*, 247 F. 2d 173 (8th Cir. 1957), it was held that gas produced, transported and sold within one State was intrastate notwithstanding its transmission in part of an interstate pipeline system commingled with interstate gas. There the narrow question was whether the sale of gas by a North Dakota producer to an interstate pipeline for resale in North Dakota was jurisdictional. The court framed the issue: "Does natural gas produced, wholesaled, transported and sold for immediate consumption solely within the State of North Dakota become a proper subject for federal regulation as being in interstate commerce, because part of its transportation occurs in a commingled state with gas admittedly being transported in interstate commerce?" It concluded: "The transactions in question cover gas produced, transported, sold and consumed entirely in the State of North Dakota. That does not constitute interstate commerce in any sense of the word." 247 F. 2d at 176–178.

In decided contrast to the facts of the above cases and those of the sales disputed here, *each and every* decision cited by the majority involved a stream of gas which, at the time and place of regulation, included at least substantial amounts coming from or destined to go beyond the State, with no attempt to identify or separate the intrastate portion (if any). In *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, 675 (1954), the Court stated that, after processing, the gas was sold and delivered to an interstate pipeline company and "then continues its flow through the interstate pipeline system until *delivered in other states*." The court in *Deep South Oil Co.* v. *F.P.C.*, 247 F. 2d 882, 887 (5th Cir., 1957), concluded: "We think it plain that they [the sales in issue] are sales 'in interstate commerce' for the obvious reason that the sale of gas originating in

one State for its transmission and delivery to distributors *in any other State* constitutes interstate commerce." Similarly, the court found in *Kentucky Natural Gas Corp.* v. *Public Serv. Comm'n.*, 28 F. Supp. 509, 511–12 (D. Ky. 1939), that "in the first three months of 1939 from 47 to 53 percent of the gas sold in Kentucky was brought in from outside the State, principally from the Panhandle Eastern Pipe Line." [11] (Emphasis added.)

Thus, the cases have uniformly maintained the distinction between interstate and intrastate commerce which Congress adopted in explicit statutory language characterized in its committee reports as "self-explanatory." Where the gas stream was transported in part of an interstate pipeline system but consisted only of gas produced, transported and sold solely within one State, it has been held a matter for State regulation and beyond the statutory authority granted this Commission. Our jurisdiction has been affirmed by the courts *only* where the gas stream at the time and place of regulation included gas flowing "between any point in a State and any point outside thereof." The majority's quotation of general language from these cases affirming jurisdiction can hardly justify a decision not contemplated by those courts, specifically rejected by other courts and expressly prohibited by the legislative history and the statutory language.

V. *Regulation of this Gas When Produced*

The majority assumes that the sales to United by the producers of this gas have been regulated by the Commission,[12] and from that argues that the gas was and continues to be in interstate commerce (p. 563). An understanding of a fundamental factual distinction compels rejection of this argument.

It is true that in the *Deep South* case, *supra*, the court *treated* the sales of gas by the producers as in interstate commerce even though the stream included an unspecified and unidentified amount to be consumed within the State.[13] However, this result was compelled by one reason, and one reason only—the gas stream was composed of substantial portions of gas destined beyond the State, and since there was no attempt and no means to identify the intrastate portion, the court had to *treat* the entire stream as interstate.

That situation is to be directly contrasted with the case in which the intrastate gas is specified and identified. The *State of North Dakota* case, *supra*, involved precisely the same facts as *Deep South* with the one exception that the intrastate portion of gas feeding into the interstate pipeline was identified by the producers. Under such circumstances the court held that the sales of the intrastate portion were not in interstate commerce and were non-jurisdictional. See p. 573, *supra*.[14]

---

[11] This case is in principle identical to the *Deep South* case (see Part V, *infra*)—since the gas stream included substantial interstate volumes and there was no attempt or means to identify the fluctuating intrastate portion, the court was forced to treat the entire volume as interstate. Thus, the case is in direct contrast to the instant case (where *all* the gas involved in the disputed sales is positively identified as intrastate), rather than "almost directly in point" as stated by the majority (p. 565).

[12] The facts pertaining to the sales by the producers were not developed in the record but can be assumed arguendo as herein stated.

[13] The Supreme Court in *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672 (1954), assumed that *all* of the gas involved was resold outside the producing State. See 347 U.S. at 675. Thus, it did not deal with the situation presented here, and the majority's statement that "the Court was apparently untroubled by the fact that some of the purchasing pipelines resold the gas bought from Phillips within the state in which it was purchased" is based on an erroneous "fact."

[14] The Commission's attempt in *Lo Vaca Gathering Co.*, 26 FPC 606 (1961), to overrule the 8th Circuit's decision in *State of North Dakota* is interestingly cited by the majority as authoritative (p. 564).

In the instant case the initial sales of gas *by the producers* include large volumes destined beyond the State, as well as the intrastate gas. Since there is no attempt or means to identify the intrastate portion, the Commission justifiably has *treated* the entire volume of gas sold by the producers as interstate. However, in the sales *by United* now in dispute, all of the gas involved is unquestionably identifiable and identified as exclusively intrastate. Each cubic foot is known to be gas produced, transported and sold solely within Louisiana. Therefore, the necessity no longer exists for treating this portion as interstate gas. For the majority to continue to do so violates without justification the explicit statutory language, the manifest intent of Congress and the uniform holding of the courts.

VI. *"Impact" on United's System*

The majority finally attempts to bolster its jurisdictional expansion by pointing to an alleged adverse impact of State regulation of these sales and to the "fully integrated" nature of United's system. Each can be disposed of in short order.

There is simply no basis in the facts for the majority's finding that the disputed sales have an adverse, substantial impact upon the national interest in commerce, or upon the effectiveness of Commission regulation, or upon any other matter of proper concern to this Commission. Certainly, the record of the one-day hearing in this case is barren of evidence showing any such impact on any such matters. In fact, no effort was made to explore the possibility of any impact, the question evidently not being considered important. See, e.g., Tr. 35, 36, 39, 138–139.

As to an impact on the national interest in commerce, presumably the important effect would be the rate impact. The majority points to differences between certain of United's intrastate rates prescribed by the Louisiana Commission and interstate rates prescribed by the Federal Power Commission. But the Federal Power Commission in prescribing interstate rates follows definite allocation-of-costs principles[15] which insure that the interstate rates bear their fair share of system costs and no more. These principles the Commission applies on the basis of its own judgement, without necessarily regarding any allegations of United or the Louisiana Commission respecting what they may consider to be the proper allocation of costs to intrastate sales.

Thus, the short, clear answer to the majority's unsupported speculation is that the Natural Gas Act now unquestionably permits jurisdictional companies to engage in non-jurisdictional operations and provides the mechanics for isolating them. These non-jurisdictional operations include not only intrastate sales for resale—such as the ones here in issue—but also direct industrial sales, sales of extracted liquids, sales of oil produced in association with gas by integrated pipelines, etc. If and when this Commission finds such non-jurisdictional operations adversely affect the prime beneficiary of the Natural Gas Act—the gas consumers—its duty will be to inform Congress and request a statutory amendment prohibiting them. However, such a finding has not been and could not be made here because of the total absence of record support and because proper application of cost allocation principles assures that jurisdictional customers pay only their fair share of system costs. The suggestion by the majority that costs from non-jurisdictional activities might be "reflected in higher interstate

[15] Applied in *Atlantic Seaboard Corporation*, 11 FPC 43 (1952), and frequently applied since. See the Commission's 1954 *United* opinion cited by the majority in footnote 2; and see Op. No. 387 in *American Louisiana Pipe Line Co., et al.*, issued May 16, 1963, 29 FPC 932, in Docket No. G–18419, *et al.*, and cases there cited.

rates" (p. 565) is totally without historical or legal foundation and will be disavowed and denied by the majority tomorrow if a regulated company seeks to justify a rate based on non-jurisdictional costs.

The majority further argues that United's sales in Louisiana may reduce the reserve and otherwise affect the quantities of gas available for out-of-state markets. Again, this basis for decision finds no support in the record. There is no evidence whatsoever that the onshore Louisiana reserves supplying these sales have been dedicated by United to the interstate market or have been relied upon by the Commission in approving United's expansions in the interstate market. But even if these reserves had been dedicated, the appropriate and conventional action would be for the Commission to issue an order requiring United to obtain an abandonment certificate before using the reserves for non-jurisdictional sales. This procedure, which is regularly used by the Commission, reserves control in the Commission over dedicated reserves and completely protects the interstate market.[10] The theory of the majority—that "we might be powerless to prevent United from selling gas in the producing state even though, as here [sic], that gas has been dedicated to the interstate market by a certificate of public convenience and necessity and even though we relied upon the availability of that gas in authorizing sales for resale to customers in other states" (p. 565)—is utter fiction contradicted by our regular practice. I can predict with confidence that it will be immediately dropped as soon as its genesis—this decision—is completed.

The majority's finding that United's disputed sales are "interdependent" with United's "fully integrated" system likewise is without substantial support in the facts or reasonable basis in the law. In practical effect, United's interstate and intrastate sales constitute separate businesses of one company. The Commission today effectively regulates United's interstate transportation and sales, as it has in the past, without concerning itself with the intrastate aspects of the company's business which are regulated by the State authorities. Indeed, Louisiana has been regulating substantially identical sales of United in its New Orleans Zone immediately adjacent to United's Jackson District without interfering with the effectiveness of Commission jurisdiction in the slightest. Similarly, the Commission regulates the interstate aspects of dozens of other natural gas companies while leaving the intrastate and other non-jurisdictional aspects to the States.

Although these sales are a part of United's overall business, as a practical matter they are only incidental to and are readily separable from it. On analysis it appears that the majority's "interdependence" or "fully integrated" factor, is in reality largely an aspect of its "substantial impact" factor, which the preceding discussion shows to be factually and legally without foundation. Thus, there is no basis either in fact or law for a holding that because one part of United's business is interstate the intrastate portion thereof also becomes interstate, as the numerous authorities cited by the examiner also clearly show.

---

[10] Section 7(b) of the Act provides:

> No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment.

It has been consistently construed to provide sufficient power in the Commission to protect jurisdictional customers. See *Panhandle Eastern Pipe Line Co.* v. *Michigan Consol. Gas Co.*, 177 F. 2d 942 (6th Cir. 1949); *J. M. Huber Corp.* v. *F.P.C.*, 236 F. 2d 550 (3d Cir., 1956).

CONCLUSION

Manifestly, United's Lirette-Mobile sales are, under the law and on the facts, intrastate and not subject to Commission jurisdiction. How, then, shall we finally appraise the majority's contrary decision in this case?

It would seem that the majority's decision stems from a conviction that Commission regulation of United's sales, and all sales of their character, is desirable and necessary in that it would enable the most complete and thorough regulation of the natural gas industry possible by a federal agency whose power and resources far exceed those of any State agency, and would thus insure to the consumers of natural gas the ultimate degree of protection in all respects now and for the future.

This objective, seemingly so laudable, is upon analysis subject to some very fundamental objections. First, it is not an objective permitted by the statute, which gives the Commission jurisdiction only over interstate and not intrastate commerce. Nor was it intended by Congress when it enacted the Natural Gas Act, for Congress specifically stated that Commission regulation under the Act was to supplement and not supplant State regulation. Further, it is not permitted by judicial decisions, which establish that these sales are intrastate.

Basically, this objective assumes that the scope of Commission jurisdiction under the Act is co-extensive with this Commission's assessment of the need for consumer protection. This is not correct. Of course, as the Supreme Court has said, the primary aim of the Act is to protect the consumer. But jurisdiction does not depend on or follow consumer need; it is established by law, and remains as thus established until changed by the legal process available through Congress. Although the overall aim of the Act is to protect the consumer, the statute itself represents a recognition and accommodation of conflicting interests—the preservation of local regulation over local transactions, as opposed to pervasive federal regulation reaching constitutional limits; the opposing interests of the several segments of the industry; opposing economic and sectional interests. Fairness to all those affected by Commission regulation and faithfulness to law require that we adhere meticulously to the statute by which Congress through the elected representatives has been fit to resolve these conflicting interests.

As stated recently by Commissioner Woodward in the *Montana-Dakota* case, Opinion No. 395 issued July 15, 1963, 30 FPC 200, 210:

> We must ever keep in mind that the basic concept of our society is the rule of law—law exercised in conformity with constitutional principles and by democratic processes. Thus the Constitution provides for the division of power between the state and federal governments, and between the three branches—legislative, judicial, and executive—of the federal government. And Congress, acting under the Commerce Clause and by the democratic process through the people's elected representatives, provides laws, of which the Natural Gas Act is an example, designed to reconcile diverse and conflicting interests in our nation and society in the interest of the whole people. It is essential to the attainment of the objectives of such legislation that the commands of Congress, and the courts' interpretations thereof, be vigorously obeyed. It is equally essential to the preservation of our basic concepts, our constitutional system, and our democratic processes, and to the preservation of the public respect for law which is their indispensable foundation, that we do not permit either our desire for what we may deem high achievement, or our misgivings concerning the quality of others' achievements, to lead us to assert authority or exercise functions which a preponderance of the guiding considerations shows are not ours.

INITIAL DECISION
OF THE PRESIDING EXAMINER ON A PETITION FOR DECLARATORY ORDER TO DETERMINE JURISDICTION

(Issued February 25, 1963)

ZWERDLING, *Presiding Examiner:* On January 8, 1962, United Gas Pipe Line Company (United) filed a Petition for Declaratory Order under Section 16 of the Natural Gas Act and Section 1.7(c) of the Regulations thereunder, requesting that the Commission determine a question of jurisdiction regarding certain gas sales made by United in the Jackson District of Eastern Louisiana. The sales in question are made in that part of the State of Louisiana lying north of Lake Pontchartrain and east of the Mississippi River, an area known as the Florida Parishes of Louisiana. Such sales are made to the communities of Kentwood, Roseland, Greensburg, Montpelier, Amite, Independence, Natalbany, Hammond, Ponchatoula, Madisonville, Mandeville, Franklinton, Bogalusa, Covington, Abita Springs, Pearl River, Doyle, Livingston, Walker, Port Vincent and Slidell. By order issued April 13, 1962, the Commission granted United's Petition for Declaratory Order and set the jurisdictional question for hearing.

The jurisdictional controversy presented here arose as follows. All of United's sales for resale made in its Jackson District, including those in the Florida Parishes area, are regulated by the Federal Power Commission and have never been regulated by any other agency. All of United's sales for resale made in its New Orleans District are regulated by the Louisiana Public Service Commission. On November 2, 1954 the Commission issued Op. No. 277 (13 FPC 398) approving a settlement in a *United* rate proceeding (Docket No. G–1142, *et al.*). The Commission found therein that the sales and services rendered in United's so-called Northern Area, including the Jackson District, were subject to the jurisdiction of this Commission, while the sales and services rendered in United's so-called Southern area, including the New Orleans District, were not subject to Commission jurisdiction.

On June 8, 1961 the Louisiana Public Service Commission issued an order directed to United to show cause why United should not be required to charge its intrastate New Orleans Zone rates for all gas sold in the Florida Parishes area of Louisiana. By such order the Louisiana Commission indicated its intention to exercise regulatory jurisdiction over all those sales of United made within the Florida Parishes area and which were then being regulated by the Federal Power Commission, unless United could show adequate cause to the contrary. On February 5, 1962, after hearing, the Louisiana Commission issued its final order directing United to apply within the Florida Parishes area gas rates no higher than those presently authorized within its New Orleans Zone. The rate charged by United to its resale customers in its Jackson District, as regulated and prescribed by the Federal Power Commission, amounts to 33.7 cents per Mcf. The rate authorized by the Louisiana Public Service Commission for gas sold by United in its New Orleans Zone is 24.85 cents per Mcf. Application of the New Orleans Zone rates to United's sales for resale made in the Florida Parishes area in 1961 would have resulted in revenues $304,000 lower than those actually collected by United under its higher FPC-approved Jackson Zone rates. (Exh. 8, p. 14)

United takes the position here that it does not know whether the sales in question are properly subject to the jurisdiction of the Federal Power Commission or the Louisiana Public Service Commission. It emphasizes that it is not interested in advancing the jurisdiction of either regulatory commission

over that of the other. However, United notes that it is faced with conflicting orders of two regulatory commissions, which forecast the possible imposition of severe penalties because of its obvious inability to comply with both orders. In order to resolve this conflict it filed the instant petition for a declaratory order to determine the jurisdictional question.

United is engaged in the transportation and sale for resale of natural gas in interstate commerce. It transports by means of its integrated pipe-line system natural gas produced from fields in Texas, Louisiana and Mississippi and delivers and sells it to industrials, other pipelines, and distribution companies in the foregoing States and also in Alabama and Florida.[1]

Prior to the year 1951 United's Florida Parish customers located within its Jackson operating district were served gas, some or all of which was produced in the State of Mississippi, which gas was moved through pipelines from that State into the State of Louisiana for resale to such Florida Parish customers. However, during the year 1951 the delivery to these customers of gas produced in the State of Mississippi ceased, and no gas produced in Mississippi has been delivered to them since that time.

Since 1951 all gas sold by United to its customers in the Florida Parishes area has been produced in South Louisiana and in offshore fields located in the Gulf of Mexico. (1:87) The facilities utilized by United to transport gas to its Florida Parishes customers are its Napoleonville, Louisiana to Kosciusko, Mississippi 30-inch line and its Lirette, Louisiana to Mobile, Louisiana 14–16 inch line. Out of the total supply of gas introduced into these pipeline facilities (from the fields in South Louisiana and offshore from South Louisiana) United makes deliveries to customers located both within the State of Louisiana and outside the State of Louisiana. Gas is introduced into United's Kosciusko line from production leases located in the Gulf of Mexico on the Continental Shelf, between 15 and 38 miles from the Louisiana shoreline. The gas is transported from its production points offshore to the mainland, being brought on shore in Louisiana at a point northwest of Four League Bay. Thence, it is conveyed northeasterly through United's 30-inch Kosciusko pipeline to the Napoleonville Compressor Station and commingled with gas produced onshore in Louisiana. The gas continues moving northeasterly through United's Montpelier Compressor Station to the Mississippi state line for ultimate sale for resale to customers outside the geographical limits of Louisiana. However, before the gas crosses the Louisiana-Mississippi boundary line, the portions here involved are sold for resale in the Florida Parishes area of Louisiana.

The Florida Parishes area also receives gas from United's Lirette-Mobile pipeline which originates in an onshore producing area of Louisiana and, following a course eastward of the Kosciusko line, crosses the Louisiana boundary into Mississippi at a point east of Lake Pontchartrain. Shortly after passing under Lake Pontchartrain, but before entering Mississippi, the Lirette-Mobile line supplies certain Florida Parishes communities through a 10-inch lateral which in turn continues northward and eventually joins United's system in the general area southwest of Jackson, Mississippi. It is undisputed that all of the gas transmitted by United in its Lirette-Mobile line enroute to the Florida Parishes area is onshore Louisiana gas.

Testimony introduced by United indicates that on five different occasions, twice during the month of January 1958, once in November 1958, once in May 1959, and once in July 1960, for periods varying from two hours up to 9 or 10 hours, some very small quantities of gas produced in Louisiana and offshore fields

[1] Op. No. 277, 13 FPC at 404.

flowed back across the Mississippi state line, through the 10-inch line extending north from Bogalusa, Louisiana, after that gas had already been transported across the state line. This backflow extended as far south as Bogalusa and possibly a little further. The United witness had not checked this situation since October 13, 1961, but he testified that he had no occasion to believe there had been any more backflows since that time. (1:127) Although this situation is referred to briefly in the Staff's Statement of the Case at the beginning of its instant brief, the Staff makes no contention that such brief, sporadic and accidental backflows occurring prior to 1961 could have any bearing upon the merits of the jurisdictional issue presented in this case.

Although, as earlier noted, the Commission in Op. No. 277, 13 FPC 398 (1954), held that United's sales in its Jackson District (which would include the Florida Parishes area) were subject to the jurisdiction of this Commission, it is important to recognize that this bare conclusion was there expressed in summary fashion, without discussion or analysis of any kind, as part of a decision approving a general rate settlement for United—and that the final result arrived at reflected the settlement process, rather than any firm determination based upon principles. One of the problems involved in that *United* rate proceeding resulted from Notices of Cancellation which had been filed by the company with respect to certain sales, based upon United's theory that these sales were intrastate in character and not subject to the jurisdiction of this Commission. On the last day of the G–1142 hearing, when the terms of the proposed settlement were spread upon the record, Staff Counsel summarized the situation with respect to these Notices of Cancellation, noting that United had agreed to move to withdraw certain of the cancellation notices, while certain other cancellation notices were to be made effective by an agreed date. (Docket No. G–1142, Vol. 35, Tr. 3048–9) In expressing agreement to the terms of the settlement, United's counsel stated: "The statements with respect to the cancellations were agreeable to United, *and were an integral part of this matter.*" [G–1142, 35:3081; Emphasis supplied.] Pursuant to this agreement, Op. No. 277 provided that United would move to withdraw its Notices of Cancellation with respect to certain listed sales, including those in the Florida Parishes area of the Jackson District. In a brief summary paragraph in that opinion the Commission disposed of the jurisdictional question in the following language:

> The New Orleans District is divided into New Orleans #5, which United conceives to be intrastate in nature; and New Orleans #6, which is interconnected with its interstate facilities. The Jackson District includes Northwest Mississippi which is not physically interconnected by existing gas transmission pipe lines. The sales and services rendered in United's so-called Northern Area, which includes the Dallas, Shreveport, Monroe, and Jackson districts, are subject to the jurisdiction of this Commission. The sales and services rendered in United's so-called Southern area, which includes the San Antonio, Houston, Beaumont, Southeast Louisiana, and New Orleans districts, are not subject to the jurisdiction of this Commission. [13 FPC 398, 405]

It is of interest to note that although the Commission recognized in the above statement that New Orleans #6 was interconnected with United's interstate facilities, as distinguished from New Orleans #5 "which United conceives to be intrastate in nature", the Commission nevertheless expressed the conclusion that all sales rendered in the *entire* New Orleans District were "not subject to the jurisdiction of this Commission". It seems clear that the relevant facts with respect to New Orleans #6 were identical with those involved in the instant proceeding in the case of the sales off United's Lirette-Mobile line to the Florida

Parishes area in the Jackson District—in that in both situations all of the gas entering United's Lirette-Mobile line is produced in onshore Louisiana and is sold off United's interstate system for consumption inside the State of Louisiana.

On the other hand it is also of interest to note, with respect to the Commission's Op. No. 277 labeling of the Jackson District sales as jurisdictional, that the instant Florida Parishes area constitutes only a very minor part of the entire Jackson District; that most of the Jackson District lies north of the Louisiana boundary line, comprising the entire State of Mississippi; and that the gas sold by United throughout the State of Mississippi, in the Jackson District, clearly was transmitted from other states and thus admittedly constituted interstate gas.

Under all the circumstances set forth above, it seems clear that the jurisdictional question in Op. No. 277 was treated, to some extent, as the subject of bargaining, as a part of the overall settlement—and that the Commission's summary jurisdictional statement in Op. No. 277 accordingly should not be given any weight in resolving the jurisdictional issue in our instant proceeding.

The instant hearing was held on May 7, 1962. Interveners included Louisiana Gas Service Company, a group of industrial consumers, and the Louisiana Public Service Commission and the State of Louisiana—hereafter referred to as the Louisiana interveners. Other interveners were Willmut Gas and Oil Company and Texas Gas Transmission Corporation.

The positions of the various parties may be summarized as follows. As already noted, United states that it does not know whether the sales in question are properly subject to the jurisdiction of the Federal Power Commission or of the Louisiana Public Service Commission. However, United's brief concludes that this Commission has jurisdiction over the transportation of gas from the offshore fields to the Florida Parishes area, if such offshore fields are ultimately found to be beyond the seaward boundary of the State of Louisiana. On the other hand, United concludes that gas sold in the Florida Parishes area which is produced in onshore Louisiana, or in offshore fields inside the Louisiana boundaries, is not jurisdictional. The Louisiana interveners contend that all of the gas sold by United in the Florida Parishes area is non-jurisdictional. The Staff of the Commission and Willmut Gas and Oil Company content that all of such sales are jurisdictional.

It is concluded here, for reasons set forth at length below, that all of United's sales for resale made in the Florida Parishes area off its Lirette-Mobile line are non-jurisdictional; and that all of United's sales for resale made in the Florida Parishes area off its Kosciusko line are jurisdictional.

I. *Sales in Florida Parish Area Off United's Lirette-Mobile Line*

As earlier noted, all of the gas transmitted by United in its Lirette-Mobile line enroute to the Florida Parishes area, and all of the gas sold by United off that line in the Florida Parishes area, is onshore Louisiana gas.

In examining the jurisdictional issue with respect to these particular sales, attention will first be directed to the possible applicability of the Commission's *Lo-Vaca* decision, Op. No. 348 (October 1961).[2] In a letter of December 13, 1961, addressed by the Chairman of this Commission to the Louisiana Public Service Commission, indicating that the instant jurisdictional question might appropriately be determined in a declaratory order proceeding, it was suggested that United's sales of Louisiana onshore gas in the Florida Parishes area, off its Lirette-Mobile line, "may well be governed by the rationale and decision

[2] 26 FPC 606 (1961).

of this Commission in Opinion No. 348 in *Lo-Vaca Gathering Company*, Docket No. CI60-693 and *Houston Pipe Line Company*, Docket CP61-177".

In the *Lo-Vaca* case the gas in question was produced in the State of Texas, and was sold by Lo-Vaca and Houston to El Paso Natural Gas Company in that state. Under the terms of the sales contracts with El Paso, the Lo-Vaca gas was to be used by El Paso solely for fuel in its facilities located outside the state;[3] and the Houston gas was to be consumed by El Paso solely as fuel in the operation of certain facilities in the State of Texas. The Commission held in Opinion No. 348 that, regardless of the terms of the contracts, the gas received by El Paso in Texas from Lo-Vaca and Houston would move physically in a commingled stream; that part of such commingled stream (which was bound to include a portion of the Lo-Vaca and Houston gas, regardless of the contract provisions) would move in El Paso's system to other states; that under these circumstances the specific gas sold by Lo-Vaca and Houston would actually in part be resold to customers outside of Texas, and that it would be physically impossible to restrict the consumption of this gas to El Paso's own facilities either inside or outside the state; that accordingly the sale of gas by Lo-Vaca and Houston to the El Paso interstate system must be regarded as subject to FPC jurisdiction.

It is of critical importance to note here that in the *Lo-Vaca* case the jurisdictional issue was directed to the sale made by the producers *to El Paso*, and the jurisdictional finding was based upon the Commission's conclusion that *some part* of the gas sold to El Paso under these contracts was bound to move physically as part of the commingled stream in El Paso's interstate line *to other states*, regardless of the terms of the contracts. By contrast, in our instant *United* proceeding the jurisdictional issue is directed to the sale made by United itself, of Louisiana gas, off its Lirette-Mobile line to local distribution companies in the Florida Parishes area, for consumption in that area. The issue is whether *that particular sale* by United is a "sale in interstate commerce". No contention is made, and there is admittedly no possibility that the gas which is the subject *of that sale* by United, or *any part thereof*, will thereafter be transported in interstate commerce outside the State of Louisiana.

It therefore seems clear that we do not have a *Lo-Vaca* situation in the instant proceeding.

On the face of it, the particular sales here involved—of gas produced in the State of Louisiana, transported by United entirely within that state, and sold to local distribution companies off the Lirette-Mobile line in the Florida Parishes area of Louisiana for resale and ultimate consumption there—would seem to fall clearly within the standard, established concept of *sales in intrastate commerce*. Certainly no one would contend here that this particular sale is of gas which as of that time had already "commenced its journey in interstate commerce", as part of "a continuous movement of such gas to an interstate destination". [*Deep South Oil Co.* v. *F.P.C.*, 247 F. 2d 882, 888 (CA 5, 1957).]

The only basis for the contention that these sales should be regarded as sales *in interstate commerce* is the fact that the gas in question, while enroute to the Florida Parishes area, is transported on United's interstate pipeline; and the fact that this gas, while so transported to the Florida Parishes area, is commingled with other Louisiana-produced gas which ultimately flows on into other states on the United System.

At the outset, it should be noted that this "commingling" aspect, while seeming at a superficial, uncritical glance to provide a surface similarity with the *Lo-Vaca* case, is nevertheless totally irrelevant to the jurisdictional issue here

[3] In other words, under the terms of the contract it was not a sale for resale.

involved. As already pointed out, the effect of the commingling in the *Lo-Vaca* case was that *some part* of the gas delivered to El Paso under the contracts there involved was physically bound to move as part of the commingled stream in El Paso's interstate line *to other states*, regardless of the terms of the contracts. However, the effect of the "commingling" in our instant *United* case is merely that the gas here in question, sold and delivered off United's Lirette-Mobile line to local distribution companies for consumption in the Florida Parishes area, "kept company" up to that point with gas which continued on into other states. It is difficult to see how it can seriously be thought that the gas in question, under such circumstances, by virtue of merely rubbing shoulders with other Louisiana gas having an ultimate out-of-state destination, could have acquired an "in interstate commerce" character through some process of "guilt by association".

There remains then, as the only possible basis for the contention that the instant sales should be regarded as "sales in interstate commerce", the theory that this gas is transported on and sold off United's interstate system, which is engaged in commerce between different states; that if Louisiana were allowed to fix the rates for United's sale of the instant gas off its interstate system to local distribution companies in the Florida Parishes area, the state's exercise of such jurisdiction *might* have an effect or impact upon United's interstate service. The Staff brief states this position as follows:

> . . . The sales are in interstate commerce because they are an integral part of a much larger interstate operation, all aspects of which are interdependent, with what happens at any one place in the system necessarily affecting the operations at all others. . . . the price at which United's gas is sold in Louisiana will affect the just and reasonable prices at which it can sell that part of its overall gas purchases in Mississippi and where Louisiana attempts to force a different rate or service pattern upon the Louisiana portion of the interstate system it is thus not merely adversely affecting interstate commerce in the transportation and sale of gas traveling between Louisiana and the other states on United's pipeline. Instead, in a very real sense, it is regulating sales of gas in interstate commerce assigned by the Natural Gas Act to the exclusive regulatory control of this Commission. [p. 14.]

Although it is recognized here that Louisiana regulation of United's rates for the instant local sales in the Florida Parishes area might conceivably have an effect or impact upon United's interstate operations, that in itself cannot be regarded as a basis for stretching the definition of "sales in interstate commerce" to cover transactions which traditionally have been regarded as intrastate in character.

It could not seriously be contended that any and every operation by a "natural-gas company" *within a state* must necessarily be regarded as an interstate operation, merely because state regulation might conceivably result in a multi-state concern, or an intrastate conflict of interest.

> . . . gas pipeline companies can be engaged in both intrastate as well as interstate business and have the intrastate portion not subject to FPC jurisdiction. . . . [*State of North Dakota* v. *Federal Power Commission*, (CA8, 1957) 247 F. 2d 173, at 177.]

The manner in which situations of this type have been handled by this Commission in the past is strikingly illustrated by Op. No. 343, *Kansas-Nebraska Natural Gas Co., Inc.*, 25 FPC 448 (1961). Kansas-Nebraska is a combined production, interstate transmission and retail gas distribution company, transmitting natural gas and distributing it both at wholesale and retail in the States of Kansas, Nebraska, and Colorado. All of its gas sold in Kansas is produced in that state. It is carried north and northeasterly through Kansas on the company's

interstate system, with 60 percent of the gas being sold for consumption in Kansas and 40 percent being carried through to Nebraska, where the latter volume is commingled with gas produced in the Julesburg Basin (located in western Nebraska and Colorado) and sold throughout the State of Nebraska. All of the company's sales in Kansas, including its sales for resale, were treated as non-jurisdictional sales, whose rates were regulated by the Kansas Commission. This created certain potential interstate conflicts of interest, which were discussed by the Commission in Op. No. 343 (25 FPC 454). In connection with the allocation of production costs Kansas-Nebraska opposed the "rolled-in" method, under which production costs are allocated to the entire system on a pooled basis, irrespective of the sources of the gas—on the ground that none of the more expensive Julesburg Basin gas was delivered to Kansas customers. The Kansas Commission, as an intervener supported the company approach on the ground that in regulating the company's intrastate rates in Kansas that Commission could not, under Kansas law, charge Kansas customers with the costs for a gas supply located outside the state. The Kansas Commission accordingly contended that if the "rolled-in" method were adopted by the Federal Power Commission in connection with its regulation of the company's interstate rates in Nebraska, there would be a resultant conflict between the dual schemes of Federal and state regulation.

The Commission rejected this argument, holding that under the Natural Gas Act it had sole authority and responsibility to determine the interstate wholesale rates of natural gas companies; that the "rolled-in" method was in its view the most reasonable one; and that the Federal Power Commission could not adopt an allocation method with which it did not agree, simply to permit the State of Kansas to carry out policies of its own. The effect of this decision was that interstate users in Kansas, under state regulation, would be charged with a lower portion of production costs than they would have been required to bear had their rates been determined by the Federal Power Commission under the "rolled-in" method. It is thus clear that the *Kansas-Nebraska* case involved the same interstate conflict of interest situation which is advanced in our instant *United* proceeding as a basis for the contention that United's sales of onshore gas in the Florida Parishes should be treated as interstate sales, subject to the jurisdiction of this Commission.

The same argument made here to support a finding of jurisdiction could have been made with equal force with respect to the Kansas-Nebraska pipeline system—*i.e.*, that gas produced in the State of Kansas, transported along Kansas-Nebraska's interstate line, and sold off the company's interstate system for resale and ultimate consumption in the same state, should be treated as involving sales of gas "in interstate commerce" in order to avoid a potential interstate conflict of interest. No such contention was made, however, and by common consent of all parties concerned and the Commission itself these particular sales of Kansas-produced gas within the State of Kansas were treated as non-jurisdictional sales, subject to regulation by the Kansas Commission.

If there were any doubt that the instant sales of onshore Louisiana gas by United for resale and consumption in the Florida Parishes area constitute intrastate sales and involve intrastate rates, those doubts must be removed upon a reading of the Supreme Court decisions in two landmark ICC railway cases arising under the Interstate Commerce Act—*Houston and Texas Railway* v. *United States*, 234 U.S. 342 (1914), hereafter referred to as the *Shreveport Rate Cases*, and *North Carolina* v. *United States*, 325 U.S. 507 (1945). The *Shreveport Rate Cases* involved the validity of an Interstate Commerce Commission order, issued under the Act to Regulate Commerce, which prohibited carriers from charging higher rates for hauling articles from Shreveport,

Louisiana into Texas than those charged for intrastate eastward traffic from Dallas and Houston, Texas, *on the same line*, for equal distances. Commodity rates fixed by the Railroad Commission of Texas for such intrastate hauls were substantially less than the rates prescribed by the ICC. Accordingly, the commodity rates charged by the carriers from Dallas and Houston eastward to Texas points were less than the rates charged for transportation of the same articles for like distances from Shreveport, Louisiana to Texas. The ICC order was attacked on the ground that Congress had no power to control the intrastate charges of an interstate carrier, and on the further ground that even if Congress did have such power it had not been exercised under the Act. The important point to be noted here is that the Supreme Court in that case treated the intrastate traffic, *hauled on the carrier's interstate line*, as involving intrastate operations and intrastate rates (234 U.S., at 350–357). In a later decision, *Wickard* v. *Filburn*, 317 U.S. 111, 123 (1942), the Supreme Court referred to the *Shreveport Rate Cases* as involving "railroad rates of an *admittedly intrastate character*." [4]

The case of *North Carolina* v. *United States*, *supra*, arose under the Interstate Commerce Act, which constituted a 1920 revision of the Act to Regulate Commerce. It involved a clash between the North Carolina State Utilities Commission and the ICC, with each claiming the paramount power to fix railroad rates in North Carolina. The State Commission had ordered railroads doing business in North Carolina to charge no more than 1.65 cents per mile for carrying intrastate coach passengers from one point in the state to another. Despite this order, the ICC authorized the same railroads to charge 2.2 cents per mile for the same type of carriage. It was conceded that intrastate coach passengers in general "traveled in the same trains and in the same cars, and on the same tracks which carried passengers traveling between two or more states. (325 U.S. 512) The situation thus would seem to be identical with that involved in our instant *United* proceeding, where Louisiana-produced gas which is ultimately delivered to the Florida Parishes area travels in the same interstate line as the balance of the Louisiana-produced gas which is headed for points outside the state. In *North Carolina* v. *United States*, *supra*, the Supreme Court, however, did not treat the travel of intrastate coach passengers as involving interstate transportation and interstate rates merely because such passengers were carried on the railway's interstate line. The Court noted that as to interstate regulation the ICC under the Act was granted "the broadest powers to prescribe rates", but that "No such breadth of authority is granted to the Commission over purely intrastate rates." (325 U.S. at 510–511) The Court then concluded that the transportation of intrastate coach passengers on the railway's interstate line involved "purely intrastate rates", as to which the ICC had been granted only limited authority to act under an express provision of the Interstate Commerce Act authorizing it to prescribe intrastate railroad rates after full hearing and upon findings that state-prescribed rates caused undue discrimination against interstate commerce. The Court then held that the ICC findings in that case were not sufficient to satisfy this requirement, and accordingly the ICC order was set aside.

In a similar reference to this limited grant of authority to the ICC under the Interstate Commerce Act the Supreme Court held in *Florida* v. *United States*, 282 U.S. 194, 212 (1931):

> The Commission has no *general* authority to regulate intrastate rates and the mere existence of a disparity between particular rates on intrastate and interstate traffic does not warrant the Commission in prescribing intrastate rates. [Emphasis supplied.]

[4] Emphasis supplied.

The Staff's position in the instant case that "where Louisiana attempts to force a different rate pattern upon the Louisiana portion of the interstate system . . . it is regulating sales of gas in interstate commerce assigned by the Natural Gas Act to the exclusive regulatory control of this Commission" (Staff brief, p. 14), amounts to a contention that the mere existence of a disparity between particular rates on intrastate and interstate sales of natural gas warrants this Commission in prescribing what clearly would constitute intrastate rates. But any such position would be totally inconsistent with the conclusion expressed by the Supreme Court in *Florida* v. *United States*, *supra*.

Once it is concluded here that United's sales of onshore Louisiana gas for resale in the Florida Parishes area are, in fact, *intrastate* sales, a conclusion which seems inescapable in view of the Supreme Court's treatment of like situations in the *ICC railway cases*, *supra*, then these particular United sales must plainly be found non-jurisdictional in view of the Supreme Court's express holding under the Natural Gas Act in *F.P.C.* v. *Transcontinental Gas Corp.*, 365 U.S. 1, 17 (1961), that: ". . . the Commission has no authority over *intrastate sales under any section of the Act* . . . ." [Emphasis supplied.]

It is true that Congress has the *power* under the Commerce Clause of the Constitution to regulate not only interstate operations, but also to regulate intrastate operations which have a substantial impact or effect upon interstate commerce. As the Supreme Court stated in *United States* v. *Wrightwood Dairy Co.*, 315 U.S. 110, 119 (1942):

> . . . The commerce power is not confined in its exercise to the regulation of commerce among the states. It extends to those activities intrastate which so affect interstate commerce, or the exertion of the power of Congress over it, as to make regulation of them appropriate means to the attainment of a legitimate end, the effective execution of the granted power to regulate interstate commerce. . . . The power of Congress over interstate commerce is plenary and complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution. . . . It follows that no form of state activity can constitutionally thwart the regulatory power granted by the commerce clause to Congress. Hence the reach of that power extends to those intrastate activities which in a substantial way interfere with or obstruct the exercise of the granted power.

Similarly, in the *Shreveport Rate Cases*, *supra*, the Supreme Court stated:

> . . . It is unnecessary to repeat what has frequently been said by this court with respect to the complete and paramount character of the power confided to Congress to regulate commerce among the several States. It is of the essence of this power that, where it exists, it dominates. . . . By virtue of the comprehensive terms of the grant, the authority of Congress is at all times adequate to meet the varying exigencies that arise and to protect the national interest by securing the freedom of interstate commercial intercourse from local control . . .
>
> . . . Its authority, extending to these interstate carriers as instruments of interstate commerce, necessarily embraces the right to control their operations in all matters having such a close and substantial relation to interstate traffic that the control is essential or appropriate to the security of that traffic, to the efficiency of the interstate service, and to the maintenance of conditions under which interstate commerce may be conducted upon fair terms and without molestation or hindrance. . . . *The fact that carriers are instruments of intrastate commerce, as well as of interstate commerce, does not derogate from the complete and paramount authority of*

Congress over the latter or preclude the Federal power from being exerted to prevent the intrastate operations of such carriers from being made a means of injury to that which has been confided to Federal care. Wherever the interstate and intrastate transactions of carriers are so related that the government of the one involves the control of the other, it is Congress, and not the State, that is entitled to prescribe the final and dominant rule, for otherwise Congress would be denied the exercise of its constitutional authority and the State, and not the Nation, would be supreme within the national field. . . . [234 U.S. 342, at 350–352; emphasis supplied.]

However, Congress does not always choose to exercise its power to the full sweep of its authority under the Commerce Clause. The crucial question presented here is whether Congress has in fact exercised any such power under the Natural Gas Act.

In the *Shreveport Rate Cases, supra*, the Supreme Court directed its attention to the *scope* of the power which Congress had granted to the ICC under the Act to Regulate Commerce. The Court noted that the Act contained an unqualified clause of sweeping scope barring undue preferences, as follows:

> SEC. 3. That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

The Court then held:

> This language is certainly sweeping enough to embrace all the discriminations of the sort described which it was within the power of Congress to condemn. *There is no exception or qualification with respect to an unreasonable discrimination against interstate traffic produced by the relation of intrastate to interstate rates as maintained by the carrier.* It is apparent from the legislative history of the act that the evil of discrimination was the principal thing aimed at, *and there is no basis for the contention that Congress intended to exempt any discriminatory action or practice of interstate carriers affecting interstate commerce which it had authority to reach.* . . . [234 U.S. at 355–357.]

No such contention, of course, could be made with respect to the provision barring undue preferences in Sec. 4(b) of the Natural Gas Act. The Natural Gas Act, by its express terms, applies only to transportation and sales "in interstate commerce" (Sec. 1(b)), and *not* to "sales *affecting* interstate commerce". Unlike the sweeping and unlimited prohibition of the Act to Regulate Commerce against undue preferences by common carriers, the prohibition contained in Sec. 4(b) of the Natural Gas Act is expressly made applicable only "with respect to any transportation or sale of natural gas *subject to the jurisdiction of the Commission*"—and is thus limited to the making or granting of undue preferences with respect to *interstate sales*. As the Supreme Court stated in *F.P.C. v. Transcontinental Gas Corp., supra*, ". . . the Commission has no authority over intrastate sales *under any section* of the Act. . . ." [365 U.S. at 17; emphasis supplied.]

The Supreme Court has held that where Congress desires to impose Federal control over intrastate operations, because of their effect upon interstate commerce, Congress does not leave its intent to guesswork or speculation, but uses explicit language to that effect.

This doctrine was the basis for the Court's decision in *Federal Trade Commission* v. *Bunte Bros., Inc.*, 312 U.S. 349 (1941). That case arose under Sec. 5 of the Federal Trade Commission Act, which prohibited "unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce . . ." Bunte Brothers, a candy manufacturer in Illinois, sold products in that state in what the trade calls "break and take" packages, which make the amount received by the purchaser depend upon chance. The Federal Trade Commission found that this enabled the company to compete unfairly in the Illinois market with manufacturers outside the state, who could not indulge in this device because the Commission had barred "break and take" packages as an "unfair method of competition." The Commission prohibited Bunte Brothers from further using this device on the ground that it constituted unfair methods of competition under the Act. The lower court held that the Commission had exceeded its power, on the ground that the Act authorized the Commission to proceed only against business practices employed in interstate commerce, and that the transactions in question occurred in intrastate commerce. The Commission contended that its powers were not thus restricted, but that it might also prohibit "unfair methods used in intrastate sales when these result in a handicap to interstate competitors." The Supreme Court affirmed the lower court's holding that the Commission had acted in violation of the statute, stating:

> . . . "Unfair methods of competition in commerce" are the concern of § 5, and the Commission is "directed to prevent persons . . . from using unfair methods of competition in commerce . . ." The "commerce" in which these methods are barred is interstate commerce. Neither ordinary English speech nor the considered language of legislation would aptly describe the sales by Bunte Brothers of its "break and take" assortments in Illinois as "using unfair methods of competition in [interstate] commerce." *When in order to protect interstate commerce Congress has regulated activities which in isolation are merely local, it has normally conveyed its purpose explicitly.* See for example, National Labor Relations Act, §§ 2(7), 9(c), 10(a), 49 Stat. 450, 453, 29 U.S.C. §§ 152 (7), 159(c), 160(a); Bituminous Coal Act, § 4-A, 50 Stat. 83, 15 U.S.C. § 834; Federal Employers' Liability Act, § 1, 35 Stat. 65, amended, 53 Stat. 1404, 45 U.S.C. § 51 . . . . [at 350–351; emphasis supplied.]
>
> * * * * * * *
>
> *. . . This case presents the narrow question of what Congress did, not what it could do. And we merely hold that to read "unfair methods of competition in [interstate] commerce" as though it meant "unfair methods of competition in any way affecting interstate commerce," requires, in view of all the relevant considerations, much clearer manifestation of intention than Congress has furnished.* [At 355, emphasis supplied.]

Of particular interest in connection with our instant problem is the dissent of Justice Douglas in the *Bunte Bros.* case, *supra*, where he stated:

> . . . An unfair method of competition is 'in' interstate commerce not only when it has an interstate origin but also when it has a direct interstate impact. Respondent is 'using' unfair methods of competition 'in' interstate commerce when the direct effect of its conduct is to burden, stifle, or impair that commerce. [312 U.S. at 356]

As already noted here, in our instant *United* proceeding the contention is made that a transaction which would normally be regarded as intrastate in character should be treated as a sale "in interstate commerce", for the sole reason that the gas in question is carried on United's interstate pipeline and the sale is

made off United's interstate system; that if the State of Louisiana is allowed to regulate the rates for these particular sales by United in the Florida Parishes area, this might affect the prices at which United could sell the remainder of the gas in the State of Mississippi; that regulation of these Florida Parish rates by Louisiana would therefore have "a direct interstate impact".

The important thing to note here, however, is that the majority decision of the Supreme Court in the *Bunte Bros.* case, *supra*, rejected the contention in the Douglas dissent that the presence of such a "direct interstate impact" was sufficient to convert a purely intrastate operation into a transaction "in interstate commerce".

The same general conclusion was strongly expressed by the Supreme Court in *Kirschbaum Co.* v. *Walling*, 316 U.S. 517, 521–523 (1942), as follows:

> Congress may choose, as it has chosen frequently in the past, to regulate only part of what it constitutionally can regulate, leaving to the States activities which, if isolated, are only local. . . . *The history of Congressional legislation regulating not only interstate commerce as such but also activities intertwined with it, justifies the generalization that, when the Federal Government takes over such local radiations in the vast network of our national economic enterprise and thereby radically readjusts the balance of state and national authority, those charged with the duty of legislating are reasonably explicit and do not entrust its attainment to that retrospective expansion of meaning which properly deserves the stigma of judicial legislation.*

Similarly, in *Florida* v. *United States*, *supra*, the Court held:

> . . . whenever the Federal power is exerted within what would otherwise be the domain of state power, the justification of the exercise of the federal power must clearly appear. . . .

The National Labor Relations Act provides an enlightening example of the type of statute where Congress has clearly manifested its purpose to exercise the full sweep of its constitutional authority under the Commerce Clause, and to impose federal control over local operations having a substantial impact or effect upon interstate commerce. Sec. 10(a) of the Act empowers the National Labor Relations Board "to prevent any person from engaging in any unfair labor practice . . . *affecting commerce*". Sec. 2(7) declares:

> The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

In *Polish Nat. Alliance* v. *National Labor Relations Board*, 322 U.S. 643 (1943), the Supreme Court had to determine whether certain practices of a fraternal organization carrying on the business of insurance, whose activities crossed state lines, could be deemed "to affect interstate commerce" and therefore to be within the operation of the National Labor Relations Act. The Court answered this question in the affirmative, stating:

> With negligible exceptions, Congress did not exercise its power to regulate commerce prior to its enactment in . . . 1887 of the Interstate Commerce Act.
>
> * * * * * * *
>
> Since that time it has frequently chosen, as the Statutes at Large abundantly prove, to regulate only part of what it constitutionally can regulate. Again, half a dozen enactments, other than the National Labor Relations Act, are sufficient to illustrate that *when it wants to bring aspects of com-*

merce within the full sweep of its constitutional authority, it manifests its purpose by regulating not only "commerce" but also matters which "affect," "interrupt," or "promote" interstate commerce.

* * * * * * *

In so describing the range of its control, Congress is not indulging stylistic preferences; it is mediating between federal and state authorities and deciding what matters are to be taken over by the central Government and what to be left to the States.

* * * * * * *

And so in this Act, unlike some federal regulatory measures, see *Federal Trade Commission* v. *Bunte Bros.*, 312 U.S. 349, 351, 85 L ed 881, 883, 61 S. Ct. 580; *A. B. Kirschbaum Co.* v. *Walling, supra* (316 U.S. at 522, 523, 86 L ed 1646, 1647, 62 S. Ct. 1116), *Congress has explicitly regulated not merely transactions or goods in interstate commerce but activities which in isolation might be deemed to be merely local but in the interlacings of business across state lines adversely affect such commerce.*

* * * * * * *

Congress therefore left it to the Board to ascertain whether proscribed practices would in particular situations adversely affect commerce when judged by the full reach of the constitutional power of Congress. Whether or not practices may be deemed by Congress to affect interstate commerce is not to be determined by confining judgment to the quantitive effect of the activities immediately before the Board. *Appropriate for judgment is the fact that the immediate situation is representative of many others throughout the country, the total incidence of which if left unchecked may well become far-reaching in its harm to commerce.* [322 U.S. at 647–8; emphasis supplied.]

To the same effect, see *Guss* v. *Utah Labor Relations Board*, 353 U.S. 1, 3 (1957):

> By this language and by the definition of "affecting commerce" elsewhere in the Act, Congress meant to reach to the full extent of its power under the Commerce Clause.

Also *N.L.R.B.* v. *Reliance Fuel Oil Corporation*, decided January 7, 1963 (No. 88, October Term, 1962), where the Supreme Court stated:

> This Court has consistently declared that in passing the National Labor Relations Act, Congress intended to and did vest in the Board *the fullest jurisdictional breadth* constitutionally permissible under the Commerce clause . . . [371 U.S. 224 at 226.]

By contrast, it is clear that in enacting the Natural Gas Act Congress had no intent or desire "to reach to the full extent of its power under the Commerce Clause", or to vest in the Federal Power Commission "the fullest jurisdictional breadth constitutionally permissible under the Commerce Clause". Instead, the Supreme Court has held in numerous decisions that the Natural Gas Act did *not* envisage federal regulation of the entire natural-gas field to the limit of constitutional power; that the overriding congressional purpose was merely to plug the gap in regulation of natural-gas companies resulting from prior judicial decisions which had prohibited state regulation of many of the interstate commerce aspects of the natural-gas business; that although Congress meant to create a comprehensive and effective regulatory scheme, it did *not* desire "comprehensive *federal* regulation"; that the Act was designed to take no authority from State commissions, and was so drawn as to complement and in no manner to usurp State authority.

The Supreme Court set forth its views on this subject at length, and with complete clarity, in *Panhandle Eastern Pipe Line Co.* v. *Public Service Commission*, 332 U.S. 507 (1947). In there holding that state regulation of rates for natural gas transported interstate and sold directly to consumers within the state was not precluded by enactment of the Natural Gas Act, the Court stated:

> The two questions may best be considered in the background of the legislative history of the Natural Gas Act and of the judicial history leading to its enactment in 1938.
>
> Prior to that time this Court in a series of decisions had dealt with various situations arising from state efforts to regulate the sale of imported natural gas. . . . by 1938 the Court had delineated broadly between the area of permissible state control and that in which the states could not intrude. The former included interstate direct sales to local consumers, as exemplified in *Pennsylvania Gas Co.* v. *Public Service Commission*, 252 U.S. 23 . . . the latter, service interstate to local distributing companies for resale, as held in *Missouri ex rel. Barrett* v. *Kansas Natural Gas Co.* 265 U.S. 298; . . . reinforced by *Public Utilities Commission* v. *Attleboro Steam & Electric Co.*, 273 U.S. 83 . . . .
>
> * * * * * * *
>
> This impotence of the states to act in relation to sales for resale by interstate carriers brought about the demand for federal regulation and Congress' response in the Natural Gas Act. To reach those sales and prevent the hiatus in regulation their immunity caused, the Act declared in § 1(b):
>
> "The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas."
>
> This section determines the Act's coverage and does so in the light of the situation existing at the time. Three things and three only Congress drew within its own regulatory power, delegated by the Act to its agent, the Federal Power Commission. These were: (1) the transportation of natural gas in interstate commerce; (2) its sale in interstate commerce for resale; and (3) natural gas companies engaged in such transportation or sale.
>
> * * * * * * *
>
> The line of the statute was thus clear and complete.
>
> * * * * * * *
>
> And the line drawn was that one at which the decisions had arrived in distributing regulatory power before the Act was passed.
>
> Moreover, this unusual legislative precision was not employed with any view to relieving or exempting any segment of the industry from regulation. *The Act, though extending federal regulation, had no purpose or effect to cut down state power.* On the contrary, perhaps its primary purpose was to aid in making state regulation effective, by adding the weight of federal regulation to supplement and reinforce it in the gap created by the prior decisions. *The Act was drawn with meticulous regard for the continued exercise of state power, not to handicap or dilute it in any way.*

This appears not merely from the situation which led to its adoption and the legislative history, including the committee reports in Congress cited above, but most plainly from the history of § 1(b) in respect to the changes which took place in reaching its final form.

* * * * * * *

Congress, it is true, occupied a field. But it was meticulous *to take in only territory which this Court had held the states could not reach.*

* * * * * * *

The Natural Gas Act created an articulate legislative program based on a clear recognition of the respective responsibilities of the federal and state regulatory agencies. It does not contemplate ineffective regulation at either level. *We have emphasized repeatedly that Congress meant to create a comprehensive and effective regulatory scheme, complementary in its operation to those of the states and in no manner usurping their authority.* [332 U.S. at 514–520; emphasis supplied.]

To the same effect, see:

Phillips Petroleum Co. v. *Wisconsin*, 347 U.S. 672 (1954):

There can be no dispute that the overriding congressional purpose was to plug the "gap" in regulation of natural-gas companies resulting from judicial decisions prohibiting, on federal consitutional grounds, state regulation of many of the interstate commerce aspects of the natural-gas business. A significant part of this gap was created by cases holding that "the regulation of wholesale rates of gas and electrical energy moving in interstate commerce is beyond the constitutional power of the States." *Interstate Natural Gas Co.* v. *Federal Power Commission*, *supra* [331 U.S. at 689.] The committee reports on the bill that became the Natural Gas Act specifically referred to two of these cases and to the necessity of federal regulation to occupy the hiatus created by them.[13]

[13] "The States have, of course, for many years regulated sales of natural gas to consumers in intrastate transactions. The States have also been able to regulate sales to consumers even though such sales are in interstate commerce, such sales being considered local in character and in the absence of congressional prohibition subject to State regulation. . . . There is no intention in enacting the present legislation to disturb the States in their exercise of such jurisdiction. However, in the case of sales for resale, or so-called wholesale sales, in interstate commerce (for example, sales by producing companies to distributing companies) the legal situation is different. Such transactions have been considered to be not local in character and, even in the absence of Congressional action, not subject to State regulation. (See *Missouri* v. *Kansas Gas Co.* (1924), 265 U.S. 298, and *Public Utilities Commission* v. *Attleboro Steam & Electric Co.* (1927) 273 U.S. 83.) The basic purpose of the present legislation is to occupy this field in which the Supreme Court has held that the States may not act." HR Rep No. 709, 75th Cong, 1st Sess 1–2; S Rep No. 1162, 75th Cong, 1st Sess 1–2. [347 U.S. at 682–4.]

Also see: *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498, 502–503 (1949):

. . . the Natural Gas Act did not envisage federal regulation of the entire natural-gas field to the limit of constitutional power. Rather it contemplated the exercise of federal power as specified in the Act, particularly in that interstate segment which the states were powerless to regulate because of the Commerce Clause of the Federal Constitution. The jurisdiction of the Federal Power Commission was to complement that of the state regulatory bodies. . . .

Federal Power Commission v. *Transcontinental Gas Corp.*, 365 U.S. 1 (1961):

. . . Congress, in enacting the Natural Gas Act, did not give the Commission comprehensive powers over every incident of gas production, trans-

portation and sale. Rather, Congress was "meticulous" only to invest the Commission with authority over certain aspects of this field, leaving the residue for state regulation.

* * * * * * *

. . . Congress "meant to create a comprehensive and effective regulatory scheme." . . .

It is true, of course, that Congress did not desire comprehensive *federal* regulation; much authority was reserved for the States. But it is equally clear that Congress did not desire that an important aspect of this field be left unregulated. . . .

Federal Power Commission v. *Hope Natural Gas Co.*, 320 U.S. 591, 610 (1944):

. . . the bill was designed to take "no authority from State commissions" and was "so drawn as to complement and in no manner usurp State regulatory authority."

In view of the Congressional intent not to usurp or reduce existing state authority or power in this field, but merely to fill the regulatory gap left by prior court decisions, Congress in enacting the Natural Gas Act carefully abstained from making the Act applicable to transportation or sales *"affecting* interstate commerce," and instead limited the jurisdiction of this Commission to transportation and sales "in interstate commerce".

An argument might reasonably be made, along the lines suggested in the instant Staff brief (p. 14), that the comprehensive regulatory scheme would be rendered more effective if the regulatory powers of this Commission were extended to cover United's intrastate sales off its interstate system, rather than leaving its intrastate rates to be fixed by the Louisiana Commission. This problem was recognized by the Supreme Court with reference to railway carriers under the Act to Regulate Commerce, when it stated in the *Shreveport Rate Cases:*

. . . *the power to deal with the relation between the two kinds of rates,*[5] *as a relation, lies exclusively with Congress.* . . . It is for Congress to supply the needed correction where the relation between intrastate and interstate rates presents the evil to be corrected, and this it may do completely by reason of its control over the interstate carrier in all matters having such a close and substantial relation to interstate commerce that it is necessary or appropriate to exercise the control for the effective government of that commerce. [234 U.S. at 354–5.]

However, unlike the situation under the Act to Regulate Commerce, Congress has neither indicated nor expressed any intent to deal with any such problem under the Natural Gas Act. If Congress *had* regarded the relation between interstate and intrastate rates for sales of natural gas as presenting a serious problem, it could have vested control over such relationships in this Commission by making the Act applicable not only to transportation and sales of natural gas "*in* interstate commerce", but also to transportation and sales *"affecting* interstate commerce". This, however, Congress did not do—and as earlier noted, the Supreme Court has recognized that

. . . the Commission has no authority over *intrastate* sales under *any section* of the Act . . . . [*F.P.C.* v. *Transcontinental Gas Corp.*, 365 U.S. 1, at 17; emphasis supplied.]

Before concluding this discussion, some reference should be made to the particular argument presented by intervener Willmut Gas and Oil Company. Willmut recognizes as established law that Congress under the Natural Gas Act withheld from this Commission the power to regulate those activities of inter-

[5] *i.e.*, interstate and intrastate rates.

state pipelines which had *not* been held beyond the power of the states to regulate under the Commerce Clause in earlier Supreme Court decisions. However, it is suggested that the problem arises "when an attempt is made to determine exactly what activities were subject to state regulation prior to the enactment of the Act". Willmut contends that prior to the enactment of the Natural Gas Act the states had no jurisdiction, in view of the Commerce Clause, over *wholesales* of gas to local distributors when made by an interstate pipeline, regardless of the fact that the gas involved was produced, transported and consumed in one and the same state; that accordingly the Act must be interpreted as subjecting the instant United sales of this character to federal regulation, in order to avoid the regulatory gap which Congress meant to fill in enacting the Natural Gas Act. The Willmut argument is that the question whether sales made by an interstate pipeline company do or do not have an interstate character, precluding interference by the state, is totally unaffected by whether the gas is transported across state lines, but is governed completely *by the nature of the sales*—*i.e.*, by whether the sales in question are made *at wholesale* to local distributing companies, or *at retail* directly to the consumers.

In presenting this theory, Willmut relies wholly upon a discussion of the general subject in *Missouri* v. *Kansas Natural Gas Co.*, 265 U.S. 298 (1924), including particularly the manner in which the Supreme Court in that case reconciled its decision with earlier decisions in *Pennsylvania Gas Co.* v. *Public Service Comm.*, 252 U.S. 23 (1920), and *Public Utilities Comm.* v. *Landon*, 249 U.S. 236 (1919).

It is concluded here that Willmut has misconceived the significance to be drawn from these cases. The salient points to be noted here are as follows:

1) No question had ever been raised, nor was any presented in the cited decisions, as to the authority of the states under the Commerce Clause to regulate sales by an interstate pipeline company of gas which was produced, transported and consumed wholly in one and the same state—*i.e.*, gas which admittedly had not yet been subjected to interstate transportation at the time when it was sold for consumption within the same state.

2) The court in the above cases was dealing with the only question which was regarded as presenting a problem—*i.e.*, that of gas which had already been transported in interstate commerce by an interstate pipeline company and brought into a given state for sale therein. Under such circumstances, the court held in *Missouri* v. *Kansas*, *supra*, that:

a) Where the sale in question was one made by the interstate pipeline company to local distributing companies, the interstate movement had not yet come to an end. Accordingly, such sale was still a part of interstate commerce, and beyond the power of the state to regulate. This was the case in *Missouri* v. *Kansas*, *supra*, where the court stated:

> The question is controlled by familiar principles. Transportation of gas from one state to another is interstate commerce; and the sale and delivery of it to the local distributing companies is a part of such commerce, [265 U.S. at 307.]

b) However, where the local distributing companies, after purchasing the gas from the interstate pipeline company, in turn resold it to the consumers, the interstate movement was regarded as having come to an end with the delivery of the gas to the local distributing companies. Accordingly, the resale by the local companies to the consumers was not regarded as part of interstate commerce, and *was* subject to state regulation. (This was the case in *Public Utilities Comm.* v. *Landon*, *supra*.)

c) Finally, where an interstate pipeline company transported the gas across state lines and itself sold the gas directly to the consumers in another state, such a sale *was* held to be interstate commerce, *regardless of its retail nature*, in *Pennsylvania Gas Co.* v. *Public Service Comm., supra:*

> We think that the transmission and sale of natural gas produced in one state, transported by means of pipe lines, and directly furnished to consumers in another state, is interstate commerce within the principles of the cases already determined by this court. [252 U.S. at 26–28.] [6]

However, the court stated that in some instances, even where interstate commerce was admittedly involved, the states had authority to pass laws indirectly affecting such commerce, when needed to protect or regulate matters of local interest, and that such laws were operative until Congress acted under its superior authority by regulating the subject-matter for itself; that under the circumstances involved in that case the sale made directly to consumers by the interstate pipeline company, while part of an interstate transmission, was nevertheless local in nature and its regulation by the state was required in the public interest; that accordingly, since the regulation of such sales had not yet been attempted under the superior authority of Congress, the state had jurisdiction.

It is difficult to see how the cases cited above could seriously be regarded as standing for the proposition that sales by an interstate pipeline company of gas produced, transported and consumed wholly in one and the same state, which admittedly had not been the subject of an interstate movement prior to such sale, nevertheless are to be considered as sales in interstate commerce which the states had no power to regulate.

II. *Sales in Florida Parishes Area off United's Kosciusko Line*

Although it is here concluded, for the reasons set forth at length above, that United's sales of onshore Louisiana gas to the Florida Parishes area off its Lirette-Mobile line do not constitute "sales in interstate commerce" and therefore are non-jurisdictional, United's sales to the Florida Parishes area off its 30-inch Kosciusko line present a different problem.

Gas is introduced into United's Kosciusko line from three offshore fields on the Continental Shelf, lying between 15 and 38 miles from the Louisiana shoreline—*i.e.*, Blocks 32, 45, and 110 of the Eugene Islands area seaward of the Louisiana coastline in the Gulf of Mexico. This gas is transported from the production points offshore to the mainland, being brought on shore in Louisiana at a point northwest of Four League Bay. Thence, it is conveyed northeasterly through United's 30-inch Kosciusko pipeline to the Napoleonville Compressor Station and commingled with gas produced onshore in Louisiana. The gas continues moving northeasterly through United's Montpelier Compressor Station to the Mississippi state line for ultimate sale for resale to customers outside the geographical limits of Louisiana. However, before the gas crosses the Louisiana-Mississippi boundary line, portions are sold for resale in the Florida Parishes area.

The Staff contends that either all, or an appreciable portion, of the above-mentioned offshore fields lie beyond the boundaries of the State of Louisiana in the Outer Continental Shelf area, which is subject to the jurisdiction and control of the United States and is administered by the Secretary of Interior in

---

[6] Thus Willmut is clearly in error in reading this case as standing for the proposition that "it was the nature of the sales and not the transportation across state lines per se which gave the sales their interstate character . . ." [p. 8 of brief].

accordance with the terms and provisions of the Outer Continental Shelf Lands Act.[7] Staff further contends that gas produced in the Outer Continental Shelf area, beyond the Louisiana boundaries, and transported to the State of Louisiana and sold off United's Kosciusko line in the Florida Parishes area, constitutes gas which is transported and sold "in interstate commerce" within the meaning of that term as defined in Section 2(7) of the Natural Gas Act. Finally, Staff argues that since such out-of-state offshore gas constitutes an appreciable portion of the gas entering the Kosciusko line, where it is commingled with gas produced inside the Louisiana boundaries, the entire commingled stream in the Kosciusko line must be regarded as an *interstate stream*—*i.e.*, "in interstate commerce"; that accordingly, all gas sold in the Florida Parishes area off United's Kosciusko line should be regarded as jurisdictional.

The first question presented is whether the mentioned offshore fields are in fact *beyond* the boundaries of the State of Louisiana—a matter which is controlled by the Submerged Lands Act enacted by Congress in May 1953 (67 Stat. 29, 43 U.S.C. §§ 1301–1315). By that Act the United States relinquished to the coastal States all of its rights in the submerged lands within certain geographical limits, and confirmed its own rights therein beyond those limits. To effectuate these purposes, the Act

a) relinquished to the States the entire interest of the United States in all lands beneath navigable waters *within state boundaries;*

b) defined that area in terms of state boundaries "as they existed at the time a State became a member of the Union, or as heretofore approved by the Congress", not extending, however, seaward from the coast of any State more than three marine leagues in the Gulf of Mexico;

c) confirmed to each State a seaward boundary of three geographical miles, in any event;

d) retained in the United States all rights in submerged lands lying beyond those areas to the seaward limits of the Continental Shelf.

Subsequently, a litigated question arose between the coastal states and the United States as to the proper definition of the state boundaries as provided in the Submerged Lands Act. In *United States* v. *Louisiana*, 363 U.S. 1, 79 (1960), the Supreme Court found that Louisiana was entitled to submerged-land rights "to a distance no greater than three geographical miles from its coastlines, wherever those lines may ultimately be shown to be". The subsidiary controversy as to the proper location of the Louisiana coastline was left by the court to be resolved in some later proceeding. In its Final Decree entered on December 12, 1960, pursuant to this decision, the court decreed that

> As against the respective defendant States, the United States is entitled to all the lands, minerals and other natural resources underlying the Gulf of Mexico more than three geographic miles seaward from the coastlines of Louisiana, Mississippi, and Alabama . . . and extending seaward to the edge of the Continental Shelf. None of the States of Louisiana, Texas, Mississippi, Alabama or Florida is entitled to any interest in such lands, minerals or resources, and each of said States . . . are hereby enjoined from interfering with the rights of the United States in such lands, minerals and resources. [364 U.S. 502–503.]

The disputed question as to the proper location of the Louisiana coastline is presently being negotiated by a Joint Committee from the State of Louisiana and the United States Department of the Interior. (1:158) Under these circumstances, the Louisiana interveners contend that the factual question as to the

---

[7] 67 Stat. 462, 43 U.S.C. §§ 1331–1343.

proper location of the Louisiana coastline, and accordingly the controversy as to whether these particular offshore fields are within the boundaries of the State of Louisiana, may be resolved only by the Supreme Court and not by this Commission.

However, the matter need not be left in such an inconclusive posture for the purpose of the resolution of the jurisdictional issue in the instant proceeding. Offshore Blocks 32, 45 and 110 are shown on Exhibit 11, an enlarged map showing United's facilities. They are also located on the map attached as Exhibit A to Exhibit No. 12 in this proceeding. The mileage figures on Exhibit No. 11 indicates that there are 14.9 miles of pipeline from Block 32 to the Louisiana shoreline,[8] 10.4 miles of pipeline between Blocks 32 and 45, and 12.8 miles of pipeline between Block 45 and Block 110. It therefore appears that the United pipeline extends approximately 38 miles from the Louisiana shoreline before it reaches Block 110. (1:90)

As already noted, the Supreme Court in *United States* v. *Louisiana*, *supra*, stated that it did not intend in that particular decision "to settle the location of the coastline of Louisiana or that of any other State". (363 U.S. at 67, footnote 108) In its Final Decree (364 U.S. 502) the Supreme Court decreed that the United States was entitled to all the lands, minerals and other natural resources underlying the Gulf of Mexico "more than three geographic miles seaward from the coast lines of Louisiana, Mississippi and Alabama . . .", and further stated:

> As used in this decree, the term" coastline" means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters. [At 503.]

The Staff notes that although the exact perimeters of the Louisiana coastline under the above-mentioned Supreme Court definition are still in dispute, it is clear that if the coastline were determined *on that basis* all of Block 110, all of Block 45 and all or most of Block 32 would fall outside the Louisiana boundaries. However, the situation is somewhat further confused as a result of the fact that the State of Louisiana in the above Supreme Court litigation contended, *inter alia*, that its coastline should be measured as defined in certain regulations promulgated by the Commandant of the Coast Guard, pursuant to the Federal Act of February 19, 1895, 33 U.S.C. § 151. The Supreme Court deferred resolution of this question, stating:

> We think the consideration of this contention should be postponed to a later stage of this case. We decide now only that Louisiana is entitled to submerged-land rights to a distance no greater than three geographical miles from its coastlines, wherever those lines may ultimately be shown to be. [363 U.S. at 79.]

The Staff notes that even under the conditions most favorable to Louisiana—*i.e.*, use of the coastline as defined in the above-mentioned Coast Guard regulations—a line three geographical miles from the Louisiana coastline as thus determined would fall on the shoreward side of Block 110; that accordingly the producing area in Block 110 inevitably would be found *outside* the boundaries of Louisiana *under any theory which could be applied*. (Staff brief, pp. 17–18) It is of interest to note that the State of Louisiana, which is of course directly involved in the pending negotiations to determine the location of its coastline, did not in its instant reply brief comment upon or raise any question whatsoever with respect to this particular Staff conclusion—nor was this Staff conclusion questioned in any way in the reply briefs filed by any of the other Louisiana interveners.

---

[8] As there used, the term "shoreline" refers to "the line along which the marsh lands end and beyond which there is open water". (1:90)

It is therefore concluded that it can properly be assumed, for the purpose of the instant decision, that an appreciable portion of the gas entering United's Kosciusko line is out-of-state gas, produced *outside* the boundaries of the State of Louisiana. Under these circumstances, it is concluded that the entire commingled stream in the Kosciusko line must be regarded as an interstate stream, involving the transportation and sale of natural gas "in interstate commerce". The controlling physical fact is that there is no way of segregating the interstate and the intrastate molecules in that commingled stream in such a way that the gas delivered off the Kosciusko line to the Florida Parishes area will consist only of the gas which was produced inside the boundaries of Louisiana.

Under similar circumstances, the Commission held in the *Lo-Vaca* case, Op. No. 348, *supra*, that:

> Sales of gas by interstate pipeline systems are sales in interstate commerce where the gas sold has been produced in another state *even when mixed with gas produced in the same state.*
>
> * * * * * * *
>
> The same conclusion applies to sales of electric energy generated in another state *although mixed with energy generated in the state of sale.* [p. 611; emphasis supplied.]

In *Wisconsin-Michigan Power Co.* v. *F.P.C.*, 197 F. 2d 472 (CA7, 1952),[9] the court stated:

> Petitioners suggest that out-of-state energy sheds its interstate commerce garb when, after arrival in Wisconsin, it is continued in transmission, reduced from 132,000 volts to 33,000 volts and commingled with relatively larger quantities of Wisconsin generated energy. [at p. 477.]
>
> * * * * * * *
>
> As we understand petitioners' contentions, they insist that commingling, in Wisconsin, of Michigan generated energy with that generated in Wisconsin destroys the interstate character of the resulting mixture, so that all energy, after commingling takes place, is intrastate in character, having become part of the mass of goods within the state. But the reasoning of the courts quite generally is convincing that, even though the interstate component amounts to only a small percentage of the entire volume, the essential interstate character remains and sole jurisdiction is vested in the Commission.
>
> * * * * * * *
>
> The fact that the amount of out-of-state energy is small in proportion to the total amount of energy sold is unimportant.
>
> * * * * * * *
>
> Nor does the fact that Wisconsin generated energy is commingled with energy transmitted from Michigan convert the transaction to local or intrastate activity. [at p. 478.][10]

The Louisiana interveners, however, contend that, entirely apart from the considerations referred to above, gas produced in and transported from the Outer Continental Shelf area beyond the Louisiana boundaries to the State of Louisiana does not constitute gas transported or sold "in interstate commerce" within the meaning of that term as defined in Section 2(7) of the Natural Gas Act.

---

[9] Certiorari denied April 13, 1953, 345 U.S. 934.

[10] This decision was cited with approval by the Court of Appeals for the District of Columbia in *State of Wisconsin* v. *F.P.C.*, 201 F. 2d 183 (1952). Also see *Pennsylvania Water and Power Co.* v. *F.P.C.*, 343 U.S. 414, 419–20 (1952).

The status of the Outer Continental Shelf area is as follows: In 1953, subsequent to enactment of the Submerged Lands Act, Congress adopted the Outer Continental Shelf Lands Act, 43 U.S.C. §§ 1331–1343, providing in detail for Federal exploitation of the submerged lands of the Continental Shelf beyond those granted to the States by the Submerged Lands Act. The Outer Continental Shelf Lands Act contains the following provisions which are deemed pertinent to this discussion:

43 U.S.C. Section 1332(a)

(a) It is declared to be the policy of the United States that the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this subchapter.

43 U.S.C. Section 1333(a)(1)

(a)(1) The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing, and transporting resources therefrom, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: . . .

In addition, Sec. 9 of the Submerged Lands Act, *supra*, provides:

Nothing in this Act shall be deemed to affect in anywise the rights of the United States to the natural resources of that portion of the subsoil and seabed of the Continental Shelf lying seaward and outside of the area of lands beneath navigable waters, as defined in section 2 hereof, all of which natural resources appertain to the United States, and the jurisdiction and control of which by the United States is hereby confirmed. [43 U.S.C. §§ 1302.]

In *United States* v. *Louisiana*, 363 U.S. 1, 10, *supra*, the Supreme Court cited the above provision as authority for its conclusion that the Act "retains in the United States all rights in submerged lands lying beyond those areas to the seaward limits of the Continental Shelf . . ." And in its Final Decree issued in that case (364 U.S. 502) the Court decreed that:

As against the respective defendant States, the United States is entitled to all the lands, minerals and other natural resources underlying the Gulf of Mexico more than three geographic miles seaward from the coast lines of Louisiana . . . and extending seaward to the edge of the Continental Shelf.

It is thus clear that the Outer Continental Shelf area is an area subject to the exclusive jurisdiction and control of the United States.

The term "interstate commerce" is defined as follows in Sec. 2(7) of the Natural Gas Act:

(7) "Interstate commerce" means commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof, but only insofar as such commerce takes place within the United States.

There can be no doubt that the phrase "commerce between any point in a State, and any point outside thereof", when read according to its normal and natural meaning, is broad enough to include commerce between points inside the state of Louisiana and offshore fields beyond the boundaries of Louisiana in the Outer Continental Shelf area. When read according to its natural meaning the phrase "any point outside thereof" is broad enough to include not merely *another state*, but also would include the District of Columbia, various possessions of the United States constituting organized Territories thereof, or lands merely subject to the

jurisdiction and control of the United States, such as areas under United States lease (*i.e.*, the Canal Zone), or a Federal domain area over which the United States has exclusive jurisdiction and control. It would seem obvious that before this natural meaning of the phrase may be abandoned or disregarded for an artificially narrow or more limited construction, some strong and compelling reason therefor should be shown.

The Louisiana interveners contend that such an artificially narrow construction of the phrase "and any point outside thereof" is required in view of the later clause limiting jurisdiction "only insofar as such commerce takes place within the United States". It is their position that the latter phrase "within the United States" must be read as meaning "within the *mainland* United States"; that under the terms of the Outer Continental Shelf Act the submerged lands merely "appertain" to the United States, but are not part of the United States; that accordingly by adding the clause at the end of this section Congress intended to make it clear that the phrase "any point outside thereof" was not to be given its normal or natural meaning, but instead must be read in a much more limited sense. The difficulty with the approach of the Louisiana interveners is that if the phrase "and any point outside thereof" is construed in such a way as *not* to include areas under exclusive United States jurisdiction and control, the result is to leave that phrase with only two possible alternative meanings, neither one of which would make any sense.

One such alternative would be to interpret the phrase as meaning "and any point *in another state*". However, if Congress had intended this result it could have accomplished its purpose quite directly, simply and unambiguously by merely defining interstate commerce as "commerce between any point in a State and any point in another state as herein defined." There does not appear to be any possible explanation as to what could have impelled Congress under such circumstances to use instead the much broader phrase "and any point outside thereof", if such a limited purpose were intended. The second alternative possibility presented by the position of the Louisiana interveners would be that the phrase "and any point outside thereof" might be interpreted as meaning "and any point in another state, or any point *in a foreign country*". However, in order to accept such a construction we would have to believe that Congress used a broader-than-necessary first phrase for the sole purpose of adding in *foreign commerce*, merely so that foreign commerce could then be expressly excluded from coverage by the last phrase "but only insofar as such commerce takes place within the United States". Obviously this would not make sense, and there is no justification for assuming that Congress was interested in engaging in any such meaningless exercise.

It is of interest to note that this latter alternative is ruled out in any event by the decision of the Court of Appeals for the District of Columbia in *Border Pipe Line Co.* v. *F.P.C.*, 171 F. 2d 149 (1948), holding that the Section 2(7) definition of "interstate commerce" in the Natural Gas Act does *not* include *foreign commerce*. It thus follows that if the phrase "and any point outside thereof" were to be construed in such a way as not to include areas under exclusive United States jurisdiction and control, that phrase could have only *one* possible alternative meaning—*i.e.*, *another state*. As already pointed out above, if Congress had any such limited intention its use of the broad phrase "and any point outside thereof" would have been entirely meaningless and unnecessary.

It is well to heed here the guiding principles laid down for statutory construction under such circumstances by the Court of Appeals in the *Border Pipe Line Company* case, *supra*, as follows:

> Congress uses expressions of established meaning.
>
> * * * * * * *

> . . . where relatively plain language and congressional conduct of accepted implication point one way and the contrary appears only through strained and complex assumptions and deductions, questions which the administrators may have as to the full intent and desirable scope of the congressional action ought to be addressed to the Congress.
>
> * * * * * * *
>
> It is bad from the viewpoint of sound government for the courts to twist strange results out of otherwise understood expressions of the legislature.
>
> * * * * * * *
>
> The wise and sound course for the courts is to give to the terms of a statute their plain meaning, so long as the resultant effect is sensible and not in conflict with a discernible purpose. [171 F. 2d at 152–3.]

If the Section 2(7) definition of "interstate commerce" is therefore simply read according to its natural and sensible meaning, the first phrase "and any point outside thereof" is broad enough to include the District of Columbia, any organized Territory of the United States, or lands merely subject to the jurisdiction and control of the United States, such as areas under United States lease or Federal domain areas over which the United States has exclusive jurisdiction and control. Similarly, it seems clear that the last phrase "but only insofar as such commerce takes place within the United States" was intended merely to insure that no regulatory authority would be exercised by this Commission over that particular portion of any interstate commerce which takes place in any *foreign country* and which is thus subject to the laws of such country—for example, the case of a pipeline connecting Alaska and the State of Washington, but passing through Canada. On the other hand, no reasonable explanation can be advanced as to why Congress should have desired to exclude from coverage interstate commerce *not* involving the laws of a *foreign country*, but involving areas subject to the exclusive jurisdiction and control of the United States. Accordingly, no justification can be found for adopting the narrow interpretation of the Louisiana interveners that the later phrase "but only insofar as such commerce takes place within the United States" is to be read as meaning "within the *mainland* United States." As already noted above, Congress has specifically provided in Section 4(a)(1) of the Outer Continental Shelf Act that

> The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing and transporting resources therefrom, *to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State.* . . . [Emphasis supplied.]

It is concluded that under these circumstances commerce between the State of Louisiana and areas subject to the exclusive jurisdiction and control of the United States in the Outer Continental Shelf area must be regarded as taking place "within the United States", within the meaning of Section 2(7) of the Natural Gas Act.

Finally, it is concluded that there is no common sense reason why Congress should have intended or desired the narrow construction contended for by the Louisiana interveners, since the result would have been to leave a gap in the regulatory scheme. It should be noted here that although the Commerce Clause of the Constitution (Art. I, Sec. 8, Clause 3) vests in Congress the power "To regulate commerce with foreign Nations, and *among the several States*, and with the Indian Tribes . . .", Congress has always regarded the Commerce

Clause as empowering it to regulate not only commerce between different states, but also commerce between a state and any organized Territory of the United States, or between a state and the District of Columbia.[11]

In the few cases where the question has been explicitly raised it has been held by the courts that "commerce between the States and a Territory which has become a part of the United States is interstate commerce". *Anderson* v. *Mullaney*, 191 F. 2d 123, 127 (CA9, 1951); *Inter-Island Steam Nav. Co.* v. *Territory of Hawaii*, 96 F. 2d 412, 416–7 (CA9). The Supreme Court acted on this assumption in *McLean & Co.* v. *Denver & Rio Grande R.R. Co.*, 203 U.S. 38, 49; *Hanley* v. *Kansas City Southern Ry. Co.*, 187 U.S. 617, 620; *Inter-Island Steam Nav. Co.* v. *Territory of Hawaii*, 305 U.S. 306, 313.

If the term "commerce . . . among the several States" in the Commerce Clause is broad enough to include commerce between a state and a Territory, or between a state and the District of Columbia, it would seem to be equally applicable to commerce between a state and an area subject to the exclusive jurisdiction and control of the United States, although not within a well-defined political unit. It follows, therefore, that prior to the enactment of the Natural Gas Act the states were without power to regulate commerce in natural gas between a state and a Territory, or the District of Columbia, or any area subject to the exclusive jurisdiction and control of the United States. See, in this connection, the holding of the Supreme Court in *Standard Oil Company* v. *California*, 291 U.S. 242, 245 (1934) that a state "cannot legislate effectively concerning matters beyond her jurisdiction and within territories subject only to control by the United States". Also see *Yellowstone Park Transportation Co.* v. *Gallatin County*, 31 F. 2d 644, 645 (1929) where the court held that a state had no jurisdiction over a Federal reservation, as follows:

> In other words, after the date of cession, the territory was as much without the jurisdiction of the state making the cession as was any other foreign territory, except in so far as jurisdiction was expressly reserved.

There does not appear to be any possible reason why Congress should have desired or intended not to fill such a regulatory gap when it adopted the Natural Gas Act. The filling of such a gap by the imposition of Federal jurisdiction and control would not have involved any problem relating to operations which might be subject to the laws of a foreign country, and accordingly it was not subject to the considerations which led Congress to exclude *foreign commerce* from the coverage of the term "interstate commerce" in the Natural Gas Act.

Since it thus appears that the clear and unambiguous language of Section 2(7) of the Natural Gas Act, as naturally read, is broad enough to cover commerce between any point in a state and the Outer Continental Shelf areas subject exclusively to United States jurisdiction and control, and since there is nothing in the legislative history of the Natural Gas Act indicating any intent or purpose not to cover such situations, the conclusion is inescapable that the transportation and sale of gas from the Outer Continental Shelf area beyond the boundaries of Louisiana to the Florida Parishes area of Louisiana involves the transportation and sale of natural gas "in interstate commerce".

Before concluding, brief reference may be made to the argument advanced by intervener Louisiana Gas Service Company that Congress in enacting the Outer Continental Shelf Act evinced a clear intent not to extend the power of this Commission into that area. The contention seems to be that even if it were

---

[11] See Bituminous Coal Act, 50 Stat. 90, 26 U.S.C.A. § 3526(d); Securities Act of 1933, 48 Stat. 74, 15 U.S.C.A. § 77(b)(7); Interstate Commerce Act, 41 Stat. 474, 49 U.S.C.A. § 1(1)(c).

concluded that the definition of "interstate commerce" in the Natural Gas Act is broad enough to include commerce between a point in a state and an area subject to the exclusive jurisdiction and control of the United States, nevertheless when Congress enacted the Outer Continental Shelf Act in 1953 it expressed a clear and effective congressional intent that commerce between a state and the Outer Continental Shelf area should be excluded from the coverage of the Natural Gas Act and from the jurisdiction of the Federal Power Commission. It is concluded, however, that there is nothing in the Outer Continental Shelf Act itself, or even in the quoted interchanges with Senator Daniel of Texas which occurred during the congressional hearings on that Act, indicating any congressional intent whatsoever to deal *in that Act* with the question whether gas produced in the Outer Continental Shelf area should be regarded as subject to Federal Power Commission jurisdiction under the Natural Gas Act as gas "in interstate commerce".

For the reasons set forth at length above, it is concluded that the sales for resale made by United in the Florida Parishes area off its Kosciusko line must be regarded as jurisdictional.

DECLARATORY ORDER

Upon consideration of the entire record in this proceeding, the evidence adduced and the briefs filed, the Presiding Examiner concludes, subject to review by the Commission on appeal, or upon its own motion as provided in the Commission's Rules of Practice and Procedure, that:

(A) The transportation and sale for resale of natural gas by United Gas Pipe Line Company *off its Lirette-Mobile line* within that part of its Jackson District located within the so-called Florida Parishes of the State of Louisiana is not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act.

(B) The transportation and sale for resale of natural gas by United Gas Pipe Line Company *off its Kosciusko line* within that part of its Jackson District located within the so-called Florida Parishes of the State of Louisiana is subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act.

JOSEPH ZWERDLING,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

COLORADO INTERSTATE GAS COMPANY, DOCKET NO. CP63-324

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 27, 1963)

On May 27, 1963, Colorado Interstate Gas Company (Applicant) filed in Docket No. CP63-324 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities in Beaver County, Oklahoma, necessary to effectuate the direct sale of natural gas to Mid-America Pipe-Line Company, all as more fully set forth in the application.

Applicant proposes to sell on an interruptible basis a maximum quantity of 700 Mcf per day through the period ending May 31, 1973. Mid-America proposes

to use the gas as turbine fuel in its hydrocarbon products pump station to be located near Applicant's Mocane compressor station site in Beaver County, Oklahoma. Applicant will make the proposed sale by means of existing facilities, together with a new meter station on its Mocane compressor station site, estimated to cost $4,400.

Pursuant to due notice, a public hearing was held in Washington, D.C. on August 13, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff Counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Colorado Interstate Gas Company, a Delaware Corporation having its principal place of business in Colorado Springs, Colorado, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, will be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30 (c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Colorado Interstate Gas Company, to construct and operate the natural gas facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 90 days from the date on which this order issues.

(D) The volume of gas hereby authorized to be sold to Mid-America shall not exceed 700 Mcf per day.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

EAST TENNESSEE NATURAL GAS COMPANY, DOCKET NO. CP63-313

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 27, 1963)

On May 20, 1963, East Tennessee Natural Gas Company (Applicant) filed in Docket No. CP63-313 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the installation and operation of a 1,000 horsepower compressor station on its 16-inch South Line near Lobelville, Tennessee, all as more fully set forth in the application.

The installation of the proposed facilities will increase Applicant's ability to utilize its pipeline system for "pack-and-flow" operations by providing an additional 13,429 Mcf of "line pack" in its South Line. Applicant will thereby be able to maintain its demand as low as possible upon its sole supplier, Tennessee Gas Transmission Company. No compressor horsepower is presently installed in Applicant's system.

The proposed installation will eliminate the need for manual pressure control between Chattanooga and Knoxville, Tennessee. The operating costs of the compressor station are estimated to approximately equal the yearly expenditure of $13,080 for valve manipulation. By enabling Applicant to move an additional 15,000 Mcf of gas per day through its South Line, the proposed station would minimize the adverse effects created by wash-outs on either of two single line river crossings on the North Line. The North and South Lines connect near Knoxville.

The estimated cost of the proposed facilities is $274,800, to be financed from general funds provided from the operations of Applicant and/or short-term bank loans.

Pursuant to due notice a public hearing was held in Washington, D.C., on August 13, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, East Tennessee Natural Gas Company, a Tennessee Corporation having its principal place of business in Knoxville, Tennessee, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, will be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and the conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon Applicant's compliance with all applicable commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, East Tennessee Natural Gas Company, to install and operate the natural gas facilities as hereinbefore described, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 3 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP62-266

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 27, 1963)

On December 19, 1962, as supplemented on March 27, 1963, El Paso Natural Gas Company (Applicant) filed in Docket No. CP62-266 an application to amend the Commission's order issued November 19, 1962, 28 FPC 817, in said docket to delete from said order authorization for the construction and operation of certain facilities, to authorize the construction and operation of certain additional facilities and to permit and approve the abandonment of five mainline taps, all as more fully set forth in the application to amend, as supplemented.

The subject order authorized Applicant to acquire and operate certain facilities of Southwest Gas Corporation (Southwest); to abandon in place 7.52 miles of 10-inch pipe so acquired from Southwest; and to construct and operate, among other facilities, 9.08 miles of 16-inch pipeline looping a portion of the 16-inch line acquired from Southwest in Mohave County, Arizona.

Applicant requests herein that the subject order be amended to delete authorization for the 9.08 miles of 16-inch pipeline loop and in lieu thereof to construct and operate 10.73 miles of 20-inch pipeline replacing, over a slightly different route, 10.45 miles of the 16-inch line acquired from Southwest. Applicant also seeks authorization to abandon five mainline taps located on the portion of the 16-inch line to be replaced and abandoned and to construct and operate four mainline taps on the proposed new 20-inch replacement line. The new taps will be used to serve customers previously served by five taps to be abandoned.

The application indicates that the subject proposals would forestall future and more expensive capacity additions in a populated area, avoid crossing subdivided and soon to be subdivided lots, eliminate need for the section of loop line heretofore authorized and prevent danger involved in testing an old line at higher pressure in a populated area.

The application indicates an estimated increase of approximately $72,000 in the total estimated cost of the original project.

By letters, dated February 25 and April 25, 1963, Applicant was granted temporary certificates authorizing the subject proposals.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on July 25, 1963 (28 F.R. 7574). No protest, petition to intervene or request for hearing has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order, issued November 19, 1962, in Docket No. CP62-266 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order, issued November 19, 1962, in Docket No. CP62-266 be and the same is hereby amended to delete authorization for the construction and operation of certain facilities, to authorize the construction and operation of additional facilities and to permit and approve the abandonment of five mainline taps, all as hereinbefore described and as set forth in the application to amend, as supplemented.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

NORTHERN UTILITIES, INC., DOCKET NO. CP63-301

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 27, 1963)

On May 10, 1963, Northern Utilities, Inc. (Applicant) filed in Docket No. CP63-301 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities and the transportation and delivery of additional volumes of natural gas for the account of Kansas-Nebraska Natural Gas Company, Inc. (Kansas-Nebraska), all as more fully set forth in the subject application.

Specifically, Applicant proposes to construct and operate the following facilities:

(a) approximately 25 miles of 16-inch main pipeline loop on Applicant's interstate transmission pipeline between Sand Draw Field, Fremont County, Wyoming, and the city of Casper, Natrona County, Wyoming;

(b) a 12-inch meter run at the delivery point to Kansas-Nebraska at the latter's Casper compressor station, replacing the existing 8-inch meter run, and,

(c) meter stations to receive additional volumes of gas from Kansas-Nebraska.

The proposed facilities will enable Applicant to deliver a maximum daily volume of 26,000 Mcf* of natural gas which volume Kansas-Nebraska has requested Applicant to transport and deliver pursuant to the transportation agreement, dated August 25, 1962, between the two companies. The application indicates that the subject volumes will be tendered by Kansas-Nebraska to Applicant from producing areas in Fremont and Natrona Counties, Wyoming, and that said volumes will be transported by Applicant and delivered to Kansas-Nebraska for utilization by the latter in its market areas in eastern Wyoming and western Nebraska.

The application shows the estimated cost of the proposed facilities to be $914,388, which cost will be financed from cash on hand and cash obtained from the sale of assets.

Pursuant to due notice, a public hearing was held in Washington, D.C., on August 6, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Northern Utilities, Inc., a Wyoming corporation having its principal place of business in Casper, Wyoming, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order, issued December 20, 1962, in Docket No. CP63-74, 28 FPC 1082.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and delivery of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

*At 15.025 psia.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Northern Utilities, Inc., to construct and operate the proposed facilities and to transport and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the transportation and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

SACRAMENTO MUNICIPAL UTILITY DISTRICT, PROJECT NO. 2101

ORDER MODIFYING LICENSE ARTICLE AND EXTENDING TIME FOR COMPLETION OF CONSTRUCTION

(Issued August 27, 1963)

Sacramento Municipal Utility District (District), licensee for Project No. 2101, filed: (1) a request on June 3, 1963 for a further extension of time from July 1, 1963, as now specified in Article 25 of the license, to January 1, 1964 for completion of the construction of Stage II of the project; and (2) a request on June 14, 1963 for modification of Article 28 of the license for the project to reflect the provisions of a Memorandum of Understanding, dated June 3, 1963, between District and the U.S. Forest Service relative to the removal and flush-cutting of tree stumps within the Ice House and Gerle Creek reservoirs of the project.

By its order issued October 24, 1962, the Commission extended the time for completion of Stage II from February 28, 1963 to July 1, 1963 because of delays caused by foundation difficulties in locating the Camino penstock and by a labor strike. Our records show that the construction of Camino penstock and powerhouse, the last uncompleted features of Stage II, has been prosecuted diligently, and that the District has kept us informed at all times as to the progress of construction. The recent high flows in the South Fork of American River prevented the maintenance of the coffer dam around the tailrace so that the gate installation could be completed. We are hereinafter granting the extension.

By its order issued September 19, 1962, 28 FPC 493, the Commission, among other things, amended Article 28 of the license to require the removal and flush-cutting of tree stumps in certain areas within the Union Valley Reservoir. The afore-mentioned Memorandum of Understanding between the District and Forest

Service seeks Commission modification of Article 28 so as to provide that the Commission, with the advice of the Forest Service, shall designate; (a) within Ice House Reservoir 23 acres where stumps shall be removed and disposed of and the area cleared of rocks readily movable by bulldozer, and 5 acres where stumps shall be flush-cut within six inches of the ground; and (b) within Gerle Reservoir 6 acres where stumps shall be removed and disposed of, and 6 acres where stumps shall be flush-cut to six inches above ground. Also, in both reservoirs, certain hazard stumps and areas of unsightly stumps, as designated by the Forest Service, are to be cut to six inches above ground.

The Commission finds:

(1) The District has carried on in good faith and with reasonable diligence the construction of Stage II of the project and it will not be incompatible with the public interest to grant a further extension as hereinafter provided.

(2) Modification of Article 28 of the license for Project No. 2101 as hereinafter provided is appropriate and consistent with the public interest.

The Commission orders:

(A) The time specified in Article 25 of the license for Project No. 2101 for completion of construction of Stage II of the project is hereby further extended from July 1, 1963 to January 1, 1964.

(B) Article 28 of the license for Project No. 2101 is hereby further modified, effective as of July 1, 1963, to read as follows:

Article 28. The Licensee shall, prior to flooding, clear bottoms and margins of each reservoir between a plane five feet below maximum drawdown elevation of such reservoir and the plane at the normal pool elevation of such reservoir. Exclusive of the Union Valley, Ice House, and Gerle reservoir areas, stumps in the reservoirs shall be cut within six inches of the ground, except that they shall be cut flush with the ground in boat-dock areas, bathing beach areas and other areas as may be designated by the Commission upon advice of the Forest Service.

Union Valley Reservoir—The Commission with the advice of the Forest Service shall designate 200 acres within the Union Valley Reservoir area where all stumps shall be removed and disposed of and 370 acres where the stumps shall be cut flush with the ground. In the remaining Union Valley Reservoir area between the minimum and normal pool elevations all existing stumps over 24 inches in height above ground shall be cut to 6 inches above ground.

Ice House Reservoir—The Commission with the advice of the Forest Service shall designate 23 acres within the Ice House Reservoir area between elevation 5450 (maximum pool) and elevation 5395 where stumps shall be removed and disposed of and the area cleared of rocks that can be readily moved with bulldozer equipment and shall designate 5 acres where the stumps shall be flush cut within six inches of the ground. In the remaining reservoir area between elevations 5450 and 5395 certain hazard stumps and areas of unsightly stumps, to be designated by the Forest Service, will be cut to six inches above ground.

Gerle Reservoir—The Commission with the advice of the Forest Service shall designate six acres within the Gerle Reservoir area between elevation 5231 (normal maximum pool) and elevation 5215 where stumps shall be removed and disposed of and six acres where stumps shall be cut to six inches above ground. In the remaining reservoir area between elevations 5231 and 5215 certain hazard stumps and areas of unsightly stumps, to be designated by the Forest Service, will be cut to six inches above ground.

The Licensee shall clear and keep clear to an adequate width lands of the United States along open conduits, and shall dispose of all temporary structures,

unused timber, brush, refuse, or inflammable material resulting from the clearing of the lands or from the construction and maintenance of the project works. In addition, all trees along the margins of reservoirs which may die during operation of the project shall be removed. The clearing of the lands and the disposal of the material shall be done with due diligence and to the satisfaction of the authorized representative of the Commission. The Licensee shall remove and dispose of floating debris and excessive accumulations on the shoreline of all new reservoirs, prior to June 1 of each year, to the satisfaction of the authorized representative of the Commission.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgement of the acceptance of this order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

CITY OF TACOMA, PROJECT NO. 2166

ORDER PERMITTING WITHDRAWAL OF APPLICATION FOR LICENSE

(Issued August 27, 1963)

Application was filed on July 8, 1963 by City of Tacoma, Washington (Applicant) for Commission permission to withdraw its application for license filed on September 7, 1954, for proposed Project No. 2166 to be located on the South Fork of the Skokomish River in Mason County, Washington.

Applicant, who is the licensee for Project No. 2016 comprising the Mayfield and Mossyrock developments on the Cowlitz River, states that in view of the delays encountered in the completion of construction of Project No. 2016 not previously expected, Project No. 2166 would not be warranted at this time.

The Commission finds:

In the circumstances recited herein, it is appropriate to permit the withdrawal of the application for license for Project No. 2166.

The Commission orders:

Permission to withdraw the aforesaid application for license is hereby granted, without prejudice to the filing by Applicant of a new application for license, and this proceeding is hereby closed.

OPINION NO. 383-A

TEXACO SEABOARD, INC., DOCKET NO. CI61–118; TEXACO INC., CI61–119; HUMBLE OIL & REFINING COMPANY, CI61–157

MEMORANDUM OPINION AND ORDER ON REHEARING REJECTING SETTLEMENT PROPOSALS

(Issued August 27, 1963)

Syllabus

1. Determination of "in-line" price is governed by date of contract execution, not date deliveries commenced. P. 615.

2. Area ceilings set forth in Policy Statement are "guideline to future action" but "cannot effect an automatic approval of proposed rates."—or have any retroactive effect. PP. 615, 616.
3. Whatever is eventually determined in R–199, Texaco or Humble will be able to receive payment for 80 percent of their gas whether delivered or not. P. 615.
4. By fixing 17-cent area price [for new sales in 1963 and thereafter] Commission did not foreclose possibility that in a contested proceeding it might certificate a particular new sale at either a higher or lower price—such determination will be based on record in accordance with principles enunciated herein and in *CATCO* and *Skelly*. P. 616.
5. Policy is to grant producers temporary authority only upon condition that guideline price will not be increased without Commission permission, with maximum limit of three years, or until permanent certificate is granted. P. 617.
6. Proper "in-line" price for contracts executed in period following Policy Statement will depend on evidence in proceedings in which initial price for such contracts are in issue. P. 617.
7. In determining "in-line" prices here account is taken of contract provisions, other than prices, which affect total compensation producers receive. P. 618.
8. Neither Texaco's or Humble's settlement proposals are in the public interest since increases proposed substantially exceed in-line price and are not governed by price at date of contract execution. P. 619.
9. Upon rehearing Commission *rejects* settlement proposals and *confirms* prior order as herein modified. P. 619.

Commissioner Ross *concurring in part; dissenting in part.*

Commissioner Morgan *joined* in Commissioner Ross' statement.

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

On April 26, 1963, applications for rehearing were filed by Texaco Inc.,[1] Humble Oil & Refining Company and the Public Service Commission of New York with respect to the Commission's Opinion No. 383 and Order issued March 27, 1963, 29 FPC 593. That Opinion concerns applications for certificates of public convenience and necessity for sales of natural gas produced by Texaco in Texas Railroad District No. 4 and by Humble in District No. 3 under contracts executed on July 1, 1960 with Natural Gas Pipeline Company of America. We found that the certificates issued to Texaco in District No. 4 should be conditioned at 15 cents per Mcf while that issued to Humble in District No. 3 should be conditioned at 16 cents per Mcf. Texaco and Humble have filed offers of settlement, and responses have been filed by the Public Service Commission of New York and The United Gas Improvement Company. Because of Texaco's offer and to allow further time for consideration we granted rehearing on May 23, 1963 [not reported].

The problem here was to determine an initial rate for these sales that would be required by the public convenience and necessity under Section 7(e) of the Natural Gas Act. This means that the proposed price must not be "out of line" in accordance with the decision of the Court in the *CATCO* case.[2] Upon remand of the *CATCO* case[3] and in the *Skelly* case[4] we determined that the

[1] Texaco Seaboard has been merged into Texaco.

[2] *Atlantic Refining Co.* v. *F.P.C.*, 360 U.S. 378, 391.

[3] *Continental Oil Co., et al.*, 27 FPC 96, 100.

[4] *Skelly Oil Co., et al.*, 28 FPC 401, 408. See also Opinion on Rehearing, 28 FPC 1065, Opinion No. 362–A, issued December 18, 1962.

price line should be determined as of the time the contracts for the sales in question were executed, and we have determined the line here as of July 1, 1960. In doing so for District No. 4 we followed our findings in the *Skelly* case where the evidence is substantially identical to the present record. For the Humble sale in District No. 3 we examined the prices for other sales in this District No. 3 for the years 1958–1960. The Policy Statement setting forth an 18-cent ceiling or guideline price for initial rates was not issued until September 28, 1960, 24 FPC 818, 820, after all the contracts herein had been executed.

In their applications for rehearing, Texaco and Humble have made various arguments with respect to our determination of the initial price in each case, particularly with respect to the evidence considered. Most of these arguments have been expressly answered by the discussion in our Opinion No. 383 or in *CATCO* and *Skelly* Opinions, *supra*. Texaco's argument, repeated here, that we are using "in lineness" as the sole criterion of public convenience and necessity is answered by the court in *Atlantic Refining Co.* v. *F.P.C.*, 316 F. 2d 677 (CADC, March 21, 1963). In that case the court held that the Commission could properly hold issues of price controlling, "it being conceded that the other requirements of public convenience and necessity had been fully met by the proposed sale." Both the *Atlantic* case and *California Oil Co.* v. *F.P.C.*, 315 F. 2d 652, (10th Cir., March 28, 1963) uphold the use of sales prices in the area as the basis for fixing the initial prices in certificate cases and indicate that the Commission was not required to consider other evidence as to financial position and costs of production.

Humble now contends further that since it has not commenced deliveries and is free to accept or reject the proffered certificate, its contract should be treated like any other new contract under which deliveries have not commenced and should be entitled, at least, to the reduced initial price of 17 cents for District No. 3 specified by Order No. 267, 29 FPC 590, issued March 27, 1963. Our determination of the "in-line" price in this case and in our prior decisions is governed by the date the contract was executed, not the date deliveries began, and in the *Atlantic* case, *supra*, the court approved our use of the date the contract was executed to determine the "in-line" price. A new label would not transform this sale into a new transaction. If Humble should file an entirely new contract, the 17-cent ceiling would not automatically apply, but the price would be subject to consideration in an appropriate proceeding in which the history of the transaction would be highly relevant. As we said in the *Skelly* opinion, the area ceilings set forth in the Policy Statement are "guidelines to future action" but "cannot effect an automatic approval of proposed rates."

Both Texaco and Humble contend that we improperly included a condition in our order granting certificates (paragraph (C)) providing that the take-or-pay requirement in each contract is subject to the provisions of the Commission's final order in Docket No. R–199, modified by adding that the producers should not be required to file take-or-pay provisions for less than 80 percent of the annual contract quantities. They argue that the condition is without support in the record, is indefinite and would require some higher revenue standard as compared with other contracts.

We have limited the effect of paragraph (C) so that whatever is eventually determined in Docket No. R–199, Texaco or Humble will always be able to receive payment for 80 percent of their gas whether or not any gas is delivered. While all doubt as to the future is not eliminated, in our opinion, it has been confined within reasonable bounds. In *Sohio Petroleum Co.* v. *F.P.C.*, 298 F. 2d 465, 468 (CA10) the court held that in issuing a temporary certificate the question of permitting a Btu adjustment could be left for future determination

where the applicable Policy Statement price was used as a floor. We followed this with respect to permanent certificates in Opinions Nos. 350 and 353.[5]

Finally, Texaco and Humble have not shown that imposition of the take-or-pay limitation requires a higher rate. It is true that we have used contracts in determining the lines that do have take-or-pay clauses,[6] but the effect of a possible limitation of such provisions in the future is highly speculative. When we determined the line we took into account such contingent factors. The line of 16 cents reached in District No. 3 and 15 cents in District No. 4 is higher than most prices which had not been involved in litigation. We think, therefore, that compensation has been made for such factors. We may observe again in this connection, as we did in Opinion No. 383, that the initial price established under this decision will not prevent Texaco or Humble from filing rate increases up to the contract level (subject to suspension and refund).[7]

A question has been raised as to the relationship of the Commission's Policy Statement guideline ceilings and the "in-line" price fixed in this case. The prices in the Commission's Policy Statement are guidelines for future Commission action. They have no retroactive effect. The fact that the Commission has determined upon a record in this proceeding that the "in-line" price for certain contracts executed in 1960 is 16 cents is in no way inconsistent with the Commission's announcement of a guideline ceiling price of 17 cents for new sales in 1963 and thereafter. The 16-cent "in-line" price was determined on the basis of the record in a contested proceeding relating to a certain time and place, namely July 1, 1960 in District No. 3. The Commission's decision to reduce its guideline ceiling from 18 cents to 17 cents was determined as of March 27, 1963, almost three years later, on the basis of data then available to the Commission to serve as a guideline price for future action. Such guideline prices are at levels at which the Commission will grant permanent certificates in non-contested cases and authorize temporary service in emergencies. By fixing these rates we do not foreclose the possibility that the parties in a contested proceeding may persuade us that the level at which we should certificate a particular new sale should be at either a higher or lower price. Our determination will be based upon the record in each proceeding in accordance with the principles enunciated in *CATCO* and *Skelly* and herein.

The need for guideline ceilings in the interim period until just and reasonable rates can be established in all producing areas is clear to all parties concerned. The Commission in the exercise of its consumer protection function must hold the line against further increases in the price of gas and producers must know the price at which, in the absence of protest, the Commission will grant them a certificate. We believe our action in reducing the existing ceiling Texas District No. 3 from 18 cents to 17 cents (and similar reductions in several other producing areas) is ample demonstration that our Policy Level prices are more than holding the line for consumers while enabling "producers to obtain authorizations which provide them a reasonable basis, for proceeding with their operations and furnishing needed supplies of gas."

Our guideline ceilings also serve the very important function during this interim period of providing the level at which the Commission grants tem-

[5] *Panhandle Eastern Pipe Line Co.*, 27 FPC 35; *Michigan Wisconsin Pipe Line Co.*, 27 FPC 449.

[6] However, in District No. 3 the Sinclair Oil and Gas Co. contract dated September 29, 1959, for an estimated monthly production of 60,000 Mcf at 15.144 cents per Mcf and the Slick Oil Corp. contract dated August 25, 1958, for 45,000 Mcf a month at 15.0 cents per Mcf do not have take-or-pay clauses.

[7] See also *Atlantic Refining Co.* v. *F.P.C.*, *supra*, cited on this point by the New York Commission.

porary authority to producers to make needed sales of gas in emergencies until permanent certificates are granted. The Commission policy is to grant such temporary authority only upon the condition that the guideline price will not be increased without permission of the Commission with a maximum limit of three years or until the permanent certificate is granted. The Commission's policy to so limit the filing of rate increases is a key element in our program to hold the line on producer prices until just and reasonable area rates are established.[8] The Commission in establishing the guideline ceiling price recognizes that while holding the line for consumers the prices must also be fair to producers who must agree to forego even filing for rate increases during the period of the temporary.

We may add that the issuance of the Policy Statement on September 28, 1960, did not automatically elevate the price line. In view of our decision in this case fixing the in-line price level at 16 cents as of July 1, 1960, and our reduction of the guideline level to 17 cents as of March 27, 1963, we are obviously not of the opinion that the proper initial price level is 18 cents on September 28, 1960. What would be the proper in-line price for contracts executed in the period immediately following the issuance of the Policy Statement will depend on the evidence in proceedings in which the initial price for such contracts are in issue.

The New York Commission calls our attention to the fact that for Texas District No. 3 we listed at 16.2 cents per Mcf a sale of Valley Gas Transmission Inc. to Tennessee Gas Transmission Company under a contract dated September 30, 1959. Since, as the New York Commission points out, the Valley company is really a gathering company, it should not have been included among the producer sales. The New York Commission also notes our inclusion of a sale by Pel Tex Petroleum Company under contract dated November 2, 1960, although we are determining the price as of July 1, 1960. Since this price itself could not have influenced Humble's determination to sell to Natural Gas Pipeline Company of America, and is dated later than the Commission's Statement of General Policy No. 61–1 issued September 28, 1960, we think that it would be appropriate as a matter of discretion to exclude prices for comparison purposes after this date. However, this does not mean that in other instances not involving the date of the Policy Statement we will not consider contracts executed contemporaneously with the contract in question as showing pricing conditions in the area merely, because the contract in issue was dated a few days before the one with which it is being compared.

The elimination of one or two of the four permanent sales at the 16.2-cent level would not change our judgment of the proper "in-line" price level as of July 1, 1960. In arriving at our result we took into account not only the 16.2-cent prices but the prices for other permanently certificated sales in District No. 3 ranging up to 15.2 cents and also the prices for sales under temporary certificates. As the table in our Opinion No. 383 shows, the latter range from 14 cents up to 20 cents, but those above 16.2 cents are at levels equal to those that have been subject to litigation and are suspect. Our table indicates seven sales under temporary certificates at the 16.2-cent level, one of which has

[8] The Commission's authority to impose such conditions is the subject of judicial review in *H. L. Hunt* v. *F.P.C.*, 306 F. 2d 334 (CA5), petition for rehearing denied April 16, 1963; petition for certiorari [granted 375 U.S. 810 (S.Ct. No. 273); CA5 reversed March 30, 1964, 376 U.S. 515].

become permanently certificated.[9] Sales under temporary certificates are, of course, not as persuasive as prices under permanent certificates but do assist in determining the price level.

As indicated in our opinion in determinating the "in-line" prices herein we have taken into account contract provisions other than prices which affect the total compensation producers received for their gas. For instance, most of the prices with which we made comparisons do not include reimbursement for dehydration although this item is included in Humble's price.[10] As noted above, we also took into account the limitation of Humble's take-or-pay clause. Another important factor is the size of Humble's proposed sale estimated to amount to 248,000 Mcf per month. There are no sales of a comparable volume for District No. 3 below the 16.2-cent level. Thus in view of the spread of permanently and temporarily certificated sales, particularly those at 16.2 cents, and without giving any weight to higher prices subject to litigation, 16 cents is in line for District No. 3 as of July 1, 1960.

The "in-line" price we have fixed herein, considering all of the above-mentioned factors relevant to the contracts involved, provides compensation to the producers that by no means is equivalent to the highest group of untainted prices heretofore paid. Our judgment is thus clearly in accord with our statement in the remanded *CATCO* case (*Continental Oil Co., et al.*, 27 FPC 96, 102) that a price is "not in line as of a given time if it is the highest price or in the highest group of prices theretofore paid," and the statement in *Texaco Seaboard Inc., et al.*, 27 FPC 482, 485, that in *CATCO* "we held the proper price line to fall between the highest group of prices and the median price."

On May 16, 1963, Texaco filed an offer of settlement proposing an initial price of 16 cents per Mcf and a moratorium on rate increase filings until May 1, 1967. By response dated June 10, 1963, the New York Commission objected to Texaco's proposal as involving too high a price and too short a moratorium. The United Gas Improvement Company indicated that it favors a price higher than the "in-line" price coupled with a moratorium on rate increase filings.

On June 14, 1963, Texaco filed an amendment to its certificate application extending the moratorium until May 1, 1968. On July 6, 1963, the New York Commission responded to the amendment saying that the moratorium was still not long enough and that it permitted an increase above the ceiling without agreement of the parties. Now by motion filed August 9, 1963, Texaco proposes an effective rate inclusive of tax reimbursement and dehydration allowance of 15.5 cents per Mcf combined with the same five-year moratorium on rate increases to May 1, 1968, and it withdrew its amendment. This proposal compares with our determination in this proceeding that the "in-line" price in Texas District No. 4 on July 1, 1960, at the time of Texaco's contract, was 15 cents, although the guideline price established as of August 30, 1962, was 16 cents (Fifth Amendment of Statement of General Policy No. 61–1, 28 FPC 441).

---

[9] This is a sale under contract dated April 11, 1960, listed in Exhibit 48 as by Olin Gas Transmission Corp., now Humble Gas Transmission Co., to Tennessee Gas Transmission Co. The price of 16.16947 cents per Mcf applies to an estimated first months production of 77,500 Mcf. The permanent certificate was issued in Docket No. CP60–109 on October 31, 1960 under *Paul F. Barnhart, et al.*, Docket No. G–13831, *et al.*

One of the other sales listed under temporary certificate at 16.2 cents (15,500 Mcf per month) and two of these listed at 14.0 cents should be eliminated for the purposes of this proceeding since the contracts were executed between September 28, 1960, when the Policy Statement was issued, and the end of year.

[10] Almost as large a provision for dehydration is included in the two remaining permanently certificated 16.2-cent sales listed in Exhibit 48 and in the Olin sale at 16.2 cents referred to above, which is also made under permanent certificate.

Humble on June 11, 1963, for its sale in District No. 3 proposed an initial price of 17 cents to remain in effect five years after the commencement of the delivery term.[11] This may be compared with the 16-cent "in-line" price determined in this proceeding as of July 1, 1960, and the 17 cents established by our Order No. 264 amending the Policy Statement as of March 27, 1963. The New York Commission and The United Gas Improvement Company made similar responses to Humble's proposal.

We are of the opinion that neither Texaco's nor Humble's proposals are in the public interest. The increases proposed over the prices determined to be "in-line" are substantial. Furthermore, the proposals are in conflict with the principle that the "in-line" price should be determined as of the contract date. To permit Texaco and Humble to put into effect initial prices at the guideline level established much later would nullify this principle without sufficient justification and would be detrimental to consumers. Furthermore, we are dealing here with in-line prices that have been determined after the presentation of evidence in a full hearing. We have no reason to believe that our determination was not correct. We shall therefore not accept the modified settlement proposal made by Texaco in its filing of August 9, 1963, nor the proposal filed by Humble on June 11, 1963.

The Commission finds:

(1) The assignments of error and grounds for rehearing set forth in the applications for rehearing filed herein present no facts or principles of law which were not considered by the Commission when it issued its Opinion No. 383, or which, having now been considered, warrant any change or modification of such opinion, except as noted above.

(2) The settlement proposals filed by Texaco and Humble should be denied.

The Commission orders:

(A) Our Opinion No. 383 and Order is hereby confirmed as the order of the Commission except as modified herein.

(B) Paragraph (D) of our Opinion No. 383 and Order is amended to require that acceptance of the certificates by the respective producer applicants may be made within 20 days of this present order on rehearing.

(C) The settlement proposals filed by Texaco and Humble are hereby rejected including those contained in Texaco's amendment to its certificate application.

Commissioner Ross *concurring in part* and *dissenting in part.*

Commissioner Morgan, *concurring in part* and *dissenting in part, joined* in Commissioner Ross' statement.

Ross, Commissioner, *concurring in part and dissenting in part:*

I concur with that aspect of the instant order which lessens the impact of guideline pricing but I dissent to the majority's in-line determination with respect to Texas District No. 3.

The majority's policy had been to automatically grant certificates—both temporary and permanent—whenever the proposed price was at or below the guideline level in the Statement of General Policy No. 61–1. The only exception concerned a permanent in cases when a party outside the Commission presented an objection in which even guideline prices were not used as a matter of course.

Here however, the majority states that the guideline price would not automatically apply to any new contract filed by Humble. And on page 616 of

[11] Delivery or six months after acceptance of certificate, whichever is sooner.

its opinion, the majority recognizes that guideline ceilings may be set improperly and that permanent certificates may be issued at a lower level in an appropriate proceeding. The significance of this statement is that guideline ceilings are not a floor. They should not be a floor because experience has repeatedly demonstrated that guideline levels have been overstated, with the result that producers have collected excessive prices under temporaries at such levels. If the Commission suspects, when it grants a temporary at a guideline ceiling, that the price permanently certificated may be lower, it should provide against the producers receiving a windfall at the expense of the consumers, as has occurred in the past. Thus, conditions providing for refunds to a level 2¢ or 3¢ per Mcf below the guideline should be imposed in all future temporaries issued at guideline levels. This is the only way guideline pricing can be employed without avoiding our obligation "to afford consumers a complete, permanent and effective bond of protection from excessive rates and charges".[1]

The majority characterizes the guideline ceilings as an exercise of its "consumer protection function". The manner in which this particular function is performed hardly deserves this appellation. After a contested proceeding, an in-line price of 16¢ per Mcf was established for District 3. At the same time, a guideline price of 17¢ was promulgated for the same area. Of course the guideline level relates to a period after the date the Policy Statement was issued. However, the Supreme Court enjoined the Commission to hold the price line on producer certificates until just and reasonable rates were established—not merely until the Commission issued a Policy Statement. Moreover, a much more reliable basis for determining in-lineness is found in the results of a contested proceeding than in a Policy Statement promulgated without the benefit of the views of interested parties.

A second important matter raised by the instant opinion concerns the basis of in-line price determinations. In this connection, the majority has correctly concluded that two of the four permanent contracts at 16.2¢ per Mcf should not have been used in determining the price line issue. It then proceeds to the remarkable conclusion that elimination of these contracts does not change its judgment of the price line which took into account all prices below the levels subject to litigation. All what prices? All the other prices below the levels subject to litigation under permanent certification, save two, are in the neighborhood of 15¢ per Mcf and lower.[2]

One-half of the highest priced contracts is eliminated from consideration and the majority is telling us that this doesn't affect the result. The clear implication of this holding is that in-line prices will be determined solely by reference to the highest contracts in the area upon which it legally can rely, regardless of their minimal number and regardless of the number of other contracts at substantially lower prices. This plainly means that contract prices below the highest legal level are irrelevant to a price line determination, irrespective of their magnitude.

Such a position constitutes a regulatory standard for considering in-lines, with which I cannot agree. Such a position, in fact, is flatly inconsistent with this Commission's order of March 7, 1962, which was unanimously adopted.[3] There the Commission held the proper price line fell *between the highest group of prices and the median price level*, specifically indicating that this was the

[1] *Atlantic Refining Company* v. *P.S.C.* 360 U.S. 378

[2] Even the two exceptions at 16.2¢ per Mcf are notably unlikely candidates for supporting a price line determination for the reasons contained in my separate statement to the original order herein.

[3] *Texaco Seaboard Inc., et al.*, Docket No. G–13169, *et al.*, 27 FPC 482.

manner in which the price line issue was determined in *CATCO, supra*. The majority is, therefore, plainly in error in asserting that it followed the *CATCO* case, *supra*, in determining the in-line price in District 3.

Surprisingly, the majority states the in-line price it determined "by no means is equivalent to the highest group of untainted prices heretofore paid". It cites with approval previous holdings that the in-line price is somewhat lower. While the majority's attempts at consistency are admirable, the "in-line" price of 16¢ *is* equivalent to the highest group of untainted prices. There are two contracts permanently certificated at 16.2¢—actually 16.16947¢—and these contracts include over 0.2¢ per Mcf reimbursement for dehydration. This is a feature not present in the other contracts in the area with which comparisons were made.

Another serious difficulty is the majority's reliance on sales made under temporary certificates in reaching its in-line determination. This places in serious jeopardy the legal sufficiency of the Commission's finding. The reason is clear. Temporaries are granted at guideline levels. Grants of such temporaries are impervious to all attacks from consumer interests. (*Cf. J. Ray McDermott & Co., Inc.*, Docket No. CI63–301, order dated December 31, 1962, 28 FPC 1300.) To provide some aura of legal respectability, interested parties are told their rights are not adversely affected because a hearing may be held on the permanent. Now, however, the majority purports to rely on prices granted in temporaries thereby making a mockery of the hearing process.

Accordingly, I dissent to the majority's in-line determination of 16¢ per Mcf in Texas District 3. Adherence to prior holdings, cited but not followed by the majority, requires a price no higher than 15¢ per Mcf.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP63–303

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 27, 1963)

On May 13, 1963, Transcontinental Gas Pipe Line Corporation (Applicant) filed in Docket No. CP63–303 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a new delivery point with the necessary metering and regulating facilities, and the sale and delivery of natural gas for resale, all as more fully represented in the application in this proceeding.

Applicant proposes to construct and operate a sales meter station and appurtenant equipment in Cherokee County, South Carolina, at milepost 1237.62 on its main transmission line to be used as an additional delivery point for natural gas service to Carolina Pipeline Company (Carolina Pipeline) for resale to a new textile finishing mill of the Deering Milliken Service Corporation (Deering), on an interruptible basis for direct-fired process application in quantities up to 3,300 Mcf per day. The volume of gas to be supplied by Transco at this point will be out of allocations previously authorized by the Commission with no increase in contract demand.

The proposed facilities to be constructed are estimated to cost $24,500 to be initially financed from Applicant's general funds. Carolina Pipeline has agreed to reimburse Applicant for the entire cost.

Pursuant to due notice, a public hearing was held in Washington, D.C., on August 13, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce for resale subject to the jurisdiction of the Commission, and the construction and operation thereof are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the related delivery of natural gas are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) The total deliveries of natural gas to Carolina Pipeline Company under this authorization should be limited to a maximum volume of 3,300 Mcf per day.

(7) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Transcontinental Gas Pipe Line Corporation, to construct and operate the proposed facilities to provide an additional delivery point for natural gas service to Carolina Pipeline Company as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The total deliveries of natural gas under this authorization are hereby limited to a maximum volume of 3,300 Mcf per day.

(D) The facilities hereby authorized shall be constructed and placed in actual operation and the sale of natural gas shall commence as provided by paragraph

(b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within six months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

CITIES SERVICE GAS COMPANY, DOCKET NO. G–18799

ORDER GRANTING STAY

(Issued August 29, 1963)

Cities Service Gas Company and Cities Service Company have jointly moved for a stay of the Commission's order accompanying Opinion No. 396, issued July 15, 1963, 30 FPC 158, in this case pending final action on their application for rehearing, and if rehearing is denied, pending conclusion of judicial review. The order requires Gas Company to file substitute tariff sheets and to make refunds of the amount of federal income tax in excess of that considered proper for rate making purposes.

This proceeding involves only rates for a locked-in period. Currently, effective rates are not involved herein. Moreover all amounts disallowed are subject to refund with interest. In these circumstances, we will grant the requested stay.

The Commission orders:

Ordering paragraphs (B), (C), (D), (E) and (F) of the order accompanying Opinion No. 396 are hereby stayed pending final action on rehearing, and if rehearing is denied, pending final conclusion of judicial review, if such review is taken.

C. N. JOHNSTON, ET AL., DOCKET NOS. G–9136 AND G–9569

ORDER ADOPTING INITIAL DECISION OF PRESIDING EXAMINER

(Issued August 29, 1963)*

Syllabus

1. Commission *disallows* proposed increased rates and *terminates* proceedings initiated under Section 4(e) of the Natural Gas Act. PP. 624; 626.

Norman A. Flaningam, C. W. Cooper, and *George C. Williams* for The East Ohio Gas Company, Hope Natural Gas Company, New York State Natural Gas Corporation and the Peoples Natural Gas Company

William R. Duff, J. Harry Mulhern, Edward S. Kirby, and *James R. Lacey* for Public Service Electric and Gas Company

J. David Mann, Jr., John Holtzinger, and *John P. Bracken* for The United Gas Improvement Company

Barbara M. Suchow, Kent H. Brown, and *Lawrence M. De Vore* for Public Service Commission of New York

Leo E. Forquer for the Staff of the Federal Power Commission

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

By initial decision issued July 29, 1963, the presiding examiner in the above-entitled proceedings issued an initial decision disallowing the proposed increased rates of C. N. Johnston, *et al.* (Johnston) involved herein and terminating the proceedings because of Johnston's failure to sustain the burden of proof under

*Initial Decision appears on P. 624.

Section 4(e) of the Act of showing that the proposed rates are just and reasonable.

The time for filing exceptions to said decision has passed and no exceptions having been filed, the matter is now properly before us.

The Commission orders:

The initial decision of the presiding examiner issued on July 29, 1963 is adopted as the decision of the Commission in this proceeding effective as of the date of this order.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON PROCEEDINGS PURSUANT TO SECTION 4(e) OF THE NATURAL GAS ACT INVOLVING PROPOSED INCREASES IN THE RATE OF A PRODUCER

(Issued July 29, 1963)

SIMPSON, *Presiding Examiner:* The proceeding involves two increases in rates proposed by C. N. Johnston, *et al.*,[1] (Johnston, Applicant), representing periodic step increases, which were suspended by the Commission under Section 4(e) of the Natural Gas Act (Act), and never made effective. The sales concern those to United Gas Pipe Line Company (United) representing Applicant's 0.0001952 non-operating working interest in the Duck Lake Gas Unit, Duck Lake Field, St. Mary and St. Martin Parishes, Louisiana.[2]

These matters were initially consolidated with the proceedings in 12 other dockets involving suspended proposed changes in rates related to sales of natural gas in interstate commerce to the same purchaser (United) from the same field, including among others, proceedings concerning Arkansas Fuel Oil Corporation (G–8921, G–9571), R. H. Goodrich (G–8977, G–9575), and W. H. Cocke (G–8978, G–9570).[3] Subsequent severances and consolidations[4] resulted in a hearing on suspensions concerning Arkansas in 15 dockets, Goodrich in 4 dockets, Cocke in 3 dockets, Johnston in 2 dockets (G–9136, G–9569), and John W. Mecom, d.b.a. Mecom Petroleums, in one docket.[5] The hearing was duly held, and evidence was received directly on behalf of Arkansas and Mecom, Goodrich and Cocke adopting that of others.[6]

---

[1] C. N. Johnston, FPC Gas Rate Schedule No. 1, Supps. No. 1, filed June 17, 1955 (G–9136) and No. 2, filed September 30, 1955, (G–9569); the increases proposed being from 12.50¢ to 13.50¢ per Mcf, and from the latter to 20.20¢ per Mfc, respectively, before the 1¢ per Mfc gathering tax (15.025 psia).

[2] The contract relates to the sale of natural gas to United Gas Pipeline Company by C. N. Johnston, Eleanor J. Jones, Felton M. Johnston, Edgar Newton Johnston, Mary J. Moore, and Evelyn Elizabeth Patterson, individually and collectively, as sellers. It became effective May 1, 1955, and deliveries commenced July 1, 1955.

[3] Order Consolidating Proceedings, Fixing Date of Hearing and Specifying Procedure, issued March 2, 1956.

[4] See, Notice Severing, Consolidating Proceeding for Purpose of Hearing, and Fixing Date of Hearing, of February 26, 1957; Notice of Consolidation of Proceedings and Date of Hearing, of October 9, 1957; and, Notice of Consolidation of Proceedings and Date of Hearing, of April 8, 1958.

[5] Interventions were effected in the various dockets, including those of Johnston's on behalf of Philadelphia Electric Company, Public Service Electric and Gas Company, The United Gas Improvement Company, The East Ohio Gas Company, Hope Natural Gas Company, New York State Natural Gas Corporation, The Peoples Natural Gas Company, the State of Louisiana, Department of Conservation of Louisiana, Louisiana Public Service Commission, State Mineral Board of Louisiana, and Hunt Oil Company. By Commission order issued March 13, 1961, Cities Service Company, ultimate successor to Arkansas, was substituted as the real party in interest effective December 3, 1960, the proceedings being appropriately redesignated.

[6] *I.e.*, principally that of Arkansas pertaining to the current market price standard and conditions obtaining in the Duck Lake Field and South Louisiana area.

As Johnston offered no evidence, was not present, and was not represented at the hearing, the direct record for decision in these dockets consists essentially of the unverified statements contained in Applicant's two letters to the Secretary which propose the increases and which the Commission found to be insufficient to avert the suspension.

Subsequent to the hearing in the above-mentioned consolidated matters the proceedings in the Mecom docket (G–10357) were severed and, after the filing of an intermediate decision, were concluded on the basis of a settlement offer accepted by the Commission.[7] Thereafter, on October 12, 1962, Cities Service Company, successor in interest to Arkansas, also filed a settlement proposal in its dockets (No. G–8921, *et al.*), as did Goodrich (December 5, 1962) and Cocke (November 28, 1962) in their respective dockets. Thereafter by its several orders conditionally approving these several proposals the Commission severed and terminated the related proceedings, leaving only those of Applicant for disposition here.[8]

The evidence of record in the consolidated proceeding fails to disclose that Johnston is engaged in exploration and production, and so data as to industry costs and revenue or return requirements would have no application to him. Further, that part of the evidence which has to do with the unitization of the Duck Lake Field, negotiations by owners for the sale of gas to United, and the history of development of gas production and markets in Louisiana, has no apparent factual applicability to Johnston. Also, the evidence which relates to field prices has previously and specifically been held to be insufficient to sustain increases such as those represented by Johnston's proposed price.[9] It is noted in passing, however, that any conclusions from the evidence concerning a current market price would be related to relatively large volumes and have no direct bearing with respect to Johnston's reserves and deliveries, which are indicated to be exceptionally small.

In each of the foregoing instances of offer of settlement, by Cities, Goodrich, Cocke, the offeror waived the right to file for contractually increased rates for a specified substantial period of time, and offered, among other matters, various concessions as to the elimination of favored nation, price redetermination and periodic increase provisions, the offer, as modified by the order, being held to meet the required criteria stated in regard to other prior settlements, and its acceptance being based primarily, upon a finding as to benefits in the public interest.[10]

---

[7] See, Order Accepting Offer of Settlement and Providing for Refunds, issued May 25, 1961, 25 FPC 1022, finding the price of 17.5¢ per Mcf plus tax reimbursement to constitute a just, reasonable and lawful price for Mecom's sale from the Crescent Farms and Hollywood Fields, Terrebonne Parish, Louisiana (15.025 psia).

[8] *Cities Service Company*, Docket No. G–8921, *et al.*, issued December 26, 1962; *R. H. Goodrich, et al.* (including *W. H. Cocke*), Docket No. G–8977, *et al.*, issued February 25, 1963.

[9] *John W. Mecom (d.b.a. Mecom Petroleums)*, 25 FPC 1022, at 1023 (1961).

[10] Such as that pertaining to the Duck Lake Field, where Cities Service settlement offer consisted of a reduction in the then existing 22.95¢ per Mcf to an 18.0¢ per Mfc rate. Here the Commission analogized to the circumstances stated in the order in the case of *The Ohio Oil Company, et al.*, 27 FPC 1373 (1962), where the price increase preceding actual deliveries, was considered as equivalent to an initial price and so compared with the Commission's guide line rate for the area. *Tidewater Oil Company, et al.*, 27 FPC 1267 (June 15, 1962); *The Ohio Oil Company, et al.*, 27 FPC 1373 (June 28, 1962); *Shell Oil Company et al.*, 28 FPC 257 (August 1, 1962). With respect to the few instances where the proposed rate exceeded the applicable area ceiling (South Louisiana) the Commission took cognizance of unusual circumstances surrounding the initial contract. The criteria stated in the precedent cases substantially sum up to concessions which are conducive to long term price stability.

While it is possible that certain unusual circumstances noticed by the Commission in settlement cases concerning the Duck Lake Field[11] may apply to the Johnston contract the record offers no definite basis for so concluding.[12] The controlling matter is that the general record here contains no basis whatever for finding that essential criteria applied by the Commission in connection with past acceptances of settlement offers can be given effect as to Johnston, and, so finding, Staff Counsel's motion to dismiss should be granted.[13]

ORDER

Upon consideration of the record herein and for the reasons and upon the findings and conclusions set forth in the foregoing portions of this decision, of which this order is a part,

IT IS BY THESE PRESENTS ORDERED, subject to review by the Commission on appeal, or upon its own motion, as provided by its Rules of Practice and Procedure, that:

(A) The increases in rate proposed in these proceedings be and the same are hereby denied, the application with respect thereto dismissed and the proceedings terminated.

EWING G. SIMPSON,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP60-36; GULF OIL CORPORATION, DOCKET NO. CI60-43; TIDEWATER OIL COMPANY, DOCKET NO. CI60-142

ORDER STAYING EFFECTIVENESS OF OPINION AND ORDER TO PROVIDE OPPORTUNITY FOR CONSIDERATION OF SETTLEMENT PROPOSALS AND COMMENTS THEREON

(Issued August 29, 1963)

On July 17, 1963, 30 FPC 329, the Commission issued its Opinion No. 399 and Order in the above-entitled proceeding. Applications for rehearing and motions for stay were filed on August 13, 1963, by both Gulf Oil Corporation and Tidewater Oil Company. Concurrently therewith, the producers have resubmitted petitions for issuance of orders granting permanent certificates of public convenience and necessity in accordance with their applications as modified by offers of settlement, as further modified in such petitions. The applications for rehearing and motions for stay and the renewed settlement offers have been served on all parties to the proceeding.

The original offers of settlement as submitted to the Commission on January 4, 1963, were rejected because of a joint opposition filed by Memphis Light, Gas and Water Division of the City of Memphis, Tennessee, and Mississippi Valley Gas Company and by Philadelphia Electric Company. In view of our subsequent

[11] Such as construing an amendment of the basic contract prior to first deliveries as providing, in effect, a new initial rate rather than a rate increase. See, *The Ohio Oil Company*, 27 FPC 1373, 1375.

[12] Deliveries by Johnston apparently commenced on July 1, 1955, or after the date for a contract increase to 13.50¢ per Mcf (June 1, 1955). However, an unresolved ambiguity exists in that the contract provides a rate (12.50¢) "from the date deliveries of gas are commenced hereunder" to June 1, 1955.

[13] Staff brief p. 57.

Opinion and Order, wherein we have treated a number of contentions raised by said interveners in opposing the settlement offers, and the modifications in the offers reflected in the current filings, it is our opinion that the public interest will best be served by staying the effectiveness of the Order accompanying Opinion No. 399 for a brief duration as it relates to the filing of rate schedule supplements and the refunding of excess charges to provide opportunity for consideration and comment by interested parties on the modified offers of settlement.

The Commission orders:

(A) On or before September 20, 1963, all interested parties to this proceeding shall, to the extent desired, submit statements of their position regarding the offers of settlement filed by Gulf and Tidewater on January 4, 1963, and August 13, 1963.

(B) The 30-day period specified in Paragraph (B) and the 60-day period specified in Paragraph (C) of the Order accompanying Opinion No. 399 are extended to and including October 15, 1963.

(C) Consideration of the applications for rehearing is stayed pending further action in this proceeding.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

AREA RATE PROCEEDING,[1] DOCKET NO. AR61-2; AMERADA PETROLEUM CORPORATION, ET AL.,[2] DOCKET NO. RI62-505, ET AL.

ORDER REDESIGNATING PROCEEDINGS, SEVERING CERTAIN RATE SUSPENSION AND CERTIFICATE PROCEEDINGS, ADDING AND DELETING RESPONDENTS, AND CONSOLIDATING PROCEEDINGS

(Issued August 30, 1963)

By order issued herein on May 10, 1961, (25 FPC 942) the Commission, among other things, initiated a proceeding to establish a just and reasonable rate or rates for sales of natural gas produced in the Southern Louisiana area. In that order, the Commission named as respondents in the proceeding all persons set forth in Appendix "A" thereto and all parties on whose behalf such persons had filed FPC Gas Rate Schedules for sales in the area, and consolidated therein a number of rate suspension proceedings listed in Appendix "C" thereto, as well as a number of certificate proceedings listed in Appendix "B" thereto.

By subsequent orders, various changes have been made relative to the respondents to these proceedings and the certificate and rate suspension proceedings consolidated herewith. The instant order makes further changes which appear to be appropriate. The appendices, "Revised Appendix A" and "Revised Appendix C" reflect these changes for the convenience of all concerned and are current as of the date of issuance of this order. As is explained below, all certificate proceedings have been severed and Appendix B has been deleted.

Most of the certificate proceedings previously consolidated herewith have been severed and consolidated with the proceedings in *Union Texas Petroleum, A Division of Allied Chemical Corporation, et al.*, Docket No. G-13221, *et al.*, by order issued December 31, 1962. The certificate proceeding still consolidated herewith,

---

[1] For a listing of all persons who are now respondents in such proceeding see Revised Appendix "A" hereto.

[2] For a listing of rate suspension proceedings which have been consolidated herewith see Revised Appendix "C" hereto.

should be severed at this time.[3] Generally, they are those in which the application has been withdrawn, cancelled, or granted, or which disposition will be made in other proceedings.

A motion has been made to change the name of Grey-Wolf Drilling Company to Wolfe Oil & Gas Company. The motion should be granted, and the change will be shown in Revised Appendix A.

It appears from the Commission's records that Argo Oil Corporation, Slick Oil Corporation, Aluminum Company of America (ALCOA), and Grande Corporation should be deleted as respondents because their sales in South Louisiana are now being made by The Atlantic Refining Company (Atlantic), Midhurst Oil Corporation, (Midhurst), Southeastern Public Service Company (Southeastern) and Magna Oil Corporation (Magna) respectively. Midhurst, Southeastern, and Magna should now be made respondents. Atlantic is already a respondent. ALCOA in its motion requesting that it be dismissed as a respondent in these proceedings, states that there is no refund obligation involved. Southeastern has filed a motion to be substituted for ALCOA as respondent. As above indicated, these motions should be granted.

Louis Ross (Ross) and Thomas Jordan, Inc. (Jordan) were made respondents in these proceedings by order issued May 10, 1961. It now appears from our records that Ross and Jordan were not making jurisdictional sales of natural gas in South Louisiana in 1960, and should therefore be deleted as respondents. By order issued May 16, 1963, Louisiana Natural Gas Corporation (Louisiana Natural) was made respondent to these proceedings. It now appears that Louisiana Natural makes no jurisdictional sales of natural gas. For this reason, Louisiana Natural should also be deleted as a respondent herein.

Three other producers, Owens Production Company, Inc., Southdown, Inc., and Whitehall Oil Company have rate schedules on file for sales in South Louisiana in 1960, but are not respondents. They will be made respondents to these proceedings by this order and added to Revised Appendix A.

By order issued April 25, 1963, in *Gulf Oil Corporation, et al.*, Docket No. G–9520, *et al.*, 29 FPC 837, provision was made for the termination of certain rate suspension proceedings consolidated with the proceedings in Docket No. AR61–2. These rate suspension proceedings, in Docket Nos. G–18669, G–19865, G–19911, RI60–392, RI61–40, RI61–170, RI62–85, RI62–120, RI62–202, and RI62–203, will now be severed from the proceedings in Docket No. AR61–2, *et al.*

On July 15, 1963, Haroldson L. Hunt, Jr., Trust Estate (Hunt) filed a motion to be dismissed as a respondent in these proceedings. In support of its motion, Hunt states that it made only one sale in South Louisiana which has been discontinued by reason of depletion, and that it has no refund obligations. Under these circumstances, it appears that Hunt's motion should be granted.

Certain rate suspension proceedings which have been instituted recently, involving respondents in these proceedings, should now be consolidated herewith. These proceedings are incorporated into Revised Appendix C as indicated therein.

By order issued herein on November 9, 1961, 26 FPC 723, Section 1.17(b) of the Commission's Rules of Practice and Procedure with respect to service of copies of documents was waived, and provision was made for each party who

---

[3] These certificate proceedings are: *Hassie Hunt Trust*, Docket No. G–8647; *Oil Participations, Inc.*, Docket No. G–17448; *Socony Mobil Oil Company*, Docket No. G–18344; *Continental Oil Company*, Docket No. G–18755; *Texas Gas Exploration Corp.*, Docket No. CI60–76; *Union Producing Company*, Docket No. CI60–622; *North Central Oil Corporation*, Docket No. CI61–553; *Tennessee Louisiana Oil Co.*, Docket No. CI62–682; *The Preston Oil Company*, Docket No. CI62–1209; and *The Pure Oil Company*, Docket No. CI62–1224.

desired to be served with copies of filings made by other parties to these proceedings to so notify the Secretary on or before November 28, 1961. Because of the lapse of time since that date, and the addition of new parties, it appears that it would be equitable to offer this opportunity again, as hereinafter ordered. Those who have already filed will not be required to do so again.

The Commission finds:

(1) These proceedings should be redesignated as hereinafter ordered.

(2) The certificate proceedings in Docket Nos. G–8647, G–17448, G–18344, G–18755, CI60–76, CI60–622, CI61–553, CI62–682, CI62–1209, and CI62–1224, and the rate suspension proceedings in Docket Nos. G–18669, G–19865, G–19911, RI60–392, RI61–40, RI61–170, RI62–85, RI62–120, RI62–202, and RI62–203, should be severed from the proceedings in Docket No. AR61–2, *et al.*

(3) The motions filed by Wolfe, ALCOA, Southeastern, and Hunt should be granted, as hereinafter ordered.

(4) The rate suspension proceedings identified in Revised Appendix C by a double asterisk (**) should be consolidated with the proceedings in Docket No. AR61–2, *et al.*

(5) Certain parties should be made respondents in the proceedings in Docket No. AR61–2, *et al.*, and deleted as respondents, as hereinafter ordered.

(6) Provision should be made for the filing, by those desiring to do so, of notices to the Secretary, requesting that they be served with copies of filings made by other parties to these proceedings.

The Commission orders:

(A) These proceedings are hereby redesignated as shown in the caption to this order.

(B) The motions filed by Wolfe, ALCOA, Southeastern, and Hunt, are hereby granted.

(C) The certificate proceedings in Docket Nos. G–8647, G–17448, G–18344, G–18755, CI60–76, CI60–622, CI61–553, CI62–682, CI62–1209, and CI62–1224, are hereby severed from the proceedings in Docket No. AR61–2, *et al.*

(D) The rate suspension proceedings in *Gulf Oil Corporation, et al.*, Docket Nos. G–18669, G–19865, G–19911, RI60–392, RI61–40, RI61–170, RI62–85, RI62–120, RI62–202 and RI62–203, are hereby severed from the proceedings in Docket No. AR61–2, *et al.*

(E) The rate suspension proceedings in Revised Appendix C hereto, which are identified therein by a double asterisk (**), are hereby consolidated with the proceedings in Docket No. AR61–2, *et al.*

(F) Owens Production Company, Inc., Southdown, Inc., Whitehall Oil Company, Wolfe Oil & Gas Company, Southeastern Public Service Company, Midhurst Oil Corporation and Magna Oil Corporation, are hereby made respondents to the proceedings in Docket No. AR61–2, *et al.*

(G) Grey-Wolf Drilling Company, Aluminum Company of America, Argo Oil Corporation, Slick Oil Corporation, Louis Ross, Thomas Jordan, Inc., Louisiana Natural Gas Corporation, Haroldson L. Hunt, Jr., Trust Estate, and The Grande Corporation are hereby deleted as respondents in the proceedings in Docket No. AR61–2, *et al.*

(H) All parties to these proceedings, desiring to receive copies of filings made herein by other parties shall, within 10 days of the issuance of this order, so notify the Secretary of the Commission by filing an original and three copies of a notice naming one specific representative to be served on their behalf, with a certificate of service showing that a copy thereof has been properly served on all parties to these proceedings. In addition, parties to the proceedings who have

associated together in common interest groups for participation in such proceedings may designate one representative to be served on behalf of such common interest groups. On and after a date 10 days following the issuance of this order, the service required by Section 1.17(b) of the Commission's Rules of Practice and Procedure need be made only on the person named in the required notices and on staff counsel; *Provided, however,* that any party who has previously filed such notice with the Secretary shall not be required to do so again by this order.

REVISED APPENDIX A

RESPONDENTS [1]

Aladdin Exploration Company, Inc.
Amerada Petroleum Corporation
American Natural Gas Production Company
Arnold, Agnes Cullen, *et al.*
Arnold, Isaac
Atlantic Refining Co., The
Austral Oil Co. Inc.
Barnhart, Paul F.
Bass, Perry R.
Earl G. Bateman, d/b/a, Bateman Drilling Co.
Beck Oil Co.
Bel Oil Corp.
Benedum Trees Oil Co.
Benin Oil Company
Berkshire Oil Co.
Bradco Properties Inc.
British American Oil Producing Co., The
Brown, George R.
Brown, Herman
Bruner, Arnold H., & Company
Wm. T. Burton Industries Inc.
Cabot Corporation
The California Co. a Division of California Oil Co.
Callery, F. A., Inc.
Callery Properties Inc.
Carter, Reese E.
Chance, R. L. Sr.
Cheyenne Oil Corp. of Delaware
Chicago Stockyards Research Company
Christie Mitchell & Mitchell Company
Cities Service Company
Cities Service Petroleum Co.
Cities Service Production Co.
Cocke, W. H.
Cockrell, E, Jr.
Cole, Howard S., Jr.
Colorado Oil & Gas Corp.
Columbian Fuel Corporation
Conover, William V.
Continental Oil Co.
Cordell, J. H.
Crow, David Trustee
Crown Central Petroleum Corp.
Cunningham, James M.
Cyprus Oil Co.
Delhi Taylor Oil Corp.
Delta Drilling Co.
Delta Gulf Drilling Co.
Dillion, Herbert L. Jr.
Diversa Inc.
Dixon Management Corp.
Dorn & Miller Company
Drew Petroleum Inc.
Eason Oil Co.
Falcon Seaboard Drilling Co.
Fidelity Oil & Royalty Co.
Flaitz, J. M., & Mitchell, R. B.
F. O. Corp., The
Forest Oil Corp.
Frankel, J. R.
Frankel, R. R.
Freedom Minerals, Inc.
Freeport Oil Co.
Gas Gathering Corp.
General American Oil Company of Texas
General Crude Oil Co.
Geological, Geophysical Associates, Inc.
Gilger, C. C.
Glassell, Alfred C., Jr.
Goff, J. R., Trustee
Goodrich, R. H.
Graridge Corporation
Grigsby, Jack W.
Gulf Interstate Oil Co.
Gulf Oil Corp.
Halbouty, Michel T.
Harbor Oil Co., Inc.

[1] All persons named herein and all parties on whose behalf such persons have filed FPC Gas Rate Schedules for sales in Southern Louisiana are respondents in this proceeding.

H. L. Hawkins & H. L. Jr.
Helis Petroleum Corp.
Helis, Wm. G. Estate of
Herrington, Mrs. Louise H.
Hibbert, R. E.
Hope Natural Gas Company
Hudson, E. J.
Hudson Gas & Oil Corp.
Roy M. Huffington, Inc.
Humble Gas Transmission Company
Humble Oil & Refining Co.
Hunt, H. L.
Hunt, Hassie Trust
Hunt, Lamar
Hunt, Lyda, Margaret Trusts
Hunt, Lyda, Caroline Trusts
Hunt, Lyda, Herbert Trusts
Hunt, Lyda, Bunker Trusts
Hunt, Lyda, Lamar Trusts
Hunt Oil Co.
Hunt, W. H.
Hunt, Wm. Herbert Trust Estate
Hurley Oil & Gas Company
Hurt Oil & Gas Corp.
Jameson, F. E., *et al.*
Jefferson Lake Sulphur Co.
Johnston, C. N.
Jones, Joseph M.
Kellerman, R. E.
Kerr-McGee Oil Industries, Inc.
Kilroy Properties Inc.
Lamson & Bennett, Inc.
Langton, Claude M., Trustee
Lone Star Producing Co.
Lyons and Logan
Lyons, C. H., Jr.
Lyons, C. H. Sr.
Magna Oil Corporation
MPS Production Co. Inc.
McCain, M. F.
J. Ray McDermott Co. Inc.
McGhee, George C.
McIntyre Oil Co.
McKnight, W. L., d/b/a LaGorce Oil Company
McLean, Harvey
Maracaibo Oil Exploration Corp.
Mayfield, M. L.
Mayronne, R. W., Jr., d/b/a Riverside Oil Co.
Mecom, John W./Mecom Petroleum
Midhurst Oil Corporation
Midwest Oil Corporation
Mississippi River Fuel Corp.
Monsanto Chemical Co.
Moore, Homer T.
Mosbacher, Robert
Mound Co.
Newmont Oil Co.
Nicklos Oil & Gas Co.
North Central Oil Corp.
O'Meara, M. P.
O'Meara, Robert W.
Ocean Drilling & Exploration Co.
Ohio Oil Co.
Oil Participations Inc.
Olin Gas Transmission Corporation
Owen, J. P.
Owen Production Company
Pan American Petroleum Corp.
Pareti, John D.
Peltier, Harvey
Penton, E. Doyle, & Penton, D. N., d/b/a, Penton & Penton
Petroleum Inc.
Petroleum Offshore Leaseholds
Petroleum Leaseholds, Inc.
Phillips Petroleum Co.
Phillips, R. P.
Pioneer Oil & Gas Company
Placid Oil Co.
Pray, Max
Prentice, Robert B.
Preston Oil Company, The
Pure Oil Co., The
Rasberry, Elge
Rauch, Morris
Rault, Joseph M. Jr., Inc.
Rebstock & Reeves Drilling Co.
Recile, Sam J.
Rimrock Tidelands Inc.
Royalite Oil Co. Inc.
Rutherford, P. R.
Rycade Oil Corp.
Samedan Oil Corp.
San Jacinto Oil & Gas Co.
Sands, Caroline Hunt
Joseph E. Seagram & Sons, Inc.
Secure Trusts
Shallow Oil Co., Inc.
Shell Oil Co.
Shoreline Exploration, Inc.
Sinclair Oil & Gas Co.
Skelly Oil Company
Socony Mobil Oil Co. Inc.
Sohio Petroleum Co.
Southdown, Inc.
Southeastern Public Service Co.

Southern Natural Gas Co.
Southwest Gas Producing Co., Inc.
Southwest Resources, Inc.
State Exploration Company
Stokes, Winston L.
Sun Oil Co.
Sunnyland Contracting Co. Inc.
Sunray DX Oil Company
Superior Oil Co., The
Sword Co.
Tamborello, Anthony J.
Tenneco Corporation
Tenneco Oil Company
Tennessee-Louisiana Oil Co.
Texaco Inc.
Texas Crude Oil Co.
Texas Eastern Transmission Corp.
Texas Gas Exploration Corp.
Texas Gulf Producing Co.
Texas Liberty Gas Corporation
Texas Liberty Oil Company
Texas National Petroleum Co.
Texas Pacific Coal & Oil Co.
Tex-Star Oil and Gas Corporation
Texstar Corporation
Tidewater Oil Co.
Trahan, J. C., Drilling Contractor, Inc.
Trice Production Co.
Trunkline Gas Company
The TXL Oil Corporation
Union Oil Company of California
Union Producing Co.
Union Texas Nat. Gas Corp
Union Texas Petroleum, A Div. of Allied Chemical Corp.
United Gas Pipe Line Company
U.S. Oil of Louisiana Inc.
Vincent and Welch Inc.
W. W. F. Oil Corp.
Walker, Willard E.
Walker, W. E.
Walker, W. E. & Meeker, J. R.
Walker, W. E. & Freedom Minerals, Inc.
Webster, C. B.
Weiner, Ted
Whitehall Oil Company, Inc.
Williams Brothers Co.
Wolfe Oil and Gas Company
Wrightsman, Charles B.
Young, Marshall R.
Zapata Offshore Co.

REVISED APPENDIX C

Producer[1]	*Docket No.*
Amerada Petroleum Corporation	RI62–505**.
Arnold, Agnes Cullen, *et al*	RI61–222.
Atlantic Refining Company	G–11844, G–12159, G–13440, G–16127, G–16518, G–16723, G–17741, G–19922, RI62–131, RI61–485, RI62–276, RI61–335, RI62–77, RI63–92**, RI63–93**.
Austral Oil Company, Inc. (Oper.), *et al.*	G–13842, G–16891, G–17797, G–19830, RI61–179, RI62–93, RI62–484**, RI63–146**.
Austral Oil Co., Inc. (Oper.), Agent for Oil Participations Inc.	RI61–175, RI62–94, RI62–360, RI63–154**, RI63–155**.
Benedum Trees Oil Co	RI62–191.
The British American Oil Producing Company (Oper.), *et al.*	RI61–174, RI61–540, RI62–184, RI62–274.
Berkshire Oil Co	RI62–266, G–19948, RI60–334.
Cabot Corporation	RI62–208.
Brown, George R	RI62–145.
The California Co., a Division of California Oil Company.	G–14313, G–16682, G–19535, G–20346.
Chicago Stockyards Research Company (Oper.), *et al.*	RI61–28.
Columbian Fuel Corporation	G–14101, G–17157, G–19942, RI61–238, RI62–79, RI63–188**.

See footnotes at end of appendix C.

Producer[1]	*Docket No.*
Continental Oil Company	G–16701, G–17936, RI60–165, RI61–470, RI63–168**.
William V. Conover	RI63–68**.
Crescent Oil & Gas Corporation[2]	G–12439.
Crow, David, Trustee	G–20083.
Cunningham, James M. (Oper.), *et al.*	RI60–232.
Delhi-Taylor Oil Corp	RI62–506*.
Dixon Management Corp	RI61–552.
Falcon Seaboard Drilling Co	RI61–509.
F.O. Corp., The	RI62–214.
Forest Oil Corporation	G–16726, G–19939, G–19940, RI61–186, RI61–187, RI62–68, RI62–69, RI63–120**, RI63–136* **.
Frankel, R. R	G–1761**.
Gas Gathering Corporation	G–20118.
General American Oil Co. of Texas.	G–19476, RI61–321, G–19875, G–19924, RI62–133, RI62–392**, RI63–127**, RI61–173, RI62–234, RI63–161**.
General Crude Oil Company	G–16727, RI61–548, RI62–359, RI63–389**.
Goff, J. R., Trustee	G–14053, G–17527, G–20441, RI60–472.
Graridge Corporation (Oper.), *et al.*	RI62–169.
Jack W. Grigsby	RI62–536**.
Hawkins, H. L., and Hawkins, H. L., Jr.	G–16314.
Herrington, Louise H. Mrs	RI62–270.
Hudson Gas & Oil Corporation (Oper.), *et al.*, and San Jacinto Oil and Gas Company (Oper.), *et al.*	RI60–211.
Humble Oil & Refining Company	G–9508, G–9521, G–9522, G–9523, G–9574, G–9679, G–11313, G–11314, G–11315, G–11316, G–11317, G–11539, G–13443, G–13609, G–13615, G–15180, G–16687, G–16698, G–16801, G–16957, G–16958, G–19903, G–20014, G–20214, RI60–187, RI61–78, RI61–132, RI62–82, RI62–321, RI62–83, RI61–133, RI62–287, RI62–393**, RI63–94* **, RI63–95**, RI63–172**, RI63–186**.
Hunt, H. L	G–13837, G–17163, G–20071, G–20340, RI60–427, RI62–228.
Hunt, Estate of Lyda Bunker	G–13840, G–17162, G–20445, RI60–432.
Hunt, W. H	G–19930.
Hassie Hunt Trust	RI62–227.
Hurt Oil & Gas Corporation	RI61–290.
Jameson, F. E., *et al*	G–18672.
Jefferson Lake Sulphur Company	G–12303, G–17997, RI61–330.
Kerr-McGee Oil Industries, Inc	G–16082, G–16697, G–17155, G–17882, G–19872, G–19914, RI60–452, RI61–191, RI61–514, RI62–62, RI62–237, RI62–378, RI63–158**.
Langton, Claude M., Trustee	G–14054, G–17164, G–20456, RI60–428.

See footnotes at end of appendix C.

Producer[1]	Docket No.
Maracaibo Oil Exploration Corp.	G–6279, G–13032, RI60–138.
Mayfield, M. L.	G–11615, G–16519, G–20064.
McDermott, J. Ray & Co., Inc.	RI62–421**, G–12158.
Mecom, John W.	RI62–311.
Midhurst Oil Corporation	G–14055, RI62–348.
Midwest Oil Corp.	G–19912, RI60–182, RI61–251, RI62–119, RI63–116**.
Mississippi River Fuel Corp.	G–20239**.
Monsanto Chemical Company (Oper.) *et al.*	RI63–157* **.
Nicklos Oil & Gas Company, *et al.*	G–11711.
Oil Participations, Inc.[2]	G–13177, G–18270, G–19913.
J. P. Owen (Oper.), *et al.* and General American Oil Company of Texas (Oper.), *et al.*	G–20555.
Owen Production Company (Oper.), *et al.* and J. P. Owen (Oper.), *et al.* and General American Oil Company of Texas (Oper.), *et al.*	RI61–220.
Owen Production Company	RI63–162**.
Pan American Petroleum Corporation	G–8614, G–9500, G–9603, G–10144, G–11331, G–11332, G–11446, G–12285, G–13442, G–13564, G–14730, G–16514, G–16515, G–16516, G–18106, G–19482*, G–19641, G–19642, G–19654, RI60–126, RI60–239, RI61–4, RI61–136, RI61–137, RI61–183*, RI61–294, RI61–401, RI62–220, RI62–98, RI62–99, RI62–356, RI63–119**, RI63–138* **, RI63–144* **, RI63–387* **.
Penton, E. Doyle & D. N.	G–17800.
Petroleum, Inc. (Oper.), *et al.*	G–20276, RI61–295, RI62–256**, RI63–255**.
Phillips Petroleum Company	G–11991, G–14260, G–16600, G–16712, G–16083, G–17156, G–17267, G–17740, G–17920, G–18414, G–20013.
Placid Oil Company, *et al.*	G–13180, RI62–211, RI62–257.
Prentice, Robert B. (Oper.), *et al.*	G–19475.
Preston Oil Company	RI63–101**.
Raseberry, Elge	G–12625.
Rauch, Morris, *et al.*	G–4334.
Rebstock & Reeves Drilling Company (Oper.), *et al.*	G–17738, G–19941, RI61–232.
Rutherford, P. R.	G–17928.
Samedan Oil Corporation	RI63–55**.
Samedan Oil Corp. (Oper.), *et al.*	RI61–313.
Secure Trusts	G–13839, G–17161, G–20455, RI60–429, RI–62–226.
Shoreline Exploration, Inc.	RI61–557, RI62–103.
Socony Mobil Oil Company, Inc.	G–12193, G–12201, G–13437, G–14068, G–15410, G–15411, G–16691, G–17526, G–17622, G–19649, G–20343, RI60–422, RI61–113*, RI61–441, RI62–153, RI62–112.

See footnotes at end of appendix C.

Producer[1]	*Docket No.*
Socony Mobil Oil Company, Inc.	RI63-412**.
Sohio Petroleum Company	G-19538, RI61-217, RI62-89, RI62-269, RI62-320, RI62-507**, RI63-118**, RI63-121**. RI63-147**.
Southwest Gas Producing Co., Inc.	G-16714, G-18100, RI62-230, RI62-241.
Southwest Gas Producing Company, Inc., *et al.*	RI63-198**.
Sun Oil Company	G-19907*, G-20447, RI60-410, RI61-129, RI61-276, RI62-101, RI63-129, RI63-112* **, RI63-153**.
Sunnyland Contracting Company	G-19896.
Sunray DX Oil Company	G-6822, G-13741, G-16484, G-17726, G-17727, G-19904, G-19905*, G-19906, RI61-93, RI61-462, RI62-32, RI61-463, RI63-91**.
Superior Oil Company, The, a Nevada Corporation.	G-11845, G-17989, G-19823, G-20577, G-17707, RI62-278, RI63-37**.
Tenneco Corp	RI63-187**.
Texaco Inc	G-19897*, G-19916, G-19917, G-19918, G-20012, G-20433*, RI61-89, RI61-148, RI61-149*, RI61-150*, RI61-237, RI61-419, RI62-155, RI62-156, RI62-157, RI62-416**, RI63-77**, RI63-78**, RI63-79**, RI63-424**, G-17613.
Texas Gulf Producing Company	G-9476, G-11536, G-13848, G-14069, G-14112, G-15056, G-17158, G-17372, G-17373, G-17884, G-17925, G-19910, RI60-402, RI60-403, RI61-223, RI62-75, RI62-90, RI63-143**.
Texstar Corp, The	RI62-358.
Trahan, J. C., Drilling Contractor, Inc., (Oper.), *et al.*	RI61-315.
Trahan, J. C., Drilling Contractors, Inc.	RI62-277**.
Trice Production Company	G-18516.
Union Oil Company of California	G-13438, G-16602, G-17705, G-19006, G-19609, RI60-450, RI61-80, RI62-43, RI63-117**.
Union Producing Company	G-20204.
Union Texas Petroleum, A Division of Allied Chemical Corp.	RI62-91.
U.S. Oil of Louisiana, Inc	G-19874.
Vincent & Welch, Inc. (Oper.), *et al.*	G-19261.
Walker, Willard, E	G-18099.
Webster, C. B	G-14187.
Weiner, Ted (Oper.), *et al*	G-17993, G-19901.
Wrightsman, Charles B	RI62-433**.

*This proceeding is consolidated only insofar as it pertains to sales in South Louisiana.

**Consolidated with the proceedings in Docket No. AR61-2, *et al.*, by the instant order.

[1] This producer designation is for general identification and may not include all of the respondents designated in the respective orders initiating rate suspension proceedings.

[2] Now Southwest Resources, Inc.

[3] Now Austral Oil Company, Inc. agent for Oil Participations, Inc.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

EL PASO NATURAL GAS COMPANY, ET AL., DOCKET NO. G–17849, ET AL.; THE ATLANTIC REFINING COMPANY (OPERATOR), ET AL., DOCKET NO. G–17571; SHELL OIL COMPANY (OPERATOR), ET AL., DOCKET NO G–17888; THE SUPERIOR OIL COMPANY, DOCKET NO. CI60–328

ORDER DENYING MOTIONS FOR RECONSIDERATION AND STAY OF OPINION AND ORDER

(Issued August 30, 1963)

Motions for reconsideration of the Commission's Opinion No. 390 and Order issued June 19, 1963, 29 FPC 1175, were filed on August 7, 1963, by The Superior Oil Company, on August 9, 1963, by Shell Oil Company, and on August 13, 1963, by The Atlantic Refining Company. Superior also has requested a stay of the ordering paragraphs of the Opinion. Earlier applications for rehearing submitted by these parties were rejected by the Secretary on the ground that their tender was not in conformity with the requirements of Section 19(a) of the Natural Gas Act and Sections 1.34 (a) and (b) of our Rules of Practice and Procedure, in that they were filed after the statutory period for such pleadings.

On August 14, 1963, we issued our Opinion No. 390–A clarifying and modifying the original Opinion and Order and denying certain timely applications for rehearing and motions for stay. The various allegations and arguments contained in the present motions were among those considered by us in denying the applications for rehearing which were timely filed. No new material has been brought to our attention which warrants additional consideration of the subject proceeding.

The Commission finds:

No reasons have been adduced for giving further reconsideration to this matter or otherwise reopening the proceeding.

The Commission orders:

The motions for reconsideration and stay of Opinion No. 390 and Order as filed by The Superior Oil Company, Shell Oil Company and the Atlantic Refining Company are denied.

Commissioner O'Connor *dissenting* for the reasons set forth in his statement accompanying Opinion No. 390 issued June 19, 1963, p. 1188.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

POTOMAC EDISON COMPANY, DOCKET NO. E–7104

ORDER AMENDING ORDER INSTITUTING INVESTIGATION AND PROVIDING FOR HEARING

(Issued August 30, 1963)

On June 7, 1963, 29 FPC 1145, an order was issued in this docket instituting formal investigation concerning the lawfulness of Electric Rate Schedule Tariff "WS" filed with the Commission by Potomac Edison Company (Potomac Edison), and providing for hearing. That order, in Paragraph (B), directed Potomac Edison to file, on or before September 9, 1963, cost and revenue data showing its

costs of rendering service to each wholesale for resale customer served under the Rate Schedule Tariff "WS" utilizing as the test period the calendar year 1962.

On August 19, 1963, Potomac Edison filed with the Commission a request for an extension of time to December 9, 1963, in which to file the required cost and revenue data. Potomac Edison stated that additional time is necessary to properly prepare the data in the detail and scope required.

The extension of time to December 9, 1963, will result in data for the calendar year 1962 being out of date by the time the hearing is held on this matter. Consequently, a test year beginning July 1, 1962, and ending June 30, 1963, would be more appropriate.

The Commission finds:

It is appropriate for the purposes of the Federal Power Act, particularly Sections 205, 206, 304, 307, 308 and 309 thereof, that Paragraph (B) of the Commission's order issued June 7, 1963, in this docket be amended: (1) to change the date by which cost and revenue data must be submitted from September 9, 1963, to December 9, 1963, and (2) to change the test period which shall be utilized from the calendar year 1962 to a period beginning July 1, 1962, and ending June 30, 1963.

The Commission orders:

Paragraph (B) of Commission Order issued June 7, 1963, in this docket is hereby amended to read as follows:

Potomac Edison shall file, on or before December 9, 1963, cost and revenue data showing Potomac Edison's cost of rendering service to each wholesale for resale customer served under the Rate Schedule Tariff "WS" referred to in paragraph (A) above, calculated in accordance with applicable Commission rulings and utilizing, among other things, as the test period a period beginning July 1, 1962 and ending June 30, 1963, showing both historical revenues and *pro forma* adjustments thereto, a prudent net investment rate base, and a fair rate of return thereon.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

GULF OIL CORPORATION, DOCKET NO. RI64-120; F. WILLIAM CARR (OPERATOR), ET AL., DOCKET NO. RI64-121

ORDER PROVIDING FOR HEARINGS ON AND SUSPENSIONS OF PROPOSED CHANGES IN RATES [1]

(Issued September 3, 1963)

The above-named Respondents have tendered for filing proposed changes in presently effective rate schedules for sales of natural gas subject to the jurisdiction of the Commission. All of the sales are made at a pressure base of 14.65 psia. The proposed changes, which constitute increased rates and charges, are designated on the following page.

F. William Carr (Operator), *et al.*, (Carr) request an effective date of September 6, 1963, for their proposed rate increases. Good cause has not been shown for waiving the 30-day notice requirement provided in Section 4(d) of the Natural Gas Act to permit an earlier effective date for Carr's proposed rate filings and such request is denied.

The producers' present effective rates of 13.8733¢ per Mcf are the results of offers of settlement submitted by Gulf Oil Corporation and F. William Carr (Operator), *et al.*, and accepted by the Commission's orders issued June 5, 1961, in Docket No. G-11444, *et al.*, and August 19, 1960, in Docket No. G-14557, respectively. The proposed increased rates of 14.3733¢ per Mcf, which were contractually due February 5, 1963, are equivalent to 14.8733¢ per Mcf when the 0.5¢ per Mcf cost to the buyer for dehydration and central point delivery is taken into consideration and exceed the increase ceiling of 14.6¢ per Mcf for Texas Railroad District No. 2 as set forth in the Commission's Statement of General Policy No. 61-1, as amended [18 CFR, Chapter I, Part 2, Section 2.56].

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds:

It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon hearings concerning the lawfulness of the proposed changes, and that the above-designated supplements be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly Sections 4 and 15 thereof, the Commission's Rules of Practice and Procedure, and the Regulations under the Natural Gas Act [18 CFR, Chapter I], public hearings shall be held upon dates to be fixed by notices from the Secretary concerning the lawfulness of the proposed increased rates and charges contained in the above-designated supplements.

---

[1] This order does not provide for the consolidation for hearing or disposition of the matters covered herein, nor should it be so construed.

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Percent per Mcf		Rate in effect subject to refund in docket Nos.
									Rate in effect	Proposed increased rate	
RI64-120	Gulf Oil Corp., P.O. Drawer 2100, Houston, Tex., 77001.	40	9	Texas Eastern Transmission Corp. (Meyersville Field, DeWitt and Goliad Counties, Tex.) (R.R. District No. 2).	$1,545	8-9-63	[2] 9-9-63	2-9-64	[3, 4] 13.8733	[3, 5] 14.3733	
	do	42	9	Texas Eastern Transmission Corp. (Southwest Helen Gohlke and North Arneckville Fields, Victoria and DeWitt Counties, Tex.) (R.R. District No. 2).	5,898	8-9-63	[2] 9-9-63	2-9-64	[3, 4] 13.8733	[3, 5] 14.3733	
	do	108	17	Texas Eastern Transmission Corp. (Maley Field, Bee County, Tex.) (R.R. District No. 2).	1,272	8-9-63	[2] 9-9-63	2-9-64	[3, 4] 13.8733	[3, 5] 14.3733	
RI64-121	F. William Carr (Operator), et al., c/o Head & James, 707 Wilson Tower, Corpus Christi, Tex.	10	14	Texas Eastern Transmission Corp. (Sunset Field, Live Oak County, Tex.) (R.R. District No. 2).	1,827	8-12-63	[2] 9-12-63	2-12-64	[3, 6] 13.8733	[3, 5] 14.3733	
	do	11	8	Texas Eastern Transmission Corp. (West George West Field, Live Oak County, Tex.) (R.R. District No. 2).	1,137	8-12-63	[2] 9-12-63	2-12-64	[3, 6] 13.8733	[3, 5] 14.3733	

[2] The stated effective date is the first day after expiration of the required statutory notice.
[3] Rate exclusive of 0.5 cent charge by buyer for dehydration and central point delivery.
[4] Settlement rate accepted in order issued June 5, 1961, in Docket No. G-11444, et al.
[5] Periodic rate increase.
[6] Settlement rate accepted in order issued Aug. 19, 1960, in Docket No. G-14557.

(B) Pending hearings and decisions thereon, the above-designated rate supplements are hereby suspended and the use thereof deferred until the date indicated in the above "Date Suspended Until" column, and thereafter until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended, nor the rate schedules sought to be altered thereby, shall be changed until these proceedings have been disposed of or until the periods of suspension have expired, unless otherwise ordered by the Commission.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the Rules of Practice and Procedure [18 CFR 1.8 and 1.37 (f)] on or before October 15, 1963.

Commissioner O'Connor dissents to this order, believing that the suspension period should be one day only for the reasons outlined in his dissent to the order issued February 4, 1963, in *Mills Bennett Estate, et al.*, in Docket No. RI63-308, *et al.*, 29 FPC 212.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NOS. CP60-122, CP61-203; ALGONQUIN GAS TRANSMISSION COMPANY, DOCKET NOS. CP60-124, CP61-220; UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP61-151; SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP61-206; TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP61-247; ARKANSAS-MISSOURI POWER COMPANY, DOCKET NO. CP62-20

ORDER MODIFYING OPINION NO. 372 AND ORDER ISSUED DECEMBER 17, 1962

(Issued September 3, 1963)

On July 26, 1963, Valley Gas Company (Valley) filed an application for rehearing and reconsideration of Opinion No. 372 and order issued December 17, 1962, 28 FPC 1035, insofar as that order denied the request for an allocation of gas to service the Martinsburg-Roaring Spring, Pennsylvania area. Our denial of this requested allocation was based on the fact that the Applicant had not obtained the appropriate authority from the Pennsylvania Public Service Commission to conduct the gas service contemplated by the requested allocation. This defect has been cured as evidenced by the order of the Pennsylvania Public Service Commission issued July 22, 1963, a certified copy of which was attached to the instant application.

The record demonstrates the economic and engineering feasibility of the proposed service to the Martinsburg-Roaring Spring area and we conclude that our order of December 17, 1962 should be amended to direct Texas Eastern Transmission Corporation to sell a maximum of 388 Mcf of gas per day at 14.73 psia to Valley for service to this area.

The Commission orders:

Opinion No. 372 and order issued December 17, 1962 is hereby modified in the following respect:

(A) Texas Eastern Transmission Corporation is directed to sell to Valley Gas Company a maximum of 388 Mcf of gas per day at 14.73 psia.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

THE CINCINNATI GAS & ELECTRIC COMPANY, DOCKET NO. E-7125

ORDER TO SHOW CAUSE, INSTITUTING INVESTIGATION AND PROVIDING FOR HEARING

(Issued September 4, 1963)

The Cincinnati Gas & Electric Company, Cincinnati, Ohio (Cincinnati Company), a corporation organized under the laws of the State of Ohio and operating within the States of Ohio, Indiana and Kentucky, has been determined to be a public utility within the meaning of the Federal Power Act, order issued June 21, 1961, *The Cincinnati Gas & Electric Company*, Docket No. E-6997 (25 FPC 1195).

Cincinnati Company reports that it serves five municipalities, one cooperatively-owned electric utility and one investor-owned electric utility for which it has not submitted rate schedules for filing with the Commission. Those purchasers are: City of Hamilton, Ohio; Village of Blanchester, Ohio; Village of Georgetown, Ohio; Village of Hamersville, Ohio; Village of Ripley, Ohio; Inter-County Rural Electric Cooperative, Inc., and The Dayton Power and Light Company.

By letter dated May 23, 1963, the staff requested that Cincinnati Company file rate schedules for service to these customers, pursuant to the requirements of Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations thereunder. Cincinnati Company, by letter dated July 25, 1963, replied that it would not file these rate schedules, on the ground that this Commission has no jurisdiction over these sales.

Cincinnati Company currently has on file with this Commission the following rate schedules:

Customer:	*F.P.C. Rate Schedule No.*
Louisville Gas and Electric Company	1
The Union Light, Heat and Power Company	2
Public Service Company of Indiana, Inc.	10
Louisville Gas and Electric Company Tennessee Valley Authority	12
Indiana and Michigan Electric Company, The Ohio Power Company	13
West Harrison Gas and Electric Company	15
Ohio Valley Electric Corporation	16
Tennessee Valley Authority	17
Butler Rural Electric Cooperative, Inc. (filing incomplete)	

Review and analysis of data currently available to this Commission indicate that some or all of these rates may result in excessive rates or charges or may be unduly discriminatory, unduly preferential, or otherwise unjust, unreasonable and unlawful within the meaning of the Federal Power Act. Additional factual data necessary for a resolution of those questions must be obtained.

The Commission finds:

(1) In view of the foregoing, it is necessary and appropriate for the purposes of the Federal Power Act, particularly Sections 205, 206, 308 and 309 thereof, that Cincinnati Company be directed to show cause in writing and at a formal hearing why the Commission should not find and determine that the sales at wholesale for resale to the seven purchasers referred to in the recital above for which there are no rate schedules on file with this Commission are

sales at wholesale in interstate commerce subject to the jurisdiction of this Commission under the provisions of the Federal Power Act for which Cincinnati Company must file appropriate rate schedules in the manner provided in Part 35 of the Commission's Regulations under that Act.

(2) It is necessary and appropriate for the purposes of the Federal Power Act, particularly Sections 205, 206, 304, 307, 308 and 309 thereof, that the Commission enter upon a hearing and investigation concerning the lawfulness of Cincinnati Company's rate schedules filed and required to be on file with this Commission; and that Cincinnati Company be directed to submit cost and revenue data all in the manner as hereinafter provided.

The Commission orders:

(A) A public hearing shall be held at a time and place to be specified by further order of this Commission concerning the lawfulness of all of Cincinnati Company's rate schedules for service to the customers referred to in the recital above; and at which Cincinnati Company shall also show cause why the Commission should not:

(1) find and determine that in each instance Cincinnati Company's sales at wholesale for resale to the seven purchasers referred to in the recital above for which there are no rate schedules on file with this Commission are sales at wholesale in interstate commerce, subject to the provisions of Sections 205 and 206 of the Federal Power Act and Part 35 of the Commission's Regulations thereunder;

(2) find and determine that Cincinnati Company has been violating and threatens to continue violating the provisions of Section 205 of the Act and Part 35 of the Commission's Regulations thereunder;

(3) order Cincinnati Company to file rate schedules for service to the seven purchasers referred to in subparagraph (1) above in accordance with the provisions and requirements of Section 205 of the Act and Part 35 of the Commission's Regulations thereunder; and

(4) issue such other orders and take such other actions as may be necessary or appropriate to bring about compliance with the Federal Power Act and the Commission's Regulations thereunder.

(B) On or before December 9, 1963, Cincinnati Company shall respond to this order to show cause through Answer as provided in Section 1.9(c) of the Commission's Rules of Practice and Procedure, 18 CFR 1.9(c).

(C) Cincinnati Company shall file, on or before December 9, 1963, cost and revenue data showing Cincinnati Company's costs of rendering service to each wholesale for resale customer referred to in paragraph (A) above, calculated in accordance with applicable Commission rulings and utilizing, among other things, as the test period the period beginning July 1, 1962 and ending June 30, 1963, showing both historical revenues and *pro forma* adjustments thereto, a prudent net investment rate base, and a fair rate of return thereon.

(D) The showing referred to in paragraph (C) above shall be submitted in writing with sufficient copies to provide this Commission with six copies, to provide each State Commission affected with a like number of copies and to provide one copy each to all other parties as may be granted intervention in this proceeding.

(E) The showing referred to in paragraph (C) above shall not preclude or limit any additional showing by Cincinnati Company or others and shall be without prejudice to any future action taken by the Commission or its staff.

or to any future position Cincinnati Company or others may wish to take as to the significance of, or conclusions to be drawn from, the above factual showing.

(F) Notices of intervention or petitions to intervene in this proceeding may be filed with the Federal Power Commission, Washington, D.C., on or before October 18, 1963, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.37).

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

EL PASO NATURAL GAS COMPANY, DOCKET NO. G–16235; PACIFIC NORTHWEST PIPELINE CORPORATION, DOCKET NO. G–16237; COLORADO INTERSTATE GAS COMPANY, DOCKET NO. G–16904

ORDER DENYING REHEARING

(Issued September 4, 1963)

El Paso Natural Gas Company on August 6, 1963, the Washington Utilities and Transportation Commission on August 8, 1963, and the Public Utility Commissioner of Oregon on August 12, 1963, have filed applications for rehearing of our Opinion No. 393 and Order issued July 12, 1963, 30 FPC 77, in which we denied certificates of public convenience and necessity to El Paso and Colorado Interstate Gas Company (CIG) for a proposed pipeline extending from near Rock Springs, Wyoming, to California.

We have considered the applications of the parties and find that they do not raise points which require further comment except as follows. El Paso compares at length the present proceeding with that in which we granted a certificate to Transwestern Pipeline Company (22 FPC 391) for gas service to Southern California. The Transwestern application was unopposed, and did not provide the same opportunity as this proceeding to consider all relevant factors. The Opinion in that case, issued in 1959, was based upon a different factual situation, and did not purport to establish any principles which should serve to govern the disposition of future certificate cases. The Opinion therefore has little bearing on the disposition of this case.

Petitioners claim that the Commission did not give adequate weight to the benefits to the Pacific Northwest area from the proposed Rock Springs project. They say the total public interest must be weighed, and if Rock Springs resulted in a disadvantage to California, as compared with alternative projects, it should nevertheless have been authorized if such disadvantage had been outweighed by advantages to the Pacific Northwest area and elsewhere. We agree that the total public interest must be the criterion, and our decision is based upon precisely that standard. It must be kept in mind that the Rock Springs project was a proposal to bring additional gas to California, not the Pacific Northwest, and the cost of the project would have been borne by California consumers. The record in this case shows that the Rock Springs project, if certificated, would have cost California consumers some $20,000,000 more a year than a possible alternative project, while possible benefits to the Pacific Northwest area were not spelled out in the record and to the extent they might exist the record indicates that they are not of this order of magni-

tude. Our decision gave equal weight to the interests of all regions and clearly meets the test of the over-all public interest.

Both El Paso and the Washington Commission have commented on our statement that the estimates made with respect to the alternative routes are subject to an "indefinable margin of error."[1] By this we meant that it was difficult to define the error by a specific percentage, but the evidence on alternative routes was sufficiently definitive for the purpose of showing the existence of more economical ways of supplying gas to California and the general magnitude of the savings as compared with the proposed project.

We also note the apparent failure of CIG and the Southern California distributing companies to continue to support the project as neither has filed a petition for rehearing of our opinion.

It was brought to our attention in the applications for rehearing that the States of California and Utah should be included in the list of interveners supporting the project.[2]

The Commission further finds:

The applicants for rehearing present no new facts or principles of law which were not considered by the Commission when it issued its Opinion No. 393 on July 12, 1963, or which having now been considered warrant any change or modification of said order except as mentioned above.

The Commission orders:

The applications for rehearing filed with respect to our Opinion No. 393 and Order issued July 12, 1963 are hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

NORTHERN STATES POWER COMPANY, DOCKET NO. E-7118

ORDER AUTHORIZING THE ISSUANCE OF FIRST MORTGAGE BONDS

(Issued September 4, 1963)

Northern States Power Company (Applicant), incorporated under the laws of the State of Minnesota and doing business in the States of Minnesota, North Dakota and South Dakota, with its principal place of business in Minneapolis, Minnesota, filed an application, on July 26, 1963, for authority, pursuant to Section 204 of the Federal Power Act, to issue and sell at competitive bidding $15,000,000 principal amount of First Mortgage Bonds, due 1993.

Applicant proposes to issue the Bonds under a Trust Indenture, dated February 1, 1937 from Applicant to Harris Trust and Savings Bank of Chicago, Trustee, as heretofore supplemented by thirteen supplemental indentures and to be further supplemented by a new Supplemental Indenture to be dated as of September 1, 1963. The new Bonds will be a first mortgage lien on all fixed

[1] P. 88.

[2] The California Commission did not participate in the present phase of the proceedings but the record does include a letter from that Commission stating its support of the applications (Tr. 8164–8165). The Public Service Commission of Utah participated in oral argument in support of the project.

properties of the Applicant and will be on a parity with the Applicant's outstanding mortgage issues. The new Bonds will be dated as of September 1, 1963 and will mature on September 1, 1993. The interest rate of the Bonds will be determined by competitive bidding.

On or about September 11, 1963 Applicant proposes to invite sealed, written bids for the purchase of Bonds by newspaper publication and by distribution of a Form of Proposal, together with a Statement of Terms and Conditions relating thereto and a Form of Purchase Contract. All bids, whether from a single bidder or a group of bidders, must be for the purchase of all of the Bonds and must be on the Form of Proposal provided by Applicant, signed by the bidder, or by the representative in the case of a group of bidders. Each bid must specify the interest rate to be borne by the Bonds, which rate shall be a multiple of ⅛th of 1 percent; the price exclusive of accrued interest to be paid to Applicant for the Bonds, which price shall be not less than 99% and not more than 102¾% of the principal amount thereof; and, that Applicant shall be paid the amount of the accrued interest on the Bonds from September 1, 1963 to the date of payment therefor and delivery thereof.

Unless postponed, all bids for the purchase of the proposed issuance of Bonds must be presented to Applicant at the 8th Floor Assembly Room, Harris Trust and Savings Bank, 111 West Monroe Street, Chicago 90, Illinois, at or before 10:00 a.m., CDST on September 18, 1962. Applicant, unless it rejects all bids, which it reserves the right to do, or excludes a bid or bids for reasons specified in the Statement of Terms and Conditions, will accept the bid which provides the lowest cost of money to Applicant. Each bid must be accompanied by a certified or bank cashier's check or checks, payable in Chicago or New York Clearing House funds, in the aggregate amount of $450,000.

Applicant states that the proceeds from the sale of the Bonds will be used to pay, in part, the cost of Applicant's 1963 construction program, estimated at $58,700,000 of which $17,200,000 has been expended within the first five months of 1963, and to pay outstanding bank loans estimated not to exceed $9,000,000 as of the date of issuance and delivery of the new Bonds. The principal items of expenditure for 1963 are: $1,030,000 for continued construction of a 66,000 kw atomic power plant near Sioux Falls, South Dakota; $18,554,000 for continuing construction of the 216,000 kw Unit #8 at Applicant's Riverside steam electric generating plant in Minneapolis; $671,000 for continuing construction of a 230 kv interconnection with Minnesota Power & Light Company; $620,000 toward the construction of 100 MVA 230/115 kv Red Rock Substation at Newport, Minnesota; $719,000 for the construction of 115 kv transmission line from Riverside Substation to the Fifth Street Substation to Aldrich Substation in Minneapolis; $20,076,000 for additions and improvements generally to electric distribution facilities; $6,000,326 for additions and improvements to gas plant; and $5,000,866 for additions and improvements to steam, telephone, water and common utility plant.

Written notice of the application has been given to the Minnesota Railroad and Warehouse Commission, the North Dakota Public Service Commission, and the South Dakota Public Utilities Commission, and to the Governor of each of those States. Notice has also been given by publication in the Federal Register on August 13, 1963 (28 F.R. 8301), stating that any person desiring to be heard or to make any protest with reference to the application should file a petition

or protest on or before August 23, 1963 with the Federal Power Commission, Washington 25, D.C. No protest, petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued September 1, 1955, *In the Matter of Northern States Power Company*, Docket No. E–6637 (14 FPC 946).

(2) The proposed issuance and sale of Bonds, as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issue here involved is regulated by a State commission within the meaning of Section 204(f) of the Act and the proposed issuance of securities is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(4) The proposed issuance and sale of Bonds, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purposes.

(5) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) The proposed issuance and sale of Bonds, upon the terms and conditions and for the purposes specified in the application, as described above, are authorized, subject to the provisions of this order.

(B) The proposed issuance and sale of Bonds at competitive bidding shall not be consummated until:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(k)(3) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(k)(4) of those Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.

(ii) The Commission, by further order, shall have approved the price to be received by Applicant for the proposed issuance of Bonds and the interest rate thereof.

(C) This authorization shall expire unless the transaction hereby authorized is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission.

(E) Nothing in this order shall be construed to imply and guarantee or obligation on the part of the United States with respect to any securities to which this order relates.

Commissioner Black present but *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

AREA RATE PROCEEDING, DOCKET NO. AR61-2; TEXACO INC., DOCKET NO. G-17613; SUNRAY DX OIL COMPANY, DOCKET NO. G-17726 AND G-17727; PHILLIPS PETROLEUM COMPANY, DOCKET NO. G-17740; THE ATLANTIC REFINING COMPANY, DOCKET NO. G-17741; AUSTRAL OIL COMPANY, INC., DOCKET NO. G-17797; TEXAS GULF PRODUCING COMPANY, DOCKET NO. G-17925; P. R. RUTHERFORD, DOCKET NO. G-17928; CONTINENTAL OIL COMPANY, DOCKET NO. G-17936; THE SUPERIOR OIL COMPANY (OPERATOR), ET AL., DOCKET NO. G-17989; TED WEINER (OPERATOR), ET AL., DOCKET NO. G-17993; JEFFERSON LAKE SULPHUR COMPANY (OPERATOR), ET AL., DOCKET NO. G-17997; WILLARD E. WALKER, DOCKET NO. G-18099; SOUTHWEST GAS PRODUCING COMPANY, INC., DOCKET NO. G-18100; TRICE PRODUCTION COMPANY, DOCKET NO. G-18516; DAVID CROW, TRUSTEE, DOCKET NO. G-20083; J. P. OWEN (OPERATOR), ET AL., DOCKET NO. G-20555; MARACAIBO OIL EXPLORATION CORPORATION (OPERATOR), ET AL., DOCKET NO. RI60-138.

ORDER GRANTING REHEARING FOR PURPOSES OF RECONSIDERATION

(Issued September 5, 1963)

Long Island Lighting Company and The United Gas Improvement Company (UGI) on August 12, 1963, filed an application for rehearing of the Commission's order issued July 24, 1963, 30 FPC 402, in the above-entitled proceedings. On August 20, 1963, Philadelphia Electric Company filed a similar petition. By that order the motions of UGI to reject, cancel and dismiss the rate filings involved here were denied. We held in the July 24 order that the producers had the right under the favored-nation provisions in their contracts to file for increased rates of 23.55¢ per Mcf based on the 23.55¢ per Mcf initial rate of Pan American Petroleum Corporation (Pan American) for the sale of gas to Transcontinental Gas Pipe Line Corp. (Transco) at least during the period that Pan American's temporary authorization is in effect. We also indicated that the producers' triggering rights under their contracts do not appear to be dependent solely upon the sales by Pan American and Oil Participations Inc. (Oil Participations)[1] mentioned in Transco's letter, since there were other sales being made at 23.55¢ to Transco under Hassie Hunt Trust Estate FPC Gas Rate Schedule No. 3[2] and Wm. Herbert Hunt Trust Estate FPC Gas Rate Schedule No. 5 and under renegotiated rates involved in Docket Nos. G-17726, G-17727, G-17740 and G-17936, among others.

Petitioners in their applications for rehearing reiterate their contention that the Pan American sale does not provide a basis for contractual support for the Section 4(e) filings here. They state, among other things, that Pan American on July 30, 1963, filed a motion for approval of a settlement proposal seeking permanent authorization in Docket No. G-16946 for the subject sale at

[1] Now Austral Oil Company, Inc.

[2] As petitioners correctly point out in their application, the order of July 24 erroneously refers to the seller as "Herbert Hunt Trust Estate" instead of "Hassie Hunt Trust Estate".

a rate of 20.625¢ per Mcf. They aver that if precedent is followed the settlement proposal will be approved, and that such sale will consequently not support a rate filing in excess of 20.625¢ per Mcf.[3] They also contend that the Hunt rates and the renegotiated rates do not provide the requisite contractual support, and that they have had no opportunity to show why the Hunt rates and the renegotiated rates are irrelevant or not comparable to the alleged triggered rates involved here.[4]

No action to date has been taken with respect to Pan American's settlement proposal, but any action taken with respect thereto may have a bearing on this case. In view thereof, and to allow further time for reconsideration of these matters in the light of any comments which might be filed by the other parties, it is appropriate that we grant rehearing in these proceedings.

The Commission orders:

Rehearing is hereby granted in these proceedings to permit reconsideration of the issues raised by the petitions for rehearing filed herein.

Commissioner Black *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

IOWA PUBLIC SERVICE COMPANY, DOCKET NO. E-7115

SUPPLEMENTAL ORDER AUTHORIZING ISSUANCE OF FIRST MORTGAGE BONDS

(Issued September 5, 1963)

By order issued August 22, 1963, 30 FPC 536, in the above-entitled matter, the Commission authorized Iowa Public Service Company (Applicant) to issue and sell at competitive bidding $12,000,000, maximum principal amount of First Mortgage Bonds, Series due 1993, subject to the provisions, among others set forth in paragraph (B) of that order, as follows:

(B) The proposed issuance and sale of Bonds at competitive bidding shall not be consummated until:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h) of those Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised

---

[3] Because of the "fringe benefits" in the settlement proposal, petitioners argue that the comparable price is something below 20.625¢ per Mcf.

[4] With respect to the Hunt sales, they contend that such sales cannot be used to support triggering because the Hunt rates were the result of the Pan American and Oil Participations sales, which petitions claim to be no longer valid. In support of this position they cite the *Shell* case, Opinion No. 382 issued March 15, 1963, 29 FPC 498. They also claim that under certain of the contracts triggering could not occur as a result of the Hunt rates or the renegotiated rates because the favored-nation provisions in such contracts are applicable only if Transco "purchases from producers new gas from sources of supply in the state of Louisiana." In this connection they aver that the triggering price must be in a "new" contract for "new" gas.

the Commission by telephone and telegram as contemplated by Section 34.9 of the Regulations;

(ii) The Commission shall have approved the price to be received by Applicant for the Bonds and the coupon rate thereof, by a further order.

Applicant, on September 5, 1963, filed an amendment, pursuant to the requirements of the afore-mentioned Commission order, in which it states, among other things, that it proposes to accept, as representing the lowest cost of money to it, the bid of Halsey Stuart & Co. Inc. to purchase all of the proposed issuance of $12,000,000 of Bonds, at a price of 98.03% of principal amount, with an interest rate of 4⅝% per annum.

The Commission finds:

(1) Applicant has satisfactorily complied with the requirements contained in paragraph (B) of the Commission's order issued August 22, 1963, in the above-entitled docket; and under the bid it proposes to accept for the issuance of Bonds, the price to be received by Applicant for the Bonds and the interest rate thereof are reasonable.

(2) The proposed issuance of Bonds, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

The Commission orders:

(A) The price to be received by Applicant for the proposed Bonds and the interest rate thereof under the bid referred to above, are approved as reasonable.

(B) The proposed issuance and sale of Bonds referred to above, upon the terms and conditions, and for the purposes specified in the application, as supplemented by the amendment referred to above, are hereby authorized, subject only to the provisions of paragraphs (C), (D) and (E) of the Commission's order issued August 22, 1963, in the above docket.

Commissioner Black *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. CP63-332

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 5, 1963)

On June 4, 1963, Texas Eastern Transmission Corporation (Applicant) filed in Docket No. CP63-332 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation and sale to certain of Applicant's present customers additional volumes of natural gas for firm service, all as more fully set forth in the application.

Commencing during the 1963-64 winter heating season, Applicant proposes to sell, under long term service agreements and its Annual Firm Gas Rate Sched-

ules, the following additional volumes of natural gas to the following existing customers:

ADDITIONAL ANNUAL FIRM SERVICE

Customer	Date of commencement	Maximum daily quantity (14.73 psia)
Central Illinois Public Service Co	11-1-63	1,020
New Jersey Natural Gas Co	11-1-63	4,080
Anna, Ill., Town of	1-1-64	204
Arkansas Missouri Power Co., Associated Natural Gas Co	1-1-64	6,120
Bude, Miss., Town of	1-1-64	153
Columbia, Ky., Town of	1-1-64	306
Franklin, Tenn., Town of	1-1-64	408
Jasper, Ind., Town of	1-1-64	306
Lafayette, Tenn., Town of	1-1-64	266
Lebanon, Tenn., Town of	1-1-64	867
T. W. Phillips Gas & Oil Co	1-1-64	1,020
Tennessee Gas Pipe Line Co	1-1-64	198
Total		14,948

ADDITIONAL WINTER SERVICE

Customer	Date of commencement	Maximum daily quantity (14.73 psia)
Lawrenceburg, Tenn., Town of	11-16-63	408
Lebanon, Tenn., Town of	11-16-63	102
New Jersey Natural Gas Co	11-16-63	6,120
Total		6,630

Pursuant to due notice, a public hearing was held in Washington, D.C., on August 22, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Texas Eastern Transmission Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 10, 1947, in Docket No. G-880 (6 FPC 148).

(2) The proposed transportation and sales of natural gas by Applicant hereinbefore described, as more fully described in the application in this proceeding, will be in interstate commerce, subject to the jurisdiction of the Commission, and such proposed transportation and sales are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed transportation and sales of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Texas Eastern Transmission Corporation, to transport and sell natural gas as hereinbefore described, all as more fully described in the application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of such Regulations.

(C) The sales of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP63-349

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 6, 1963)

On June 19, 1963, Cities Service Gas Company (Applicant) filed in Docket No. CP63-349 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas to The Gas Service Company (Gas Service) for resale in the communities of Golden City, Greenfield, El Dorado Springs, Lockwood, Stockton, Jerico Springs, Missouri and to domestic consumers and other customers of Gas Service residing adjacent to the 12-inch Lamar line.

All deliveries of natural gas above mentioned will be made through Applicant's existing facilities previously installed in connection with sales in and around the cities of Lamar and Jasper, Missouri.

The sales of gas to Gas Service are to be made under Applicant's Gas Rate Schedules F-2, C-2 and I-2.

The estimated volumes of gas requirement of the communities named on the third year after the beginning of service are as follows:

Customer	Peak day	Annual volume
Golden City	637	57,255
Greenfield	895	83,205
El Dorado Springs	2,387	295,910
Lockwood	696	64,750
Stockton	696	68,770
Jerico Springs	99	6,980
Lamar Mainline (Domestic Customers)	159	11,110

The total peak day requirements as shown are 5,569 mcf. per day at 14.73 psia and 587,980 Mcf., on an annual basis.

Pursuant to due notice, a public hearing was held in Washington, D.C., on August 29, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Cities Service Gas Company, A Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G–298 (4 FPC 471).

(2) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(3) Public convenience and necessity require that a certificate of public convenience and necessity issue authorizing the proposed sale and the rights granted hereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such regulations.

(4) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant to sell and deliver natural gas to The Gas Service Company for resale, as hereinbefore stated, as more fully described in the application.

(B) The certificate issued herein and the rights granted hereunder are conditioned upon Applicant's compliance with all applicable rules and regulations under the Natural Gas Act and particularly the terms and conditions set forth in Section 157.20 of such Regulations.

(C) Applicant shall advise the Commission of the commencement of the service within 10 days thereof.

Commissioner Black *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

EASTERN SHORE NATURAL GAS COMPANY, DOCKET NO CP63-341

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 6, 1963)

On June 11, 1963, Eastern Shore Natural Gas Company (Applicant) filed an application in Docket No. CP63-341 pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction of metering and connecting facilities to deliver gas to General Foods Corporation, as more fully set forth in the application.

Applicant proposes to tap its existing transmission line at Dover, Delaware, making a 5,200-foot extension, including necessary metering facilities, to supply General Foods with a maximum of 300 Mcf per day of firm gas for food processing. Applicant proposes to reduce its existing contract demand to Tidewater Oil Company by an amount sufficient to permit the service to General Foods on a firm basis.

It appears that the proposed service can be made with existing facilities and from Applicant's existing gas supplies for the indefinite future. The estimated total cost of the facilities is $28,645.

Pursuant to due notice, a public hearing was held in Washington, D.C., on August 20, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Eastern Shore Natural Gas Company, a Delaware corporation having its principal place of business in Salisbury, Maryland, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transmission of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Eastern Shore Natural Gas Company, to construct and operate the facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission Regulations, within 12 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP63-333

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 6, 1963)

On June 5, 1963, as supplemented on June 14, 1963, El Paso Natural Gas Company (Applicant) filed in Docket No. CP63-333 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the modification of Applicant's existing Turner, Oregon, measuring and regulating station to increase the capacity of said station and the sale and delivery of natural gas to Northwest Natural Gas Company (Northwest) for resale and distribution in the communities of Aumsville, Stayton, Mehama, Lyons, Mill City, Junction City and Columbia City, and said communities' respective environs, all in Oregon, all as more fully set forth in the application, as supplemented.

Deliveries of natural gas by Applicant to Northwest for Aumsville, Stayton, Mehama, Lyons and Mill City will be made at the Turner Station; deliveries of natural gas for Junction City and Columbia City will be made, respectively, at Applicant's existing stations providing service for Eugene and Portland, Oregon. The application shows that Northwest will transport the gas so delivered through partial use of its existing facilities and through facilities proposed by it to points of resale and distribution.

The proposed modification of the Turner Station is to provide capacity sufficient to deliver the requirements of those communities proposed to be served through use of such Station. No additional facilities will be required at the Eugene and Portland Stations. The estimated cost of the proposed modification is $19,600 which cost will be financed out of current working funds.

The estimated third year requirements of the seven communities to be served by Northwest are:

Communities	Annual (Mcf)	Peak day (Mcf)
Aumsville	156,477	639
Stayton	171,428	877
Lyons	255,143	991
Mehama	(1)	
Mill City	63,619	306
Junction City	242,286	1,010
Columbia City	146,381	505
Total	1,035,334	4,328

[1] Included with Lyons.

The application shows that the total estimated cost of transmission and distribution facilities to be constructed by Northwest during the first three years of the proposed service is $1,388,200.

It appears that Northwest has received the appropriate state and local authorizations necessary for the proposed service to the seven communities.

Pursuant to due notice, a public hearing was held in Washington, D.C., on August 22, 1963, respecting the matters involved in and the issues presented by the application, as supplemented, herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 11, 1944, in Docket No. G-288 (4 FPC 486).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and

particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c) (1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, El Paso Natural Gas Company, to construct and operate the proposed facilities and to transport and sell natural gas as hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the transportation and sale of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP63-335

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 6, 1963)

On June 6, 1963, El Paso Natural Gas Company (Applicant) filed in Docket No. CP63-335 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the modification of Applicant's existing Albertson's Inc., measuring and regulating station in Ada County, Idaho, and the sale and delivery of natural gas to Intermountain Gas Company (Intermountain) for resale and distribution in Kuna, Ada County, Idaho, and environs, and surrounding irrigation areas, all as more fully set forth in the application.

Applicant proposes to deliver natural gas to Intermountain at the outlet side of the subject meter station. In order to accommodate Intermountain's requirements for Kuna, Applicant proposes to modify the meter station at an estimated cost of $800, so as to provide sufficent capacity therefor.

Intermountain proposes to install a natural gas distribution system in Kuna and to interconnect this system with the Albertson's, Inc., meter station. The total estimated cost of the transmission and distribution facilities to be constructed by Intermountain during the first three years of the proposed service is $116,266.

The application states that Intermountain estimates that during the third year of operation, the annual and peak day natural gas requirements will be 43,-

360 Mcf and 236 Mcf, respectively. The gas will be sold pursuant to Rate Schedules DS–1 and S–1 of El Paso FPC Gas Tariff, Original Volume No. 3.

Pursuant to due notice, a public hearing was held in Washington, D.C., on August 20, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 29, 1942, in Docket Nos. G–242 and G–257 (3 FPC 851).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof and the sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, El Paso Natural Gas Company, to construct and operate the proposed facilities as hereinbefore described, as more fully described in the application in this proceeding, and to sell natural gas to Intermountain Gas Company for resale and distribution in Kuna, Idaho, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The construction of facilities authorized by paragraph (A) above shall be completed and the facilities placed in actual operation, as required by Section 157.20(b) of the Commission's Regulations under the Natural Gas Act, within three months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

EQUITABLE GAS COMPANY, DOCKET NO. CP63-334

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 6, 1963)

On June 5, 1963, Equitable Gas Company (Applicant) filed in Docket No. CP63-334 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of approximately 3 miles of 20-inch transmission pipeline at a point in Union Township, Washington County, Pennsylvania, all as more fully set forth in the application.

The proposed facilities will increase the deliverability into Applicant's distribution system from the transmission system by 8,800 Mcf of gas. Inasmuch as most of Applicant's production, underground storage, and points of gas purchase are located south of Applicant's principal service area, the additional deliverability will enable Applicant to utilize its gas supply in such a way that the deliverability of storage pools, located more advantageously in relation to Applicant's distribution system, can be conserved until later in the heating season and for days of exceptionally high requirements.

The proposed facilities will increase the volume of line pack now available from the facilities constructed pursuant to authorization received in Docket Nos. G-17871 and CP60-4 from approximately 30,000 Mcf of gas per day to approximately 31,800 Mcf of gas per day and will make possible the more efficient use of line pack since it will then be available at both the Tepe Measuring Station and the distribution line commencing at the Hartson Compressor Station. This additional utilization of line pack will reduce the use of Applicant's peak load storage facilities during peak hours.

The proposed facilities will permit Applicant to reduce pressures on its older pipelines and will also provide capacity in addition to that now available in the event of any emergency affecting the operations of the presently existing pipelines into the Tepe Measuring Station.

With the proposed facilities in operation larger volumes of gas can be handled at the connection with Texas Eastern Transmission Corporation near Applicant's Pratt Compressor Station without reducing flows from Applicant's storage pools located to the south of such connection. This in turn will permit Applicant at periods of other than those of peak demands to reduce the volume of gas deliveries directly into Applicant's distribution system at the connection with Texas Eastern near Delmont, Pennsylvania. This will provide more efficient distribution of gas entering the distribution system and will permit more flexibility in storage input operations at Applicant's peak load pools during periods of less severe weather during the winter heating season.

The estimated cost of the proposed facilities is $365,866, to be financed from funds on hand.

Pursuant to due notice, a public hearing was held in Washington, D.C., on August 20, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Equitable Gas Company, a Pennsylvania corporation having its principal place of business in Pittsburgh, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of May 9, 1944, in Docket No. G–275 (4 FPC 588).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Equitable Gas Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The construction authorized in paragraph (A) above shall be completed and the facilities placed in actual operation, as required by Section 157.20(b) of the Commission's Regulations under the Natural Gas Act, within 4 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

MIDWESTERN GAS TRANSMISSION COMPANY, DOCKET NOS. G–16841 AND RP61–19; PEOPLES GAS LIGHT AND COKE COMPANY v. MIDWESTERN GAS TRANSMISSION COMPANY, DOCKET NO. RP63–11

ORDER DENYING REHEARING

(Issued September 6, 1963)

On August 9, 1963, Midwestern Gas Transmission Company filed an application for rehearing of Opinion No. 394, 30 FPC 150. Ordering Paragraph (C) of

that opinion determined that Midwestern is and will be obligated to pass on to its Southern System customers all refunds received and to be received from Tennessee Gas Transmission Company with respect to the period from April 5, 1960 to October 1, 1962, which constitute a reduction in Midwestern's gas purchase costs for that period below what they would have been at the level of rates for which Tennessee filed in Docket No. G–17166. Midwestern raises two principal points in its Application for Rehearing: first that Opinion No. 320 did not impose upon Midwestern a binding obligation to pass on *any* of the refunds which might be received from Tennessee; and second that even if such a binding obligation were imposed with respect to refunds for the G–17166 period (ending April 4, 1960) no such obligation was or could have been imposed with respect to the refunds for the G–19983 period (from April 5, 1960, to October 1, 1962). All of the arguments which Midwestern now advances in support of the second point were fully considered in Opinion No. 394, and no purpose would be served by further discussion here. The first point, however, has not been fully argued by Midwestern heretofore, and we will briefly indicate our reasons for concluding that the argument is without merit and cannot alter the result we have reached.

In Opinion No. 394 we contrasted Midwestern's apparent acquiescence in its obligation to pass on the refunds received with respect to the period prior to April 5, 1960, with its complete denial of any refund obligation for the period thereafter. We indicated that nothing in either the language of Opinion No. 320 or its underlying purpose justifies a termination of the refund liability because of Tennessee's placing in effect of further increased rates on April 5, 1960. Midwestern now informs us that "its proposal to pass on the G–17166 refunds was not motivated by any understanding that it was bound to make these refunds under Opinion No. 320." In its present view Midwestern relies primarily on the fact that the statement in the body of Opinion No. 320 to the effect that Midwestern "should" make the refunds was not repeated in any of the Ordering Clauses of the Opinion.

The most striking fact about Midwestern's new contention is its inconsistency with everything that Midwestern has previously told the Commission. Thus in its letter of January 25, 1963, wherein it proposed to make $923,440 of refunds to its Southern System customers (the G–17166 refund) Midwestern stated:

> Opinion No. 320 issued by the Federal Power Commission on May 12, 1959 granting a Certificate of Public Convenience and Necessity for the construction of the Southern System of Midwestern Gas Transmission Company, provided that if Midwestern should receive refunds from Tennessee Gas Transmission Company under Docket Nos. G–11980 and G–17166, Midwestern should make corresponding refunds to its customers, subject to the approval of the Commission. [1]

Again, in its 1962 Annual Report to the Commission Midwestern stated its position as follows:

> In December, 1962, Tennessee Gas Transmission Company, sole supplier for the Company's Southern System, refunded $5,927,896 (including interest of $568,495) to the Company covering settlement of a rate increase in effect at the time the Company received its original certificate from the Federal Power Commission and another later rate increase for which the Company did not file a corresponding rate increase. Pursuant to a condition in the original certificate, the Company proposes to refund to its customers $923,440 (including interest of $142,117) applicable to the increase in effect

[1] The Commission's Secretary notified Midwestern of such approval by letter of August 5, 1963.

when the certificate was issued. Such proposed refund has been approved by the customers and is now filed with the Federal Power Commission for approval. The Company in concurrence with the opinion of legal counsel intends to retain the remainder of the refund received from Tennessee since the Company's rates were not increased to offset the increase in gas purchase costs.

We have no doubt that Midwestern's original understanding of the nature of the obligation imposed by Opinion No. 320 is the more accurate one. In the light of what has subsequently occurred, it perhaps would have been a desirable precaution to repeat the statement of the refund obligation in an ordering paragraph in Opinion No. 320. But considering what Opinion No. 320 does say, and considering further the manner in which Midwestern's initial rate of return was fixed (which we discussed in Opinion No. 394), we are satisfied that in Opinion No. 320 the Commission intended to impose a binding obligation. The only remaining question is whether, as a matter of law, this purpose could only be achieved by the inclusion of direct language of command in an ordering clause. We are not aware of any principle of law requiring such a formalism nor does Midwestern cite any. It is quite clear that in this case no such mechanical rule was needed to enable Midwestern fairly to understand the obligations imposed upon it.

The Commission orders:

Midwestern's application for rehearing is denied.

Commissioner O'Connor *dissenting.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

CITY OF PARIS, MISSOURI, DOCKET NO. CP63-306; CITY OF MADISON, MISSOURI, DOCKET NO. CP63-307

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued September 6, 1963)

On May 15, 1963, the Cities of Paris and Madison, Missouri, (Applicants) filed in Docket Nos. CP63-306 and CP63-307, respectively, applications pursuant to Section 7(a) of the Natural Gas Act for orders of the Commission directing Panhandle Eastern Pipe Line Company (Respondent) to establish physical connection of its facilities with those which Applicants propose to construct and operate, and to sell and deliver natural gas to Applicants for resale and distribution in the Cities of Paris and Madison, Missouri, all as more fully set forth in the applications.

Applicants propose to construct and operate jointly a 20.8-mile lateral line from Respondent's transmission line in Audrain County, Missouri, to the city gate of Paris. Madison will bear 25% of the cost and Paris will bear the remaining 75%. The City of Madison will construct and operate an 11-mile transmission line from the Paris city gate to the proposed distribution system in Madison. Both cities propose to construct and operate individual municipally-owned natural gas distribution systems.

The estimated cost of the facilities proposed to be constructed by the City of Paris is $375,000, and the estimated cost of the facilities proposed to be con-

structed by the City of Madison is $247,000. The proposed project will be financed with 30-year gas revenue bonds.

The estimated annual and peak day natural gas requirements in Mcf at 14.73 psia for the first three years of operation of the proposed distribution systems are as follows:

	First year	Second year	Third year
City of Paris:			
Annual	77,564	88,034	100,506
Peak day	969.8	1,106.2	1,270.3
City of Madison:			
Annual	29,784	36,947	43,435
Peak day	365.5	460.0	524.8

On June 21, 1963, Respondent filed an answer to the applications and stated that it does not object to rendering the requested service upon the execution of appropriate gas sales contracts specifying maximum delivery pressures at Respondent's main line not to exceed 250 psig.

Notice of the applications was issued on July 25, 1963, and published in the Federal Register on August 1, 1963 (28 F.R. 7874). No protests, requests for hearing, or petitions to intervene have been received.

The Commission finds:

(1) Applicants, the Cities of Paris and Madison, Missouri, are municipal corporations organized and existing under the laws of the State of Missouri, and are legally empowered to construct and operate natural gas facilities and to sell and distribute natural gas in the Cities of Paris and Madison.

(2) Respondent, Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 17, 1945, in Docket No. G–254 (4 FPC 1081).

(3) It is necessary and desirable in the public interest to direct Respondent to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Applicants, as hereinbefore described and as more fully described in the applications herein, and to sell and deliver to Applicants natural gas for resale and distribution in their respective communities as hereinafter ordered.

The Commission orders:

(A) Panhandle Eastern Pipe Line Company be and it is hereby directed to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Applicants, as hereinbefore described and as more fully described in the applications in this proceeding, together with such metering, regulating, and appurtenant facilities as may be required therefor, and to sell and deliver up to 1,270 Mcf of gas per day to the City of Paris, Missouri, and up to 525 Mcf of natural gas per day to the City of Madison, Missouri, for resale and distribution in said communities pursuant to Respondent's appropriate rate schedules on file with the Commission.

(B) Applicants shall commence the purchase of gas as proposed herein within one year from the date on which this order issues.

(C) This order is conditioned upon the execution of appropriate gas sales contracts between Applicants and Respondent specifying maximum delivery pressures at Respondent's main line not to exceed 250 psig.

(D) Respondent shall report to the Commission the date of commencement of service within ten days thereof.

THE TOWN OF POSEYVILLE, INDIANA, DOCKET NO. CP63-224

ORDER MODIFYING EXAMINER'S DECISION

(Issued September 6, 1963)*

Syllabus

1. Commission *directs* Texas Eastern Transmission Corporation, under Section 7(a) of the Natural Gas Act, to establish physical connection of its facilities with facilities proposed to be constructed by Applicant, and sell natural gas to Applicant. P. 665.

Commissioner Black *not participating.*

John W. Kern for The Town of Poseyville, Indiana.

Keith M. Pyburn and *Jack D. Head* for Texas Eastern Transmission Corporation.

Albert J. Feigen for Community Natural Gas Company.

John J. Mullally for Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

On July 31, 1963, the presiding examiner issued a decision in this proceeding requiring Texas Eastern Transmission Corporation (Respondent) to establish connection with the municipal facilities of The Town of Poseyville, Indiana (Applicant). Applicant, filing under Section 7(a) of the Natural Gas Act, seeks this connection with facilities it proposes to construct and operate so as to purchase and receive natural gas for resale and distribution in the Town of Poseyville and environs.

Applicant proposes to construct and operate approximately 4 miles of 3-inch transmission line from the town gate to an interconnection with the main line of Respondent. Applicant will also construct and operate a distribution system to serve consumers in Poseyville and make sales directly from the lateral line in outlying areas.

Applicant estimates its natural gas requirements in Mcf for the first three years of operation to be as follows:

Year	Peak day	Annual
1	271	31,000
2	374	41,700
3	495	54,300

Applicant's facilities are estimated to cost $230,000, which will be financed by a $230,000 bond issue.

Respondent filed on May 7, 1963, an answer to the aforementioned application wherein it stated the volume of natural gas requested by applicant could be delivered by Respondent without impairing the ability of Respondent to provide adequate service to its existing customers. Respondent did not object to the granting of the aforementioned application in the event the Commission found

*Initial decision appears on p. 665.

that Applicant's proposed project was economically feasible and that the delivery of natural gas to Applicant by Respondent was found to be in the public interest.

Pursuant to our order of July 1, 1963, a hearing was held on July 24, 1963. Intervention in opposition to the project was granted to the Community Natural Gas Company (Community). Community, subsequently, on the record, withdrew its opposition to Applicant's project and thereafter took no position either in support of or in opposition to the project. Community also withdrew from any participation in the proceeding. Staff, on the record, requested certification of Applicant's project since it satisfied Commission requirements as set forth in *Panhandle Eastern Pipe Line Co.* 15 FPC 1421. Staff and Applicant waived the right to file briefs and the aforementioned examiner's decision was issued.

The examiner found it necessary and desirable in the public interest to direct respondent to render gas service to Applicant and ordered that Respondent establish connection of its facilities with those of Applicant and that Applicant install its facilities to be ready for operation by December 31, 1964.

Since this project meets the requirements for Section 7 (a) applications which we have previously established, we concur generally with his conclusion. See *Panhandle Eastern Pipe Line Co.*, 15 FPC 1421.[1] This determination, however should not be taken as necessarily expressing approval of the type of analysis of the matter set forth on page 669 of the Examiner's initial decision, moreover, we believe the project should become operative prior to the commencement of the 1964–65 heating season. Accordingly, we shall condition the order upon Applicant being prepared to receive natural gas from Respondent within one year from the date of this order and upon the execution of a proper service agreement.

The Commission finds:

(1) Texas Eastern Transmission Corporation, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) Applicant, The Town of Poseyville, Indiana, is a municipal corporation incorporated under the laws of the State of Indiana and is legally empowered to construct and operate natural gas facilities and to sell and distribute natural gas in the Town of Poseyville and environs.

(3) It is necessary and desirable in the public interest that Texas Eastern Transmission Corporation be directed to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant and to sell and deliver to Applicant up to 495 Mcf of natural gas per day, its estimated third year peak day requirement, as set forth in the application, and as hereinafter ordered and conditioned.

(4) Applicant should be prepared to receive natural gas from Texas Eastern Transmission Corporation within one year from the date of issuance of this order and, in addition should execute a service agreement with Texas Eastern in accordance with the Commission's Regulations under the Natural Gas Act.

(5) The requirement that Texas Eastern serve Applicant, as proposed, will not place any undue burden upon Texas Eastern Transmission nor impair its ability to render adequate service to its existing customers.

---

[1] These requirements include:

(a) Minimum debt service coverage of at least 1.5 based upon a 20-year bond issue or 2.0 based upon a 30-year bond issue.

(b) No undue burden on Respondent.

(c) The project will not impair the ability of Respondent to render service to its customers.

(d) Respondent's pipeline is the most feasible source of supply.

(e) There is a public need for and the public will benefit from natural gas service.

The Commission orders:

(A) Texas Eastern Transmission Corporation be and it is hereby directed to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant and to sell and deliver up to 495 Mcf of natural gas per day to Applicant, all as hereinbefore described and as set forth in the application.

(B) Applicant shall be prepared to receive natural gas from Texas Eastern within one year from the date of issuance of this order and, in addition shall execute a service agreement with Texas Eastern in accordance with the Commission's Regulations under the Natural Gas Act.

(C) Texas Eastern shall report to the Commission in writing the date of commencement of service to Applicant, within ten days after initiation of service.

Commissioner Black *not participating.*

INITIAL DECISION

OF THE PRESIDING EXAMINER ON THE SEC. 7(a) APPLICATION OF THE TOWN OF POSEYVILLE, INDIANA

(Issued July 31, 1963)

TABLE OF CONTENTS

		Page No.
I	Project summary	665
II	Procedural history	665
III	Former competing application	666
IV	Texas Eastern's response	667
V	Economic feasibility	668
VI	Statutory requirements	670
VII	Findings and order	670

ELLIS, *Presiding Examiner:*

I—PROJECT SUMMARY

The Town of Poseyville, Indiana, a community of 1,000 persons near Evansville in southwest Indiana, has besought the Federal Power Commission for an order under Section 7(a) of the Natural Gas Act calling upon a nearby natural gas pipeline, that of the Texas Eastern Transmission Corporation, to connect their line with a lateral proposed to be established by the town and to supply it with natural gas to meet the needs of its residents, the distribution to be made by the municipality. A similar project of a private distributor for service to Poseyville was approved by an order of the Commission of last year, but its lateral has not been built for failure of the distributor to acquire a franchise from the town.

II—PROCEDURAL HISTORY

December 17, 1962: The Commission's order in Opinion No. 372, CP60–122, directs Texas Eastern to supply gas to Mr. S. C. Chapman (now the Community Natural Gas Company) for Poseyville and two other nearby towns. Only the latter two had enfranchised Mr. Chapman.

January 16, 1963: By a popular vote of 231 for and 16 against, the residents of the town of Poseyville approve a program for distribution of gas in Poseyville by the municipality, the piping system to be built and financed out of revenue bonds.

February 14, 1963: Application filed by the town of Poseyville for an FPC order upon Texas Eastern, under Section 7(a) of the Natural Gas Act.

July 1, 1963: Following its notice of May 10, the Commission orders hearing on the application, and grants intervention to the Community Natural Gas Company.

July 24, 1963: Hearing held on the application and the parties agree to dispense with the filing of written briefs.

III—FORMER COMPETING APPLICATION

In one sense, the suitability of gas service to Poseyville has already been determined by the Commission. In a recent proceeding for the expansion of Texas Eastern Transmission Corporation's sales capacity, which was decided by Opinion No. 372 of December 17, 1962, there intervened Mr. S. C. Chapman, who petitioned for an order requiring Texas Eastern to sell to him 1,140 Mcf of natural gas per day for service to Poseyville and two other nearby towns in Indiana. The two other towns had already granted him a franchise, but Poseyville had not. Accordingly, the initial decision in that case, issued October 3, 1962, directed Texas Eastern to connect its facilities with those proposed by Mr. Chapman and make the sale of 1,140 Mcf, with the indication that if the Poseyville franchise should be denied him, Mr. Chapman will make gas available to Poseyville off his proposed system. The evidence and the estimates upon which this order issued were in lump sum form and did not break down the figures to show the need for Poseyville alone, the sales expected to be made there, or the investment required for that portion of the program. Hence there is no indication in the order as to how much of the 1,140 Mcf was destined for Poseyville. The Commission's opinion adopted the initial decision in this respect, without revision (Docket Nos. CP60–122, CP61–203). It is apparent that there had been local negotiations for some time with respect to a franchise for service to Poseyville, but it now is denied that Chapman ever was given a firm assurance that he would be called upon to distribute gas in the town.

A month after the Commission's December order, the town of Poseyville held a popular election and voted overwhelmingly, that is 231 to 16, to establish its own gas distribution system, under a plan to pay for it by the issue of revenue bonds. The question voted upon by the townspeople gives no hint, one way or the other, as to whether the plan includes the necessary four-mile lateral line out to the Texas Eastern main line or whether it is the plan to buy at wholesale from Mr. Chapman's new line expected to be built to the town border. But it is quite possible that a particular voter who inquired into the program in great detail could discern that the expected financing included $46,200 (one-fifth of the total) for four miles of three-inch lateral line to reach out to Texas Eastern's line.

Thereafter Community Natural (Mr. Chapman's new company) filed for intervention in Poseyville's petition before FPC, averring that service to Poseyville's residents under the municipal program will be 27 to 32 percent more expensive to them than the cost of such service if rendered by Mr. Chapman's company.

However, when the matter came on for hearing, Mr. Chapman and the Community Natural withdrew any and all expression of opposition to the municipal project, announcing on the record that Community Natural specifically takes no position either way on the town's application and does not purpose actively to participate in the proceeding. Also, it was said that if an order should now issue to Poseyville as requested, then Community Natural will not extend its line toward Poseyville; from this it is concluded that no problem of duplication of facilities now remains. There remains an obvious question whether there will be an unused portion of the allocation made last year to Mr. Chapman, now

Community Natural, but it was agreed at the hearing that the present proceeding, being limited to Poseyville's independent application, is not and cannot be the vehicle for a revision of the Texas Eastern allotment to Community Natural, or an abandonment of a portion of it, which will require a separate treatment at the initiative of Texas Eastern, Community Natural, or the Staff. Thus there does remain this *possibly* excess allocation, but this is not regarded as a bar to present consideration of Poseyville's own application on its own merits, since the condition upon which the former allocation was made is now seen to fail of consummation, that is, either Mr. Chapman's enfranchisement for service in Poseyville or an arrangement for sale at wholesale to Poseyville. Instead, the town now wants to install its own distribution system and buy direct from Texas Eastern. While, for this reason, there has not been conducted a comparative hearing on the merits of the two projects and there is no finding here, nor even the slightest implication, as to which program is more in the public interest, it is significant that the lateral line to be built in either case is of about the same length, four to four and a half miles.

IV—TEXAS EASTERN RESPONSE

Under FPC's new regulation, Section 156.2(d), the Texas Eastern Transmission Company "is a party respondent to the proceeding." Their answer filed to the town's application reads as follows:

> The volume of gas required by Applicant for the third year of service in the amount of 485 MCF (at 15.025 psia; 495 MCF at 14.73 psia) per day represents approximately 0.019% of Texas Eastern's presently authorized long term firm service. In view of this small volume, Texas Eastern is obviously able to make it available to Applicant without impairing Texas Eastern's ability to render adequate service to its customers. It is Texas Eastern's position that the sale and delivery of this small volume of gas by Texas Eastern is not economically feasible. However, Texas Eastern will abide by whatever decision the Commission may make on the merits of the Application.

At the hearing, Texas Eastern's counsel explained this to mean, not that the project is regarded as infeasible so far as the town is concerned, but that the service by Texas Eastern is regarded as not economically feasible to it. Though twice requested so to do, the counsel declined to furnish any evidence, explanation, figures or detail to suggest why or how much infeasibility might result. At page 19 of the Transcript, the Presiding Examiner advised the attorney for Texas Eastern that the statement referred to could not be accepted unless backed up or explained by something in the way of evidence or analysis; that unless so supported, their statement could not be accepted as one of objection to the grant of the application. This reaction appears to be appropriate in any event, under the circumstances, but also is required as a result of the regulation, Section 156.7, which reads:

> If the natural gas company objects to the grant of the relief sought by the application, it shall fully state the grounds and reasons for its objections.

The only response from Texas Eastern is this statement appearing in the transcript: "We will leave it that way." All this becomes important because the governing statute specifies that the order upon a pipeline may issue "if the Commission finds that no undue burden will be placed upon such natural-gas company thereby." Here, upon the record made, it is evident that the requested order will result in a revenue sale by the pipeline somewhat in excess of $2,000 per month; there is no acceptable evidence that such a sale would be a burden upon the pipeline, undue or otherwise, and it is the conclusion that

the cryptic, unsupported, unexplained statement that this sale "is not economically feasible" furnishes no basis to counteract the otherwise sufficient evidence that this sale will not place an "undue burden" on Texas Eastern. Especially so when the sale is under Texas Eastern's own filed tariff rate, a change in which it is free to file at any time.

V—ECONOMIC FEASIBILITY

Under the statutory requirement of a finding that the proposed order on the pipeline is "necessary or desirable in the public interest", in this, as in other cases, the real question calling for the Commission's examination and determination—whether raised by any intervener or not—is the economic feasibility of the project itself.[1] Among other tests, the most significant one applied to municipal projects is the bond coverage, that is, whether the net earnings (or surplus of revenue over expenses without a deduction for depreciation) is amply budgeted to provide in each year at least 1.5 times the amount required for debt service on the bonds to be sold to build the project. 15 FPC 1421, 16 FPC 897, 17 FPC 118; *Virginia Petroleum Jobbers Association* v. *F.P.C.* (CADC, 1961) 293 F. 2d 527.

To establish the feasibility of its project, Poseyville presented an exhibit detailing the capital and operating costs, the number of customers and amount of sales and revenues expected, and the result of all of those figures on the coverage ratio referred to. If 30-year bonds are sold, the coverage ratio averages 2.1 and in no year falls below 1.7, while if 20-year bonds are sold the average is 1.7 and the minimum 1.5, all of which are within the standards set by the Commission in the cases referred to. It is true the figures depend for their significance upon the validity of the engineering exhibit from which they are derived. No particular industrial market is relied upon, and it is obvious the net revenues and the quantities sold depend upon the number of customers which may be expected to develop, especially for domestic heating, since the plans show that sales to residences to be heated by gas are relied upon for 70 percent of the town's market; without this market there would be a serious question of feasibility. The bases for reliance upon the study submitted as to customer acceptance, and the various figures derived from it, are three:

(a) The engineering firm which prepared it has acquired a considerable experience in this field, has installed a number of similar projects in quite similar towns in this very area, and their estimates and predictions have proved to be of considerable reliability.

(b) While in some other cases there have been reported detailed house-to-house surveys, questionnaires or "straw votes" upon which the sales predictions were made (17 FPC 118, 120), it is becoming evident that a more reliable index of the activity to be expected is the realized experience of similar towns in the area. For this purpose it is noteworthy how very closely the project of Poseyville compares to one approved by the Commission in 1960 for Stonington, Illinois, which appears to be 100 or 200 miles from Poseyville. In that decision, 24 FPC 482, the question of economic feasibility was very directly raised, and the project was examined at considerable length and finally approved. Note these correlations:

(1) Stonington's population is about 10 percent over Poseyville's.

---

[1] See 28 FPC 1035, 1038, Opinion No. 372, Texas Eastern Transmission Co., CP60-122, Dec. 17, 1962. This is because, it being a municipal project, there is no state commission certificate to rely upon for the determination of feasibility (27 FPC 967, 975, 980).

(2) Both towns are four miles from their supply line and must build the lateral. Stonington's was to cost $47,630, Poseyville's is supposed to cost $46,200.

(3) The local vote was roughly the same, over 10 to 1 in favor of municipal operation, in both cases.

(4) The total investment is about the same, $240,000 for Stonington and $230,000 for Poseyville.

(5) The peak day gas requirement also is slightly larger for Stonington, 572 compared to 495.

(6) The number of customers is about the same: 336 Stonington residents had "signed up"; 334 Poseyville customers are predicted.

(7) Stonington has the advantage of service from a pipeline whose rate is about one-fourth below Texas Eastern's and also has a subsidiary sale to a municipal light plant. On the other hand, Poseyville's bonds are expected to be sold for a considerably lower rate of interest than was predicted in the other case.

(c) Estimates as to peak day needs, total customers predicted, heating saturation hoped for, and the like, are significant and helpful only after their correlation with numerous similar projects, which requires some restating of the data in terms of a common denominator. For that purpose, and following the procedure approved in 28 FPC 41, 42, 49, there follows, a summary table comparing the data predicted for Poseyville with like figures for thirteen comparable projects which were approved in 1962 (27 FPC 967) nearly all of which are in the same territory.

COMPARATIVE TABLE—*New project for Poseyville compared with 13 other local midwestern projects*

Poseyville, Indiana, project		Comparative range (13 other projects)		
		High	Median	Low
Population	1,009	1,687	750	230
Miles to the pipeline	4.0	17.4	1.8	0.25
Number of customers (3d yr.):				
Residential:				
Non-heating	54	119	12	18
Heating	233	279	215	56
Commercial and industrial:				
Non-heating	24	31	8	2
Heating	23	20	30	5
Total customers	334	449	265	81
Gas requirements:				
Peak day—Mcf	495	680	496	102
Annual—MMcf	54.3	65.2	51.2	10.7
Capital investment:				
Total as proposed	$230,000			
Per customer	690	$728	$577	$412
Operating revenue:				
Income	66,976			
Expense	35,915			
Net operating revenue	31,061	35,440	8,110	2,358
Percent of investment [2]	13.5	14.2	5.78	2.49
Comparative data:				
Heating saturation (percent)	81	100	75	64
Home heating use (cu. ft./DDD)	29	28.2	25.6	21
Peak day Mcf per population unit	0.463	1.18	.483	.286
Residential peak day use per population unit	.333	1.07	.316	.22
Peak day Mcf per customer	1.48	2.62	1.57	1.26
Population units per residential customer	3.72	6.83	3.95	1.39

[2] This of course does not allow for depreciation.

The close correlation with the median figures for other localities corroborates the conclusions here relied upon. Upon all of these facts the critical bond service coverage ratio seems supported by the evidence and the economic feasibility seems adequately established.

VI—STATUTORY REQUIREMENTS

The specific findings or requisites set out in Section 7(a) of the Natural Gas Act, to sanction an order for pipeline service to a local distributor, are here listed and their coverage recited, as follows:

1. FPC's action is "necessary or desirable in the public interest." The basic question on this score is economic feasibility, as covered above, which is regarded as comprehending also whether the project can be financed, as here testified. In addition, some previous cases have examined, for this finding of public interest, the question whether there is a "public need" for the service and "public benefit" from it (15 FPC 1421, 1425), and there is evidence on it here. However, by this time, after the issuance of evidently hundreds of these orders wherever there is a gas supply available and the project appears feasible, it should be taken and concluded that any town without natural gas service has a public need for it and will benefit from it. Until, at least, some party disproves it, any discussion, evidence, or finding of public need and public benefit would seem to be pure supererogation; it should be taken for granted.

2. The sale is to a municipality "legally authorized to engage in the local distribution of natural gas to the public." In the initial decision of January 22, 1963 in G–2306 *et al.*, *infra* at page 750, it was the holding that this means *prima facie* authority, which is satisfied by noting that (a) there is a state law permitting towns of this class upon popular vote to go into the gas business, (b) the vote has been had, and (c) its outcome is favorable. The statute to that effect here is found in Burns Indiana Statutes, Sections 54–602 to –612. The vote has been had, and it was favorable, 231 to 16.

3. ". . . that no undue burden will be placed upon such natural gas company" (meaning Texas Eastern). That question is covered in Part IV above.

4. ". . . no authority to compel . . . such natural-gas company to establish physical connection or sell natural gas when to do so would impair its ability to render adequate service to its customers." Texas Eastern's answer, as quoted above, gives satisfactory assurance on this score.

VII—FINDINGS AND ORDER

In conclusion, it is found:

(1) Texas Eastern is subject to the Natural Gas Act (Opinion No. 372, December 17, 1962).

(2) It is necessary and desirable in the public interest to direct Texas Eastern to render gas service for distribution by the Town of Poseyville, Indiana, which is a municipality authorized to engage in such distribution.

(3) This action will place no undue burden on Texas Eastern, nor impair its ability to render adequate service to its customers.

Accordingly, *it is ordered*, Subject to review by the Commission, that Texas Eastern Transmission Corporation establish a physical connection of its transportation facilities with the facilities to be installed by the Town of Poseyville, Indiana, and sell natural gas to the Town up to the amount of 495 Mcf per day, subject to the condition (which is hereby found to be required by the public convenience and necessity) that the Towns facilities to receive,

transport and distribute the gas are installed and ready for operation by December 31, 1964.

WILLIAM L. ELLIS,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. G–2280

ORDER TERMINATING PROCEEDING

(Issued September 6, 1963)

On October 16, 1953, in the above-designated proceeding, the Commission ordered Tennessee Gas Transmission (TGT) to show cause why it should not be required to make certain adjustments in its surplus and plant accounts to make them conform to the requirements of the Uniform System of Accounts prescribed for natural gas companies.[1] As stated therein, the entries questioned stem from two incidents of profit on pipe exchanges with other pipe-line companies, and from the capitalization of interest during construction.

One of the aforementioned pipe exchange incidents took place in 1949, and involved the entry of $1,764,821.50 to the gas plant in-service account. This matter has previously been satisfactorily adjusted by proper journal entries made by the company. The two matters remaining to be adjusted under the aforementioned order have been the subject of further staff study and conferences between the company and staff. As a result thereof, agreement was reached on May 7, 1963, (1) that interest during construction was properly capitalized at 6% per annum; and (2) that for recording the adjustments on a 1950 pipe exchange transaction, the following journal entries should be made:

FPC account	Particulars	Amount
435	Miscellaneous debits to surplus	$473,862
101	Gas plant in-service	(473,862)
	To record reduction of plant in-service account.	
108	Accumulated provision for depreciation gas plant in-service	177,419
434	Miscellaneous credits to surplus	(177,419)
	To adjust depreciation for period July, 1950 through December, 1962.	
108	Accumulated provision for depreciation of gas plant in-service	4,928
403	Depreciation expense	(4,928)
	To adjust depreciation for period January through April, 1963. (Depreciation calculated at 3% per annum through Sept. 30, 1962; and at 3.12% per annum from and after Oct. 1, 1962.)	

The Commission finds:

The calculation of depreciation and the accounting adjustments hereinbefore stated appear to be appropriate and are hereinafter accepted as being in compliance with the requirements of the Uniform System of Accounts.

The Commission orders:

(A) The journal entries herein noted are hereby accepted as being in compliance with the aforementioned order issued herein and the Uniform System of Accounts.

(B) Within 30 days of the date of issuance of this order, TGT shall file certified statements that the aforementioned accounting adjustments have been recorded on its books and records.

---

[1] 12 FPC 1300.

(C) Acceptance of the journal entries herein noted is limited to the issues and amounts expressly set forth in the Commission's order of October 16, 1953.

(D) Subject to TGT's filing of the statements required by Paragraph (B) of this order, the above entitled proceeding, Docket No. G–2280, is terminated.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

FOSTER PETROLEUM CORPORATION, DOCKET NOS. RI64–17 AND RI64–24

ORDER DENYING MOTION FOR RECONSIDERATION

(Issued September 9, 1963)

On August 12, 1963, Foster Petroleum Corporation (Foster) filed motions for reconsideration [1] of the Commission's suspension orders issued July 12, 1963, in Docket Nos. RI64–17 and RI64–24, requesting that the Commission vacate its suspension orders.

The suspension order issued in Docket No. RI64–17 involves proposed increases in rates from 7.2 to 11.0 cents per Mcf for sales of sour gas by Foster to Phillips Petroleum Company (Phillips) from Panhandle Field, Moore County, Texas (Railroad District No. 10). The proposed increased rates [2] were suspended until December 15, 1963, and thereafter until such further time as they are made effective in the manner prescribed in the Natural Gas Act.

The suspension order in Docket No. RI64–24 involves proposed increases in rates from 7.2 cents per Mcf to 10.5 cents per Mcf for sales of sour gas by Foster to Phillips from Panhandle Field, Moore County, Texas (Railroad District No. 10). The proposed increased rates [3] were suspended until July 16, 1963, and thereafter until such further time as they are made effective in the manner prescribed in the Natural Gas Act.

In support of its motions, Foster states that (1) the subject increased rates are just and reasonable in and of themselves, and (2) the Commission has accepted without suspension rates identical to Foster's proposed rates for sales of gas by producers not only from the Panhandle Field in Moore County, but also from the same wells as Foster.[4]

The area price levels set forth in the Statement of General Policy No. 61–1, as amended (18 CFR, Chapter I, Part 2, Section 2.56), are applicable to pipeline quality gas as that term is generally understood in each area. In the instant case, Phillips gathers the subject gas, among others, into its Panhandle gather-

---

[1] Foster termed the motions as applications for rehearing and reconsideration. Applications for rehearing of interlocutory orders such as here involved may not properly be filed. [Section 1.30(e) of the Rules of Practice and Procedure (18 CFR 1.30(e))]. The instant tenders have been considered as motions for reconsideration pursuant to Section 1.12 of the Commission's Rules of Practice and Procedure.

[2] The increased rate filings were designated as Supplement Nos. 1 to Foster's FPC Gas Rate Schedule Nos. 1, 5, 6, 8, 9, 10 and 12.

[3] The proposed increased rates were designated as Supplement Nos. 1 to Foster's FPC Gas Rate Schedule Nos. 14 and 15.

[4] In its motions, Foster suggests, as an alternative plea, that if the Commission will not permit Foster to charge and collect the subject increased rates without suspension, Foster would be willing to file increased rates of 10.0 cents per Mcf for sour gas and 10.5 cents per Mcf for sweet gas, if such rates would be accepted without suspension. No action on such alternative plea has been taken.

ing system which connects its Dumas, Sanford and Sneed gasoline plants. After processing, the residue gas is then sold by Phillips to several interstate pipeline companies. We consider the area rate ceiling for pipeline quality gas to be applicable to the sales of residue gas by Phillips at the outlet of its plants. Although Foster's increased rates are not in excess of the 11.0 cents per Mcf increased rate ceiling for pipeline quality gas for Texas Railroad District No. 10, the cost per Mcf to Phillips for the gathering and processing of Foster's nonpipeline quality gas must be taken into consideration in determining the proper rate level for Foster's sales to Phillips. Since such costs are not known, the subject increased rates of 10.5 cents and 11.0 cents per Mcf were properly suspended.

The previous acceptance of certain increased rates similar to the rates of Foster involved in these proceedings does not preclude suspension of Foster's rates where there is the sound justification for doing so as indicated above. *Cf. F.C.C.* v. *Pottsville Broadcasting Company*, 309 U.S. 134, 145; *Panhandle Eastern Pipe Line Company* v. *F.P.C.*, 236 F. 2d 289.

The Commission finds:

The motions for reconsideration filed by Foster on August 12, 1963, in the above-designated proceedings, set forth no new facts or legal considerations which were not fully considered prior to the issuance of our orders of July 12, 1963, or which now having been considered, warrant the modification of said orders.

The Commission orders:

Foster Petroleum Corporation's August 12, 1963 motions for reconsideration of the Commission's orders issued July 12, 1963, in the proceedings in Docket Nos. RI64–17 and RI64–24 are hereby denied.

Commissioner Black *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. CP63–350

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 9, 1963)

On June 21, 1963, Texas Eastern Transmission Corporation (Applicant) filed in Docket No. CP63–350 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a new delivery point and the necessary metering and regulating facilities for the delivery of natural gas to the Dayton Power and Light Company (Dayton) for the account of The Ohio Fuel Gas Company (Ohio Fuel), an existing customer of Applicant's, all as more fully represented in the application in this proceeding.

Applicant as agent for Ohio Fuel, would construct the proposed facilities on its main transmission line in Clinton County, Ohio, at an estimated cost of approxmiately $27,400. Excluding the cost of main line taps and tap valves estimated at $2,235, the cost of the metering and regulating station will be paid for by Ohio Fuel. This additional point of delivery is to be established for the

purpose of delivering natural gas to Dayton for resale in Bowersville and Port Williams, Ohio, and surrounding area. Dayton is an existing wholesale customer of Ohio Fuel, which has received "budget" authorization in Docket No. CP63-185 to establish additional delivery points to existing wholesale customers for resale in new communities.

No additional mainline facilities will be required by Applicant and gas delivered at this new point will be part of Applicant's presently authorized volumes to Ohio Fuel. Applicant plans to finance its portion of the proposed construction from funds on hand.

Pursuant to due notice, a public hearing was held in Washington, D.C., on August 29, 1963, respecting the matters invloved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Texas Eastern Transmission Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof as well as sale and delivery of natural gas by Applicant, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the related sale of natural gas are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Texas Eastern Transmission Corporation, to construct and operate certain natural gas facilities, and to sell and deliver natural gas for resale, as hereinbefore described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the

general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the sale of natural gas shall commence as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within six months from the date on which this order issues.

Commissioner Black *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNION CARBIDE CORPORATION, PROJECT NO. 1856

FINDING THAT OFFER OF SETTLEMENT IS UNACCEPTABLE

(Issued September 9, 1963)

The Union Carbide Corporation (Carbide) on July 29, 1963, filed an offer of settlement concerning the issue of this Commission's jurisdiction under Part I of the Federal Power Act over Hawks Nest and Glen Ferris hydroelectric plants on the New-Kanawha River in West Virginia. This issue has been set for hearing on September 23, 1963. The offer of settlement proposes that Carbide will acknowledge the licensing authority of the Commission over the aforementioned projects if (1) the term of any license issued shall extend to 1993 and (2) the following method of calculating "gross earnings" for application to the provisions of Section 10(d) of the Federal Power Act is incorporated in the license:

> gross earnings * * * shall be assumed and calculated to be the actual cost of generating electric energy in the Hawks Nest Plant and the Glen Ferris Plant, from time to time, plus a specified reasonable return upon the net investment of Carbide in the Hawks Nest Plant and the Glen Ferris Plant * * *.

Carbide is an industrial corporation which utilizes all of the energy from its Hawks Nest and Glen Ferris projects in arc furnaces at a metallurgical plant. It does not sell any of such energy.

The problems involved in applying to industrials the provisions of Section 10(d) concerning an amortization reserve, of Section 10(e) concerning expropriation of excess profits and of Section 3(13) concerning the determination of "earnings in excess of a fair return on such [legitimate original cost] investment" have never been definitively settled by the Commission for the practical reason that it has never had to determine the net investment of an industrial concern in a hydroelectric project for the purposes of Section 14 of the Act. It has addressed itself merely to the first step, the establishment of an amortization reserve pursuant to Section 10(d) to provide a fund in the event that it is later determined that a licensee has received earnings in excess of a fair return which should be used to reduce its net investment in the project under Section 3(13). By Order No. 252, issued August 7, 1962 (28 FPC 298), and the amortization reserve schedule prescribed thereunder, an industrial licensee is required to report, pursuant to Section 10(d), the basis it employs in valuing project power output which it uses.

The fair import of the reporting requirement of Order No. 252 is that if the basis employed by the industrial concern is reasonable, it may be used by them

in establishing amortization reserves pursuant to the Section 10(d) license conditions (17 FPC 388, Article 14). The method suggested by Carbide in its offer of settlement, however, by its terms would automatically exclude the possibility of an amortization reserve and would therefore negate Section 10(d). For this reason we are unwilling to incorporate such a method in a license.

For the foregoing reasons we find Carbide's offer of settlement is unacceptable.

Commissioner Black *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

CITIES SERVICE GAS COMPANY, DOCKET NO. G–18799

ORDER ON REHEARING

(Issued September 10, 1963)

On August 14, 1963, Cities Service Gas Company (Gas Company) and Cities Service Company jointly filed an application for rehearing of Opinion No. 396 and accompanying order issued July 15, 1963.

The arguments advanced by Cities Service on rehearing are essentially a repetition of their previous contentions in this case which were adequately disposed of in Opinion No. 396. We shall, therefore, discuss only the relatively few considerations which warrant further consideration.

Cities Service declares that our decision constitutes an improper departure from the past "uniform practice" of routinely allowing a tax allowance on Gas Company's cost of service at the 52% rate. This contention overlooks a previous case involving Cities Service in which the Commission adopted the consolidation effective tax rate recommended by Staff herein.[1] The effective consolidated tax rate was also utilized in a number of subsequent decisions by this Commission.[2] Thus, Cities Service should not be surprised by a tax allowance of less than 52% of Gas Company's income. But even if this were a departure from past practice, we would be unwilling to permit Cities Service to collect excessive rates herein simply because it had been successful in collecting such rates in the past.

Cities Service contends that the Commission erred in holding that Gas Company's rates should be made subject to further reduction in light of the Commission's decision in *Alabama-Tennessee Natural Gas Co.*, Docket No. G–5471, *et al.*, regarding the treatment of deferred income taxes. This contention is correct. As Cities Service points out, we have provided that whatever decision is rendered in that case will be applied only prospectively. Since this proceeding relates to a past locked-in period we shall rescind this provision from our order.

We have reviewed the remaining arguments presented by Cities Service and find them to be adequately reviewed in our original Opinion herein.

---

[1] *Penn-York Natural Gas Corporation*, 5 FPC 33, 38–39.

[2] *Hope Natural Gas Company*, 10 FPC 583, 612 (order adopting Examiner's decision as modified, 10 FPC 625); *Atlantic Seaboard Corporation*, 11 FPC 486, 514–515 (order adopting Examiner's decision as modified, 11 FPC 43); *United Fuel Gas Company*, 12 FPC 251, 264–265; *Hope Natural Gas Company*, 12 FPC 342, 347; *Michigan Wisconsin Pipe Line Company*, 13 FPC 326, 358–359, 373; and *United Fuel Gas Company*, 23 FPC 127, 134, fn. 15.

The Commission orders:

(A) Ordering paragraph (H) of the Commission's order issued July 15, 1963 is hereby rescinded.

(B) The application for rehearing filed herein on August 14, 1963, by Cities Service Gas Company and Cities Service Company is hereby denied in all other respects.

Commissioner O'Connor *dissenting* for the reasons set forth in Commissioner Woodward's dissenting statement accompanying Opinion No. 396, 30 FPC 158, 171.

Commissioner Black *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

MONTANA-DAKOTA UTILITIES CO., DOCKET NOS. CP61-234, CP61-297; AMERADA PETROLEUM CORPORATION, DOCKET NO. CI61-1133; SIGNAL OIL & GAS COMPANY, DOCKET NO. CI61-1271; LYDA HUNT-HERBERT TRUSTS, ET AL., DOCKET NO. CI61-1621; TEXACO INC., DOCKET NO. CI61-1687; CONTINENTAL OIL COMPANY, OPERATOR, ET AL., DOCKET NO. G-14440.

ORDER DENYING APPLICATION FOR REHEARING

(Issued September 10, 1963)

On July 15, 1963, the Commission issued its Opinion No. 395, 30 FPC 200, together with accompanying order, determining jurisdiction in these proceedings over certain sales of natural gas by Amerada Petroleum Corporation (Amerada) and Signal Oil and Gas Company (Signal) to Montana-Dakota Utilities Company at Signal's processing plant near Tioga, North Dakota. On August 13, 1963, Amerada and Signal filed an application for rehearing of the Commission's opinion and order. In support of their application, Amerada and Signal urge the Commission to reconsider the points raised in their briefs to the examiner and their exceptions to the examiner's decision, and they attach as an appendix to their application the exceptions and supporting reasons for exceptions heretofore filed. No new legal or factual considerations are presented.

The Commission finds:

The assignments of error and grounds for rehearing set forth in the application for rehearing filed by Amerada and Signal present no new facts or principles of law which were not fully considered by the Commission when it adopted its Opinion No. 395 and accompanying order issued July 15, 1963, or which having now been considered warrant any change or modification in said opinion and order.

The Commission orders:

The application for rehearing filed herein on August 13, 1963, by Amerada Petroleum Corporation and Signal Oil and Gas Company is hereby denied.

Commissioner O'Connor *dissenting* for the reasons set forth in Commissioner Woodward's dissenting opinion accompanying Opinion No. 395 and order issued July 15, 1963, 30 FPC at 207.

Commissioner Black *not participating.*

737-370—66——46

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

OAKDALE IRRIGATION DISTRICT AND SOUTH SAN JOAQUIN IRRIGATION DISTRICT, PROJECT NO. 2005

ORDER APPROVING REVISED PROJECT EXHIBITS AND ADJUSTING ANNUAL CHARGES

(Issued September 10, 1963)

On May 11, 1959, as supplemented on April 8, 1963, Oakdale Irrigation District and South San Joaquin Irrigation District, joint licensees for Project No. 2005, filed for Commission approval revised Exhibit K maps showing the present project area and boundary of the project and revised Exhibit L drawings showing the "as-built" plans of the project.

The project is located on Middle Fork of Stanislaus River and affects lands of the United States within the Stanislaus National Forest.

The effects of approval of the revised exhibits would be to show a reduction of the area of National Forest lands occupied by the project from 2,945.23 acres to 1,356.29 acres, and a resultant reduction in the annual charges for such occupancy from $5,890.46 to $2,712.58.

The substantial reduction in project area is due to the fact that the license initially described the project boundary by subdivisions of the public land survey, Revised Exhibit K fixes the boundary at an elevation five feet above full pool and includes only the areas in the vicinity of the powerhouses and spillways necessary for project operations.

The joint licensees have cooperated with the Forest Service in determining the new project boundary. By letter dated June 7, 1963, the Service has advised us that the new boundary would best serve the purpose of the Stanislaus National Forest, and has recommended Commission approval of the revised Exhibit K maps.

The Commission finds:

(1) Revised Exhibit K (FPC Nos. 2005–42 through-46) and revised Exhibit L (FPC Nos. 2005–47 through–65) conform to the Commission's rules and regulations and should be approved as part of the license for the project.

(2) Exhibit K (FPC Nos. 2005–16, –17, –26, –40) and Exhibit L (FPC Nos. 2005–28 through–39), now part of the license and which have been superseded, should be eliminated from the license.

(3) The decreased amount of annual charges for recompensing the United States for the occupancy of its lands by the project are reasonable as hereinafter fixed and specified.

The Commission orders:

(A) The revised exhibits described in finding (1) above are hereby approved as part of the license for Project No. 2005.

(B) The superseded exhibits described in finding (2) above are hereby eliminated from the license for Project No. 2005.

(C) Article 2 of the license for Project No. 2005 is hereby modified, effective as of August 1, 1963, to read as follows:

Article 2. The project covered by and subject to this license is located on the Middle Fork of the Stanislaus River in Tuolumne County, California, and consists of:

A. All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands

necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the Licensees or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for license, and the application for amendment, and which are designated and described as follows:

EXHIBIT J

(FPC No. 2005–1) General Location Map;
(FPC No. 2005–15) Donnells Project—General Location Map.

PROJECT No. 2005–OAKDALE

EXHIBIT K

(FPC No. 2005–4) Beardsley Project—Map of Reservoir Area;
(FPC No. 2005–5) Beardsley Project—Map of Reservoir Area;
(FPC No. 2005–27) Beardsley Project—Map of Reservoir Area;
(FPC No. 2005–41) Beardsley Afterbay Dam—Map of Reservoir Area;
(FPC No. 2005–42) Beardsley Project—Map of Project Boundary;
(FPC No. 2005–45) Beardsley Afterbay Dam—Map of Project Boundary;
(FPC No. 2005–46) Beardsley Project—Access Road Location;
(FPC No. 2005–18) Donnells Project—Topography of Reservoir Area;
(FPC No. 2005–19) Donnells Project—Topography of Reservoir Area;
(FPC No. 2005–43) Donnells Project—General Layout—Tunnel and Powerhouse; and
(FPC No. 2005–44) Donnells Project—Map of Reservoir Project Boundary.

B. All project works consisting of:

Beardsley Development

An earth and rock-fill dam with a maximum height of 275 feet and a crest length of 1,100 feet including the spillway which is controlled by four radial gates, each 30 x 40 feet; intake works; a reservoir with gross capacity of 97,500 acre-feet at elevation 3397 feet; a tunnel and steel penstock; a powerhouse immediately below the dam with an installed capacity of 14,000 horsepower in a single unit; and appurtenant facilities;

Donnells Development

A concrete arch dam about 450 feet high above the lowest foundation; a spillway, located in a saddle in the left abutment, controlled by five radial gates, each 35 x 19 feet; intake works; outlet works; a tunnel about 38,750 feet long; a steel penstock; a reservoir with gross capacity of 64,500 acre-feet at elevation 4916 feet; a powerhouse, located downstream from Hells Half Acre bridge, with installed capacity of 74,500 horsepower in a single unit; and appurtenant facilities;

Beardsley Afterbay Development

A rock-filled timber crib dam with overflow crest at elevation 3135 feet, located about 4,700 feet downstream from the Beardsley powerhouse; a reservoir with a capacity of 272 acre-feet; outlet works consisting of a steel conduit through the dam controlled by a sluice gate; and appurtenant facilities;

the location, nature and character of which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also formed part of the application for license or for amendments thereof and which are designated and described as follows:

EXHIBIT L

(FPC No. 2005–47) Beardsley Project—General Layout;
(FPC No. 2005–48) Beardsley Tunnel and Penstock Structures—General Section;
(FPC No. 2005–49) Beardsley Powerhouse—General Layout;
(FPC No. 2005–50) Beardsley Switchyard—General Layout;
(FPC No. 2005–52) Donnells Dam—Plan;
(FPC No. 2005–53) Donnells Dam—Plan of Spillway;
(FPC No. 2005–54) Donnells Dam—Foundation. Contraction Joint, Arch Support, and Miscellaneous Details;
(FPC No. 2005–55) Donnells Dam—Spillway Sections, Bridge and Details;
(FPC No. 2005–56) Donnells Dam—Valve House, General House, and Bridge Details;
(FPC No. 2005–57) Donnells Dam—Spillway Gates and Trashrack;
(FPC No. 2005–58) Donnells Dam—Taintor Gate Hoist;
(FPC No. 2005–59) Donnells Dam—Wiring Diagram and Miscellaneous Details;
(FPC No. 2005–60) Donnells Power Tunnel—General Layout;
(FPC No. 2005–61) Donnells Power Tunnel Structures—General Sections;
(FPC No. 2005–62) Donnells Penstock—General Layout;
(FPC No. 2005–63) Donnells Powerhouse—General Layout;
(FPC No. 2005–64) Donnells Switchyard—General Layout;
(FPC No. 2005–65) Tri-Dam Project—Basic Single Line Diagrams;
(FPC No. 2005–51) Beardsley Afterbay Dam—General Plan, Elevation and Sections; and

EXHIBIT M

Three typewritten sheets, except for the design head of the Donnells Development filed in the Commission February 10, 1953.

C. All other structures, fixtures, equipment, or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used and useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as a part of the project is approved or acquiesced in by the Commission, also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance and operation of the project.

D. The horsepower capacity herein authorized to be installed is 88,500 horsepower.

(E) Article 29 of the license is hereby modified, effective as of August 1, 1963, to read as follows:

Article 29. Licensees shall pay to the United States the following annual charges:

A. For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge in accordance with

the provisions of Part 11 of the Commission's regulations. The authorized installed capacity is 88,500 horsepower.

B. For the purpose of recompensing the United States for the use, occupancy and enjoyment of its lands, exclusive of those used for transmission line right-of-way, $2,712.58, effective July 1, 1963.

(F) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgment of the acceptance of this order, it shall be signed for the licensees and returned to the Commission within 60 days from the date of issuance of this order.

Commissioner Black *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

AMERADA PETROLEUM CORPORATION, ET AL., DOCKET NO. CI62-1544, ET AL.

ORDER DENYING MOTION OF EASTERN SEABOARD INTERVENERS TO VACATE SECRETARY'S NOTICE OF EXTENSION OF TIME AND TO EXPEDITE PROCEEDINGS

(Issued September 11, 1963)

On August 14, 1963, The Eastern Seaboard Interveners[1] filed a motion requesting that the Commission either vacate the Secretary's notice of August 7, 1963 granting The Sun Oil Company's (Sun's) *ex parte* "request" for a thirty-day extension of time within which to file exceptions to the examiner's decision or take such other and further action as may be necessary to expedite ultimate decision in these proceedings.

The Eastern Seaboard Interveners strongly urge that because of the failure of Sun to serve its telegraphic request for an extension of time to file exceptions to The Initial Decision of the Presiding Examiner upon them that they were deprived of the opportunity to answer or object to Sun's motion as specifically envisaged by Section 1.12(e) of the Commission's Rules. We agree that the request for extension of time to file exceptions (which by the terms of Section 1.13(f) must be by written motion) should have been served on the other parties and that in the absence thereof[2] the Secretary should not have granted the

---

[1] The Brooklyn Union Gas Company, Long Island Lighting Company, Philadelphia Electric Company, and the United Gas Improvement Company, hereinafter referred to as The Eastern Seaboard Interveners.

[2] We recognize that there will be circumstances in which a request for extension of time will have to be filed within a period too short to allow responses within the 10-day period generally prescribed by Section 1.12(c) of our rules for answering or objecting to motions. In such cases we would normally expect the moving party to certify that the other parties have been contacted and have no objection to the grant of the motion, or, failing this, to ask that the time for responses be cut down after advising the Secretary that it made an effort to secure consent and as to which parties are unwilling to agree to the underlying request. The Secretary would have discretion to pass upon such a request to cut down the time for response pursuant to Section 3.5(10), and in appropriate circumstances could fix a shorter period providing such period gives non-consenting parties a reasonable opportunity to make their responses.

extension. But since he did grant the extension, we do not believe that it would be fair to rescind this action now.

Sun has undoubtedly placed reliance upon the extension issued to it by the Secretary's notice of August 7, 1963, and to require it to prepare its exceptions within the time normally contemplated by our Rules would, in effect, make it impossible for Sun to put its case before the Commission.

The Commission orders:

The motion of the Eastern Seaboard Interveners to vacate the Secretary's Notice of Extension of Time be and hereby is denied.

Commissioner Black *not participating*.

OPINION NO. 398-A

PLACID OIL COMPANY, DOCKET NO. G-13183; PLACID OIL COMPANY, DOCKET NO. G-13184; J. R. FRANKEL, ET AL., G-13197; HASSIE HUNT TRUST, G-14109; THE SUPERIOR OIL COMPANY, G-16380; THE SUPERIOR OIL COMPANY, G-16388; J. RAY MCDERMOTT AND COMPANY, INC., G-17337; KILROY PROPERTIES, INC., ET AL., G-17338; CALLERY PROPERTIES, INC., G-17340; CALLERY PROPERTIES, INC., G-17341; OCEAN DRILLING AND EXPLORATION CO., G-17342; OCEAN DRILLING AND EXPLORATION CO., OPERATOR, ET AL., G-17343; CAROLINE HUNT SANDS, ET AL., G-17398

MEMORANDUM OPINION AND ORDER CLARIFYING OPINION AND ORDER; DENYING APPLICATIONS FOR REHEARING AND MOTION TO REOPEN FOR ADDITIONAL EVIDENCE; AND GRANTING STAY

(Issued September 11, 1963)

Syllabus

1. Settlement is an accommodation of conflicting positions agreed to as reasonable basis for terminating a proceeding in a manner consistent with public interest—fact that in-line price here is lower than price at which settlements have been effected affords no basis for objection. P. 683.
2. Until requisite filings have been made and succession approved, original producer applicant remains accountable for all refunds required. P. 684.
3. Commission *affirms Skelly* conclusion that date of contract execution is significant act in price determination—*rejects* contention that consideration be given all contracts up to date deliveries commenced. P. 684.
4. Commission *holds* that gas paid for but not yet taken by pipeline is gas sold in interstate commerce for resale and regulation thereof is within jurisdiction of the Act. P. 684.
5. It would be inequitable to require refunds for sales under a temporary authorization where authorization contained no refund condition and thus failed to alert producer of such possibility. P. 685.
6. Public interest would not be served by allowing price increase above existing triggering rate pending conclusion of applicable area rate proceeding, even if such rate were indicated on basis of individual company cost of service concepts. P. 686.
7. Commission *clarifies* prior Opinion and order; *denies* applications for rehearings and motion to reopen; and *grants* stay. Pp. 686–687.

Commissioners O'Connor and Ross *dissenting in part*.

Before Commissioners: Joseph C. Swidler, Chairman, L. J. O'Connor, Jr., and Charles R. Ross.

Applications for rehearing have been filed to our Opinion and Order issued July 17, 1963, 30 FPC 283, in the above-entitled proceeding by various of the parties.[1] Motions for stay of the Order pending action on the applications and until the completion of judicial review also have been submitted. The application filed by Placid Oil Company, *et al.* in Docket Nos. G–13183, G–13184, G–14109, and G–17398 includes a motion to reopen the proceeding on the basis of facts which have become available since the initial decision. Transcontinental Gas Pipe Line Corporation has requested certain clarification of the decision as to its obligation to make refunds to its customers in respect to gas paid for but not yet taken into its system. Our examination of the rehearing applications indicates that a number of the issues argued therein are simply restatements, often in similar terms, of arguments previously advanced by the parties and adequately covered in the Opinion.

In particular these include the sales considered in fixing the price line, the kind of evidence to be used in determining whether the initial price is in the public convenience and necessity, the amount of tax reimbursement allowed, denial of the option to reject, the moratorium on the filing of price increases, and, in general, the matter of the refunds required of the producers. A rediscussion of these points would be largely repetitious and could serve no useful purpose. We direct our attention, therefore, to the remaining matters.

Several of the producers urge error in our failure to grant, as a bare minimum, the 20.625 cents per Mcf initial rate allowed in the orders approving settlements in other Southern Louisiana certificate proceedings. Without engaging in an extended discussion, we may note that a settlement, as its title connotes, is an accommodation of conflicting arguments and positions which is agreed to as a reasonable basis for terminating a proceeding in a manner consistent with the public interest. The settlement of the pending controversy with its elimination of further expense and delay, the savings attendant thereon, and the stability of prices which results, balanced against the possible allowance of a somewhat higher price to the producers or a waiver of a portion of the refunds which might otherwise be forthcoming are all elements which enter into consideration in the determination whether the offer accords with the public interest. In the instant dockets setlement could not be achieved and, as a consequence, it was necessary that an in-line price be determined for these sales. The fact that this price is lower than the price at which the settlements have been effected itself affords no basis for objection, nor does it support the assertions that our failure to fix a price equal to that allowed in the settlements is in any way capricious, arbitrary, unfairly discriminatory, violative of the Natural Gas Act, or constitutes an unconstitutional deprivation of property without due process of law.

The producers also argue that we erred in putting a condition in the certificates issued them to the effect that the take-or-pay requirement in each contract is subject to the provisions of our final order in the rule-making proceeding in Docket No. R–199, with the limitation that we would not require them to accept provisions for less than 80 percent of the annual contract quantities. The condition is identical with that provided in *Panhandle Eastern Pipe Line Company*,

---

[1] The Superior Oil Co., Ocean Drilling and Exploration Co., J. R. Frankel, Kilroy Properties, Inc., Placid Oil Co., Hassie Hunt Trust and Caroline Hunt Sands, J. Ray McDermott and Co., Inc., Callery Properties, Inc., New York Public Service Commission, Long Island Lighting Co. and The United Gas Improvement Co., and Transcontinental Gas Pipe Line Company.

et al., Opinion No. 350, and *Michigan Wisconsin Pipe Line Company, et al.*, Opinion No. 353, and in a number of other producer certificate proceedings. The charge of indefiniteness in the certificates occasioned by the condition is answered in our treatment of similar arguments in *Skelly Oil Company, et al.*, Opinion No. 362–A and *Texaco Seaboard, Inc., et al.*, Opinion No. 383, wherein the condition as initially imposed was modified to provide for a maximum reduction to 80 percent of the volumes provided in the contracts. As noted, this qualification is already provided in the condition applied in this proceeding. Moreover, applicants' uncertainty as to the terms under which they are required to sell their gas production is alleviated further by the proviso that any changes or modifications to be made as a result of the rule-making proceeding is to have only prospective application.

The application for rehearing filed by Kilroy Properties, Inc., *et al.*, states that Kilroy transferred substantially all of its interest in the properties involved in Docket No. G–17338 by an assignment dated September 1, 1962, the actual transfer to have been effective January 1, 1962. Notice of the assignment was not submitted to the Commission until July 29, 1963, a date subsequent to our Opinion in this proceeding. By letters dated August 20, 1963, addressed to the alleged assignee and attorney of record for Kilroy the Secretary of the Commission advised that, until the requisite filings have been made and the succession approved, Kilroy remains accountable for all refunds required by Opinion No. 398 in Docket No. G–17338. The import of those letters is hereby confirmed.

Kilroy also contends that in determining whether its proposed price was "in-line" we erred in not considering all contracts up to the date it commenced deliveries, rather than the date of its contract, "because until such deliveries commenced the gas had not been dedicated to the interstate market and the Commission did not have jurisdiction over Kilroy's sale to Hope." This contention is effectively answered in our order on the rehearing applications filed in *Skelly*, Opinion No. 362–A, wherein we stated that we used the date of the contract because we are of the opinion that the execution of the contract is the significant act on the part of buyer and seller in determining the price. Our conclusion is affirmed for the reasons expressed in that opinion and in the cases therein cited. We may note that our use of the date of execution of the contract to determine the "in-line" price was approved in *Atlantic Refining Co.* v. *F.P.C.*, 316 F. 2d 677 (CADC, March 21, 1963).

The Superior Oil Company asserts a rather novel contention in regard to our action in requiring refunds on the basis of gas paid for but not yet taken by its pipeline purchasers. Referring to the Act's limitation in Section 1(b) to the transportation of natural gas in interstate commerce and to the sale in interstate commerce of natural gas for resale, it avers that the gas there involved has been neither sold nor delivered, and that any provision for failure to take this gas for transportation or sale in interstate commerce is beyond our regulatory powers. We cannot agree with such a hypertechnical approach. Assuredly, the gas has been sold—it has been paid for by Transco and United. While, as observed in the Opinion, some possibility of forfeiture of the prepaid volumes continues to exist, the possible occurrence thereof cannot be made a controlling consideration. Otherwise our jurisdiction could easily be evaded by sales for future deliveries subject to remote conditions subsequent. In our opinion, the gas has been sold in interstate commerce for resale and our regulation thereof is within the jurisdiction of the Act.

However, a further problem remains with respect to the refund obligation on the prepaid gas, one which we believe requires rectification. We speak here of the requirement in the Opinion and Order for immediate flow-through of refunds

on the prepaid gas which may be taken in kind. As clarified by Transco in its application for rehearing, and confirmed on re-examination of the order issued February 2, 1962, approving settlement in Docket No. RP61–13, the settlement agreement (Article IV, as implemented by Article V(C)), includes adequate provisions for proper disposition of all contingent supplier refunds made to Transco, including payment of such refunds to its utility customers where warranted. A review of United's settlement agreement in Docket No. G–9547, *et al.*, approved by order issued March 12, 1962, likewise establishes that ample provision has been made (Article V, Appendix E) for flow-through of refunds resulting from the permanent certificate granted in Docket No. G–16388. Accordingly, we shall amend ordering paragraph (E) of the Order accompanying Opinion No. 398 to the extent of deleting the last sentence thereof.

The New York Public Service Commission objects to the lack of an interest charge on the computation of refunds to be made in kind for prepaid gas. In our opinion, the absence of an interest charge is offset by the almost complete preclusion of any possibility of forfeiture on the volumes of refund gas (the time limitation being the life of the contracts) and by the fact that the volume of such gas is to be calculated at the conditioned initial price, regardless of whatever future price escalations may occur. Thus, Transco and United are accorded an assured volume of gas which they may take at their option at a minimum price.

The New York Commission, together with Long Island Lighting Company and The United Gas Improvement Company, protest the failure to order refunds of excess charges on the gas sold by Superior from offshore Vermilion Block 76 field prior to the issuance of the August 10, 1959 certificate. Our refusal to order the refund was based upon the fact that the temporary authorization which had been granted Superior on October 22, 1958, did not contain a refund condition. Thus, although Superior was informed that once service was commenced under the temporary authorization it could not be discontinued without permission of the Commission, there was nothing to alert it to the possibility that a refund might be required thereunder. For this reason we believe it would be inequitable to now require Superior to make the refund. The clarification of our position expressed in the opinion on rehearing in *Skelly*, which follows, is directly in point and suffices for disposition of the present claims:

> A refund has been required when the permanently certificated rate is less than the temporary one, but in such a case specific language advising the parties of the risk they took if they accepted the temporary certificate has uniformly been used. Since in the present proceeding there is no such provision in the temporary certificates, to proceed now and order the producers to make refunds would not be equitable regardless of any ultimate right we may have to order such refunds.

Placid Oil Company, Hassie Hunt Trust and Caroline Hunt Sands jointly urge error in the temporary moratorium placed by us on the price escalations. Their application points out that the gas involved in some of their dockets has been the subject of a Section 4(e) rate proceeding to determine the justness and reasonableness of increases from the initial price of 23.55 cents per Mcf to 25.55 cents per Mcf. These increases were disallowed by us in Opinion No. 369[2] on the ground that the Hunt interests had failed to meet their burden of proof, specifically that the cost of service presentations were improper. Applicants

[2] *H. L. Hunt, et al.*, Docket No. RI62–467, *et al.*, issued November 30, 1962, 28 FPC 897, rehearing denied by order issued January 15, 1963, 29 FPC 84; petition for review filed, CA5, Nos. 20375 and 20386.

now contend that "The purport of the Commission's Opinion No. 369 was that if the so-called deficiencies had been corrected, Applicants' 25.55-cent price would have been 'just and reasonable' ". Assuming, without deciding, this to be true, it does not meet the problem here. For we have held, for reasons which we here reaffirm, that it would not serve the public convenience and necessity to allow a price increase above the existing triggering rate pending conclusion of the area rate proceeding in AR61–2, even if such rate were indicated on the basis of individual company cost of service concept. See *Superior Oil Co.* v. *F.P.C.*, 322 F. 2d 601, 617–618, CA9, No. 18252, decided August 26, 1963. Since the temporary certificates issued these petitioners contained no such condition and the permanent certificate applications were still in hearing, we were not in a position to so hold at the time of Opinion No. 369.

As previously noted, applicants have included a motion to reopen the proceeding for the introduction of new evidence. This evidence, as outlined in their application, involves the recent increases in production of gas from the South Louisiana area, the amount of such gas which has moved in interstate commerce, growth of the Louisiana intrastate market, depths of reservoirs in South Louisiana, both industry-wide and those respecting Placid's production in this proceeding, and changes in well drilling costs. The evidence also attempts to differentiate Placid's position from the general statistics relating to production in the South Louisiana area. Opinion No. 398 rejected consideration of this type of evidence as irrelevant to the determination of the initial price question in independent producer certificate cases. Moreover, a large part of the information sought to be introduced at this late date either was or should have been available to petitioners earlier, or relates to periods considerably after the date of execution of the contracts, from which the in-line price must be judged. The motion will therefore be denied.

A number of the producer-applicants have requested stay of ordering paragraphs (B), (C), (D) and (F) pending the outcome of judicial review of the Opinion and Order. Paragraphs (B) and (C) relate to the filing of supplements to the presently effective rate schedules to reflect the conditioned price as the initial price and to the imposition of the moratorium. Paragraphs (D) and (F) provide for the making of the refunds within 60 days of July 17, 1963, the date on which Opinion No. 398 was issued. Except for the indicated modification in paragraph (E), our review of the applications for rehearing does not convince us that we were in error in our determinations or that continued collection of the initial contract prices, determined by us to be excessive, can be sanctioned. We do not believe the public interest will be adversely affected, however, by deferring payment of the refunds, with interest, for a period of 30 days after conclusion of judicial review of Opinion No. 398. Accordingly, we shall grant the motions for stay of ordering paragraphs (D) and (F). In all other respects the applications for rehearing and motions for stay will be denied.

The Commission finds:

(1) The assignments of error and grounds for rehearing and reopening set forth in the applications for rehearing filed herein present no facts or principles of law which were not considered by the Commission when it issued its Opinion No. 398, or which, having now been considered, warrant any change in, modification of, or rehearing of such Opinion and Order, except as specified below.

(2) The motion to reopen for the submission of additional evidence should be denied.

(3) Good cause exists for granting, in part, the motions for an amendment to the Order issued herein on July 17, 1963, so as to stay the actions required by

ordering paragraphs (D) and (F) for a period of 30 days after conclusion of judicial review of Opinion No. 398.

The Commission orders:

(A) The applications for rehearing filed in the above-entitled proceeding are hereby denied.

(B) The last sentence of paragraph (E) of the Order is hereby deleted.

(C) The motion to reopen the proceeding is denied.

(D) The completion of the acts and compliance with the requirements set forth in ordering paragraphs (D) and (F) of the Order accompanying Opinion No. 398 are hereby stayed for a period of 30 days after conclusion of judicial review of said Opinion.

(E) In all other respects said Opinion and Order is confirmed.

Commissioners O'Connor and Ross *dissenting in part.*

Commissioner O'Connor, *dissenting in part:*

I believe the Commission should stay paragraphs (B) and (C) which require the producers to immediately reduce their rates, conditioned upon the producers' agreement to refund the difference between present and ordered rates if the order is upheld on review. This procedure would protect both consumers and producers pending judicial review, and would prevent the possibility of irreparable loss which the order now imposes upon the producers. Otherwise, I join the order.

Commissioner Ross, *dissenting in part*, for the reasons contained in his statement accompanying Opinion No. 398, issued July 17, 1963, *Placid Oil Co., et al.*, Docket No. G–13183, *et al.*, 30 FPC 283, 302, to the extent applicable.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, Harold C. Woodward, and David S. Black.

IOWA POWER AND LIGHT COMPANY, DOCKET NO. E–7119

ORDER AUTHORIZING ISSUANCE OF PROMISSORY NOTES

(Issued September 12, 1963)

Iowa Power and Light Company (Applicant), incorporated under the laws of the State of Iowa and doing business in that State. with its principal place of business in Des Moines, Iowa, filed an application on August 8, 1963 and supplement thereto on August 19, 1963 for authorization pursuant to Section 204 of the Federal Power Act, to issue from time to time, short-term Promissory Notes in an aggregate principal amount not to exceed $12,500,000 outstanding at any one time.

The proposed notes, payable to such commercial bank or banks from which the Applicant may borrow funds, will have maturities of not more than 90 days from the date of issuance and in no event shall the maturity of any of the notes extend beyond December 31, 1964. Applicant will pay no commitment, finder's or other fees in connection with the issuance of any of the aforesaid notes or with the borrowings evidenced by said notes.

The interest rate for each borrowing will be at the prime rates in force at the time and place of making the loan. As of the date of the application the current prime interest rate was 4½% per annum.

Applicant states that proceeds from the bank borrowings will be used to obtain temporary financing of Applicant's construction program, pending receipt of proceeds from permanent financing.

Applicant's construction program for the last six months of 1963 is estimated to cost $11,975,000 and for the full year of 1964 $12,500,000. Of these amounts $4,800,000 for 1963 and $2,500,000 for 1964 are allocated to the construction of a new 125,000 kw generating unit being installed at Applicant's Des Moines Power Station No. 2; $1,200,000 for 1963 and $400,000 for 1964 is allocated to the construction of a high pressure boiler and modernization of the Des Moines Power Station No. 2; and other items in the construction program include $500,000 for Des Moines Urban Renewal Modifications and Rebuilds, of transmission and distribution facilities and $500,000 for conversion from 34.5 kv to 69 kv of 21 miles of transmission line between Clarinda and Shenandoah plus a new substation at Shenandoah.

Written notice of the application has been given to the Iowa Commerce Commission and to the Governor of that State. Notice of the application also was published in the Federal Register on August 21, 1963 (28 F.R. 9223), stating that any person desiring to be heard or to make protest with reference to the application should file a petition or protest on or before September 5, 1963, with the Federal Power Commission, Washington 25, D.C. No protest, petition or request to be heard in opposition to the granting of application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission, as heretofore described and set forth in the Commission's order issued May 31, 1961, *Iowa Power and Light Company*, Docket No. E-6974 (25 FPC 1063).

(2) The proposed issuance of Promissory Notes, as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) The proposed issuance of Promissory Notes in the aggregate principal amount of not to exceed $12,500,000, as described above, will be in excess of 5% of the par value of the other securities of Applicant, and, therefore, will not be exempt from the requirements of Section 204(a) of the Act by the virtue of Section 204(e) thereof.

(4) The proposed issuance of Promissory Notes, described above, will be exempt from the competitive bidding requirements of Section 34.1a of the Commission's Regulations under the Federal Power Act by reason of Paragraph 34.1a(a)(2) thereof.

(5) Applicant is not organized and operating in a State under the laws of which the security issue here involved is regulated by a State Commission within the meaning of Section 204(f) of the Act; and the proposed issuance is, therefore, not exempt by virtue of that Subsection from the requirements of Section 204 of the Act.

(6) The proposed issuance of securities, as hereinafter authorized will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest which is appropriate for and consistent with the proper performance of service by Applicant as a public utility, and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

The Commission orders:

(A) The proposed issuance of Promissory Notes in the aggregate principal amount of not to exceed $12,500,000 outstanding at any one time, upon the terms

and conditions and for the purposes set forth in the application, all as described above, is hereby authorized, subject to the provisions of this order.

(B) This authorization is expressly conditioned upon final maturity of all notes, issued pursuant hereto, being on or before December 31, 1964.

(C) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost or any other matter whatsoever now pending or which may come before this Commission.

(D) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect to any securities to which this order relates.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, Harold C. Woodward, and David S. Black.

TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP63-327

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 12, 1963)

On May 28, 1963, as supplemented on June 14, 1963, and July 12, 1963, Texas Gas Transmission Corporation (Applicant) filed in Docket No. CP63-327 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities; the transportation and delivery on a firm daily basis of up to 3,000 Mcf of natural gas per day for Texaco, Inc. (Texaco); and in addition to said firm service, the transportation and delivery, annually, on an interruptible basis of up to 1,825,000 Mcf of natural gas at daily volumes not to exceed 5,000 Mcf. Under this proposal, Applicant is obligated to make available annual transportation service of 1,368,750 Mcf; however, said annual service may be curtailed or interrupted on any particular day.

The gas to be transported will be produced by Texaco from its properties in the Dog Lake Field, Terrebonne Parish, Louisiana. The gas will be taken by Applicant and transported through its system for delivery to Texaco at the latter's Lawrenceville, Illinois, refinery. The subject gas will be used by Texaco at its Lawrenceville refinery as fuel. The application indicates that the use of natural gas will reduce the frequent shutdowns for tube cleaning caused by the presently used fuel which is oil and will increase the overall operating time of refinery units such as heaters, compressors and boilers.

The proposed transportation service will be rendered pursuant to an agreement dated May 20, 1963, between Applicant and Texaco.

In order to render the proposed service Applicant proposes to construct and operate the following facilities:

(1) 5.37 miles of 30-inch loop pipeline in Mississippi, Tennessee and Kentucky;
(2) 3.53 miles of 26-inch loop pipeline in Louisiana;
(3) 5.70 miles of 8-inch pipeline in Louisiana;
(4) 5.65 miles of 8-inch loop pipeline in Illinois;
(5) 1.70 miles of 8-inch pipeline in Illinois, and,
(6) One meter station in Louisiana and one meter station in Illinois.

The total estimated cost of the proposed facilities is $1,809,700, which cost will be financed, pending permanent financing, by funds on hand and short-term bank loans.

Pursuant to due notice, a public hearing was held in Washington, D.C., on September 5, 1963, respecting the matters involved in and the issues presented by the application, as supplemented, herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Texas Gas Transmission Corporation, a Delaware corporation having its principal place of business in Owensboro, Kentucky, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 30, 1949, in Docket No. G–859 (8 FPC 190).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and delivery of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) The certificate hereinafter issued is granted on the express condition that the firm and interruptible transportation services hereinafter authorized shall be subject to curtailment and interruption if required to meet the existing and future Contract Demands of Applicant's customers for firm resale service.

(7) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30 (c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Texas Gas Transmission Corporation, to construct and operate the proposed facilities and to transport and deliver natural gas as hereinbefore described, all as more fully described in the application, as supplemented, herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the transportation and delivery of natural gas shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 6 months from the date on which this order issues.

(D) The certificate issued hereby is granted on the express condition that the firm and interruptible transportation services authorized herein shall be subject to curtailment and interruption if required to meet the existing and future Contract Demands of Applicant's customers for firm resale service.

Commissioner Black *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, Harold C. Woodward, and David S. Black.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP60-36; GULF OIL CORPORATION, DOCKET NO. CI60-43; TIDEWATER OIL COMPANY, DOCKET NO. CI60-142.

ORDER DENYING APPEAL FROM REJECTION BY THE SECRETARY OF JOINT APPLICATION FOR REHEARING

(Issued September 12, 1963)

On August 28, 1963, Memphis Light, Gas and Water Division and Mississippi Valley Gas Company (Appellants) filed pursuant to Section 1.7(d) of the Commission's Rules of Practice and Procedure an appeal from the action of the Secretary of the Commission in rejecting by letter of August 21, 1963, the Joint Application for Rehearing of the Commission's Opinion No. 399 tendered for filing by the Appellants on August 19, 1963.

On July 17, 1963, 30 FPC 329, the Commission issued its order in the above-entitled proceedings. Under the provisions of Section 19(a) of the Natural Gas Act and Section 1.34(a) of the Commission Rules a party seeking rehearing of a Commission order must file its application for rehearing within 30 days of the issuance of the Commission order. Appellants allege that their lateness in the filing of their Application for Rehearing was not due to their fault but was caused by an unusual and unforseeable delay in the mails and that such delay constitutes good cause for late filing as comteplated in Section 3.5(a)(8) of the Commission's Rules.

As noted above, the 30 day requirement for the filing of applications for rehearing of a final order of the Commission is a statutory requirement which is not subject to waiver for any cause. Moreover, since Appellants present no new contentions in their late-filed Application for Rehearing not previously raised by them and considered by us in our Opinion No. 399, there is no issue presented therein which would lead us to reopen the proceeding on our motion for reconsideration of their claims.

The Commission orders:

The Appeal From Rejection by the Secretary of Joint Application for Rehearing tendered by Appellants is denied.

Commissioner Black *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, Harold C. Woodward, and David S. Black.

THE CALIFORNIA COMPANY, A DIVISION OF CALIFORNIA OIL COMPANY, DOCKET NO. G-16167, ET AL.

ORDER AMENDING ORDER CONDITIONALLY APPROVING PROPOSED SETTLEMENT AND CONDITIONALLY ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND AMENDING CERTIFICATE

(Issued September 13, 1963)

On August 15, 1963, Texas Gas Transmission Corporation (Texas Gas) filed a request for modification of our order of August 7, 1963, 30 FPC 448, in the above-captioned proceedings.

Texas Gas requests that ordering paragraph (I) of the August 7, order be amended to relieve Texas Gas of the refund holding and reporting requirements thereby imposed. Ordering paragraph (I) requires United Gas Pipeline Company (United), Southern Natural Gas Company (Southern) and Texas Gas within fifteen days from the date of receipt of the refunds from The California Company to submit reports to the Commission setting forth the proposed disposition of the refunds. Ordering paragraph (I) also requires these refund recipients to hold the refunds pending further Commission action. Texas Gas, in its request for modification, correctly points out that it is presently required by the terms of its rate settlement agreement in Docket No. RP61-15 to make refund to its jurisdictional customers of the entire portion of the refund applicable to jurisdictional sales to be received from The California Company in Docket Nos. CI61-628, CI61-629 and CI61-630, the only dockets in which Texas Gas is the purchaser.[1] Further, Texas Gas is required within 20 days of making the refunds to its jurisdictional customers to report to the Commission in writing and under oath the amount of principal and interest so paid together with a computation showing the manner in which such refund was determined and to serve a copy of such report on each customer receiving a refund.

It therefore appears that ordering paragraph (I), insofar as it applies to Texas Gas, duplicates and is in conflict with Texas Gas' obligations under its rate settlement. Accordingly, Texas Gas' request for modification will be granted.

The Commission finds:

It is appropriate in carrying out the provisions of the Natural Gas Act that the Order Conditionally Approving Proposed Settlement and Conditionally Issuing Certificates of Public Convenience and Necessity and Amending Certificate issued August 7, 1963, in the above-captioned matters be amended as ordered below.

The Commission orders:

(A) Finding paragraph (6) of the Order Conditionally Approving Proposed Settlement and Conditionally Issuing Certificates of Public Convenience and Necessity and Amending Certificate, issued August 7, 1963, in the above-captioned matters is hereby amended to read as follows:

---

[1] See "Order Approving Settlement, Prescribing Refund and Terminating Proceeding," *Texas Gas Transmission Corporation*, Docket No. RP61-15, issued December 26, 1961, 26 FPC 924.

(6) It is in the public interest and it is appropriate in carrying out the provisions of the Natural Gas Act that United and Southern be required to submit the report and retain the refunds and interest as ordered below.

(B) Ordering paragraph (I) of said order is hereby amended to read as follows:

(I) Within 15 days from the date of receipt of refunds and interest required by this order, United and Southern each shall submit a report to the Commission and serve a copy on each jurisdictional customer and the various utility comissions in the states wherein it does business, setting forth the amount of refund and interest and the proposed disposition of such amounts. Pending Commission action and further orders respecting such disposition, United and Southern shall hold such refund and interest amounts in a special fund (without further interest obligation).

(C) In all other respects said order shall remain in full force and effect.

Commissioner Black *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, Harold C. Woodward and David S. Black.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G–13221, ET AL., CROWN CENTRAL PETROLEUM CORPORATION, DOCKET NO. G–16907; AUSTRAL OIL COMPANY, INCORPORATED, DOCKET NOS. G–17563 AND CI62–395; R. E. KELLERMAN, DOCKET NO. G–18136; TEXAS CRUDE OIL COMPANY (OPERATOR), ET AL., DOCKET NO. G–20124; TED WEINER (OPERATOR), ET AL., DOCKET NO. G–20126; ROBERT W. O'MEARA (OPERATOR), ET AL., DOCKET NO. CI62–479; J. M. FLAITZ, ET AL., DOCKET NO. CI63–225

ORDER SEVERING PROCEEDINGS, CONDITIONALLY APPROVING SETTLEMENT PROPOSALS AND CONDITIONALLY ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 13, 1963)

Motions for severance, for approval of settlement proposals and issuance of certificates of public convenience and necessity in their respective dockets were filed in the above-captioned proceedings on August 1, 1963, by Austral Oil Company, Incorporated (Austral); Angust 5, 1953, by R. E. Kellerman (Kellerman), Texas Crude Oil Company (Operator), *et al.* (Texas Crude), and Ted Weiner (Operator), *et al.* (Weiner); August 8, 1963, by J. M. Flaitz, *et al.* (Flaitz); August 9, 1963, by Crown Central Petroleum Corporation (Crown) and August 12, 1963 by Robert W. O'Meara (Operator), *et al.* (O'Meara).

The settlement proposals are similar to those previously approved by the Commission [1] and provide for the following:

(1) Effective April 1, 1963, the rates for gas delivered (or paid for but not taken)[2] under Crown's Rate Schedule No. 7, Austral's Rate Schedules Nos. 3

---

[1] See orders in *Union Texas Petroleum et al.*, Docket No. G–13221, *et al.*, issued June 24, 1963, 29 FPC 1279, concerning Union Oil Company of California and Tenneco Corporation and order issued August 7, 1963, 30 FPC 456, concerning Humble Oil and Refining Company.

[2] The term "delivered" is used in the proposals as in other proposals approved by us. In the context of the proposals we interpreted the term to include gas required to be taken during the moratorium periods but paid for and not taken. Our approval of these settlements is also conditioned upon such interpretation.

and 15, Texas Crude's Rate Schedule No. 3, Weiner's Rate Schedule No. 5, O'Meara's Rate Schedule No. 2 and Flaitz' Rate Schedule No. 3 will be 20.625¢ per Mcf.[3] The presently effective rate under Kellerman's Rate Schedule No. 1 will remain at 20.25¢ per Mcf.[4]

(2) A moratorium on rate increase filings from April 1, 1963, through March 31, 1968, inclusive, in all dockets.

(3) Extension of make-up periods for gas paid for but not taken to 4 years in all cases except Docket No. G–18136 in which case there is no take or-pay-for provision.

The settlement rates are subject to prospective changes during the moratorium periods according to any applicable area rate determined in the South Louisiana Area Rate Proceeding, AR61–2.

Rate increase filings may be made (1) prior to the end of moratorium periods to the extent that the maximum suspension period under Section 4(e) of the Natural Gas Act may be extended beyond 5 months or the Commission may hereafter be authorized to lengthen such suspension period, and (2) at any time for reimbursement of one-half the amount of increased State and Federal taxes or payments in lieu of taxes, provided that such increase does not exceed the reimbursement to which the applicant is entitled by contract.

Each of these applicants is presently selling under a temporary authorization without refund condition and none of these applicants proposes to make refunds for amounts above the settlement rates collected for deliveries made prior to April 1, 1963.

Since payments for gas delivered by each of the applicants except Kellerman subsequent to March 31, 1963, have been made at rates above the settlement rates the differences will be refunded by each of said applicants to the various pipeline purchasers within 30 days from the date of this order.

No party has filed an answer to any of these motions and we find these settlement proposals, as herein modified, in the public interest.

In keeping with our present policy we shall require that the applicants pay interest on the amounts to be refunded at 7 per cent per annum, such interest to accrue through the last day of the month in which the settlement proposals were filed, August 31, 1963.

The settlement provisions for adjustments in rates according to our order or orders in Area Rate Proceeding, Docket No. AR61–2, seek to anticipate in part the nature of our final determinations in that matter. It is clear that we shall make no determinations in this matter which will control our conclusions in Docket No. AR61–2. The settlement proposal also provides that adjustments in price growing out of the Area Rate Proceeding, Docket No. AR61–2, should go into effect upon conclusion of judicial review of our final order.

However, we cannot now commit the Commission to conditionally staying the effectiveness of its final order in Docket No. AR61–2. These matters should be decided at the conclusion of that proceeding and our approval of the settlement will be so conditioned.

In accordance with the above we shall sever these individual dockets from the consolidated proceeding Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*, omit the intermediate decision in regard to these dockets[5] and issue cer-

---

[3] All prices expressed inclusive of tax reimbursement and all volumes expressed at 15.025 psia.

[4] See Appendix for further details.

[5] The hearings in the Union Texas Petroleum, *et al.* consolidated proceeding concluded July 25, 1963.

tificates of public convenience and necessity in accordance with the applications, settlement proposals and conditions of this order.

The Commission finds:

(1) Each of the applicants herein is a natural-gas company within the meaning of the Natural Gas Act, and is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(2) The proposed sales of natural gas are subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Each of the applicants herein is able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, are required by the public convenience and necessity and are in the public interest upon the conditions set forth below, and certificates should be issued as ordered below.

(5) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

(6) No party has opposed the waiver of the intermediate decisions in these proceedings.

The Commission orders:

(A) The motions for waiver of the intermediate decisions are granted.

(B) The matters in the Docket Nos. G–16907, G–17563, G–18136, G–20124, G–20126, CI62–395, CI62–479 and CI63–225 are hereby severed from the consolidated proceeding, Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*

(C) Certificates of public convenience and necessity are hereby issued upon the conditions set forth herein to the applicants for the sales of natural gas in interstate commerce for resale as proposed and as modified by the settlement proposals and this order, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in the applications and settlement proposals herein.

(D) The certificates issued by paragraph (C) above, are granted upon the express conditions that the applicants comply fully with the terms of the settlement proposals which settlements are expressly approved, as modified by this order.

(E) Within 30 days after making the refunds required by the terms and conditions of this order and the settlement proposals the applicants shall report to the Commission, in triplicate, the amount of the refunds made to each pipeline purchaser, showing separately the amount of principal and interest so paid and the bases used for such determinations, together with releases from the purchasers showing receipt of the refunds in conformity to the settlements and the conditions of this order.

(F) Upon full compliance of the applicants with all the terms of this order and of the settlement proposals as modified, the applicants shall be relieved of any further refund obligations in these certificate proceedings and the proceed-

ings in Docket Nos. G–16907, G–17563, G–18136, G–20124, G–20126, CI62–395, CI62–479, and CI63–225 shall terminate.

(G) The certificates herein issued are not transferable and shall be effective only so long as the applicants continue the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(H) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or Part 154 of the Regulations thereunder; *Provided, however,* that the 30-day notice provision of Part 154.94(b) and the detailed submittal requirements of Part 154.94(f) are hereby waived insofar as they apply to the filing of reductions in rates as required by this order and the settlement proposals.

(I) The grant of certificates herein and approval of the settlement proposals is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the applicants, particularly any proceeding under Section 5 of the Natural Gas Act and is without prejudice to claims or contentions which may be made by the Commission, applicants, the Commission staff, or any affected party herein in any other proceeding.

(J) Interest on amounts to be refunded to the pipeline purchasers shall accrue through the last day of the month in which the settlement proposals were filed, August 31, 1963.

Commissioner Black *not participating.*

APPENDIX

Seller	Rate schedule No.	Docket No.	Purchaser	Current rate (¢/Mcf)	Proposed settlement rate (¢/Mcf)
Crown Central Petroleum Corp.	7	G–16907	United Gas Pipe Line Co.	22.25	20.625
Austral Oil Co.	3	G–17563	Transcontinental Gas Pipe Line Corp.	23.55	20.625
R. E. Kellerman	1	G–18136	United Gas Pipe Line Co.	20.25	20.25
Texas Crude Oil Co. (Operator), et al.	3	G–20124	Trunkline Gas Co.	21.8	20.625
Ted Weiner (Operator), et al.	5	G–20126	do.	21.8	20.625
Austral Oil Co. (Operator), et al.	15	CI62–395	Southern Natural Gas Co.	21.25	20.625
Robert W. O'Meara (Operator), et al.	2	CI62–479	Texas Gas Transmission Co.	21.25	20.625
J. M. Fialtz, et al.	3	CI63–225	Florida Gas Transmission Co.	21.25	20.625

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, Harold C. Woodward, and David S. Black.

ALGONQUIN GAS TRANSMISSION COMPANY, DOCKET NO. CP63–322

FINDINGS AND ORDER PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued September 16, 1963)

On May 23, 1963, Algonquin Gas Transmission Company (Applicant), filed in Docket No. CP63–322 an application and supplement thereto on June 12, 1963, pursuant to Section 7(b) of the Natural Gas Act, for authority to abandon and sell certain natural gas facilities to The Hartford Gas Company (Hartford Gas)

and to relocate its delivery point from Wethersfield to Cromwell, in Connecticut, all as more fully described in the application.

Hartford Gas is now a customer of the Applicant and the facilities abovementioned are now being used to serve part of its service area and will continue to serve such public purpose after acquisition. Ownership and operation of the 33,150 feet of 10-inch pipeline and 4,033 feet of 12-inch pipeline will allow Hartford Gas to redesign its distribution system so as to conform to changes in the area being served due to developments in the City of Hartford, Connecticut.

Applicant will receive the sum of $266,545.19 which is the amount of original costs of the property to it, less depreciation as of June 30, 1963, and for account purposes such amount will be carried as a debit in account 102—Gas Plant Purchased or Sold.

The measuring and regulating equipment belonging to Applicant and now installed in the station at South-Wethersfield-Rocky Hill which is owned by Hartford Gas and leased to Applicant will be removed and relocated at a station site near Applicant's main line in Cromwell, Connecticut and the former location will no longer be listed or shown as a delivery point in the Service Agreements with Hartford Gas.

Pursuant to due notice, a public hearing was held in Washington, D.C., on August 27, 1963, respecting the matters involved in and the issues presented by the application. No petition to intervene or protest to the granting of the application has been received. Staff Counsel, moved orally at the hearing that the intermediate decision procedure be omitted and the Commission render a decision pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant is a natural gas company within the meaning of the Natural Gas Act and the facilities hereinbefore described are parts of the Applicant's pipeline system and subject to the jurisdiction of the Commission.

(2) The change of the kind of use of the pipeline facilities to be transferred by Applicant to Hartford Gas will inure to the public benefit enabling the distributor to use the line acquired as a distribution facility to be tapped as may be required thus obviating the necessity to construct duplicate facilities in the area of Hartford, Connecticut to serve the customers in the area. The public convenience and necessity will be better served by the proposed arrangement than without it.

(3) The sale of the facilities and the relocation of the measuring equipment now located on the facilities being sold and transferred, as hereinbefore stated, by the Applicant to Hartford Gas has been agreed to and contracted for by the said parties.

(4) A request made during the public hearing by Staff Counsel for the omission of the intermediate decision procedure under Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure was unopposed by any party of record, and not having been denied by the Commission is granted pursuant to Section 1.30(c)(1) of said rules.

The Commission orders:

(A) Applicant be and is hereby permitted to abandon the facilities heretofore described, as more fully described in the application.

(B) Applicant shall advise the Commission in writing of the date of settlement of the sale and relocation of the measuring facilities within 10 days thereof.

Commissioner Black *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black

MIDWESTERN GAS TRANSMISSION COMPANY, DOCKET NOS. RP61–19 AND RP62–7; NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. RP63–6

ORDER REJECTING APPEAL FROM PRESIDING EXAMINER'S RULING EXCLUDING EVIDENCE

(Issued September 16, 1963)*

On August 8, 1963, the Presiding Examiner ruled certain prepared testimony and exhibits submitted by the Coal Intervenors were inadmissable in evidence in the above-designated consolidated proceedings. On August 19, 1963, the Coal Intervenors filed a joint appeal to the Commission from that ruling. Midwestern Gas Transmission Company on August 27, 1963, filed an answer in opposition to the appeal. A joint answer also in opposition was tendered by Natural Gas Pipeline Company of America, Northern Illinois Gas Company, Northern Indiana Public Service Company and The Peoples Gas Light and Coke Company on August 28, 1963.

The Commission has considered all of the foregoing tenders and concludes that it is not necessary to pass upon the Coal Intervenors' appeal at this time. The appeal, therefore, should be rejected without prejudice to its being raised, if necessary, in any exceptions to the Presiding Examiner's Initial Decision which Coal Intervenors may file.

The Commission orders:

The appeal from the Presiding Examiner's ruling of August 8, 1963, excluding certain Coal Intervenors' tendered evidence from the record in these proceedings is hereby rejected without prejudice.

Commissioner Black *not participating.*

*Order issued October 30, 1963, denying reconsideration.

OPINION NO. 402

AMERICAN LOUISIANA PIPE LINE COMPANY, DOCKET NO. G–2306; MICHIGAN WISCONSIN PIPE LINE COMPANY, G–2327; AMERICAN LOUISIANA PIPE LINE COMPANY, G–10396; PANHANDLE EASTERN PIPE LINE COMPANY, G–11061; TRUNKLINE GAS COMPANY, CP60–22 (PHASE TWO); PANHANDLE EASTERN PIPE LINE COMPANY, CP60–40; PANHANDLE EASTERN PIPE LINE COMPANY, CP60–60; PANHANDLE EASTERN PIPE LINE COMPANY, CP61–36; PANHANDLE EASTERN PIPE LINE COMPANY, CP61–136

OPINION AND ORDER MODIFYING AND ADOPTING PRESIDING EXAMINER'S INITIAL DECISION

(Issued September 17, 1963)*

Syllabus

1. Commission *reaffirms* interim allocation of American Louisiana's gas to Michigan Consolidated P. 701.
2. Goodrich industrial sale approved; Commission *notes* it will be more than

*Initial decision appears on p. 720. Rehearing denied, 30 FPC 1211. Affirmed, *sub nom Central Illinois Public Service Co.* v. *F.P.C.*, 338 F. 2d 682 (CA7–1964).

compensatory to Panhandle's jurisdictional business and will benefit wide segment of public as well as immediate parties. P. 705.

3. Commission *conditions* authorization for direct industrial service so as to insure a true interruptible sale which will not preempt capacity needed to meet firm demands of pipeline's jurisdictional customers. P. 705.
4. A proceeding to formulate a policy of general application is proper vehicle to explore issue whether distributors or pipelines should make direct sales. P. 706.
5. Absent evidence showing available capacity on Galesburg lateral, Commission *directs* delivery of gas to Bushnell from Panhandle's Canton lateral. P. 711.
6. There is no substance to argument that Commission has no jurisdiction to consider request for gas supply absent a Section 7(a) filing. PP. 712: 717.
7. Citing *City of Redbud*, Commission *refutes* argument that it lacks jurisdiction to order sale of gas to city if part thereof is to be used in city's electric generating plant. P. 712.
8. Commission is satisfied with Milford's showing of apparent authority for municipal gas system—legal questions raised to the contrary are local in nature and should properly be determined by State courts. P. 716.
9. Where community votes for municipal system—shown to be economically feasible—it is not for Commission to tell community to seek gas service instead from private distributor. P. 717.
10. Commission *issues* certificates of public convenience and necessity; *dismisses* application for certificate; and *directs* interconnection of facilities and sale of gas in proceedings arising under Section 7 of the Natural Gas Act. P. 718.

Commissioner Ross *dissenting, in part.*

Commissioner Black *not participating.*

Charles V. Shannon, Louis Flax and *Arthur R. Seder* for American Louisiana Pipe Line Company, Michigan Wisconsin Pipe Line Company and Michigan Consolidated Gas Company.

Raymond N. Shibley, J. William Via, Jr., John A. McGuinn, G. R. Redding and *Wendell J. Doggett* for Panhandle Eastern Pipe Line Company.

Leland F. Cadenhead and *Raymond N. Shibley* for Trunkline Gas Company.

Q. P. Dorshell, Robert S. Hunt and *John V. Gilhooly* for Village of Savoy, Illinois, and Illinois Power Company.

C. V. O'Hern, Jr., Bradford Ross and *Sherman S. Poland* for Central Illinois Light Company.

Daryal A. Myse for Citizens Gas Company.

Albert J. Feigen for City of LaCygne, Kansas.

J. W. McAuliffe and *Phebe Eppes Gordon* for Battle Creek Gas Company.

John F. Zimmermann for Wisconsin Natural Gas Company and Wisconsin Michigan Power Company.

John C. Lawyer and *Edmund A. Schroer* for Northern Indiana Public Service Company.

N. J. Lesselyoung and *Vernon A. Swanson* for Milwaukee Gas Light Company.

William E. Torkelson for Wisconsin Public Service Commission.

Seymour Tabin for Wisconsin Public Service Corporation.

Robert R. Batton and *Albert L. Harker* for Central Indiana Gas Company, Indiana Gas Distribution Corporation, Greenfield Gas Company, Inc., and Pendleton Natural Gas Company.

Reuben Goldberg and *George Spiegel* for Michigan Gas and Electric Company.

Wilson W. Snyder for The Toledo Edison Company.

William Herron and *Julian de Bruyn Kops* for The Dayton Power and Light Company.

Samuel H. Olsen, David R. Kaplan and *F. Clifton Lind* for County of Wayne, Michigan.

Paul L. Adams and *A. C. Stoddard* for Michigan Public Service Commission.

Gebhard, Hogue & Dwyer for Ohio Gas Company.

John Helm Pratt and *Patrick J. Smith* for Citizens Gas and Coke Utility.

Will W. Reller, Robert R. Batton and *Albert L. Harker* for Richmond Gas Corporation.

R. P. Duff, J. B. Falahee, James Boorsch and *J. Philip Bahn* for Michigan Gas Storage Company and Consumers Power Company.

Elmer Nafziger and *Hal M. Smith* for Central Illinois Public Service Company.

Glen H. Bell for City Gas Company, Merrill Gas Company and Wisconsin Fuel and Light Company.

Nathaniel H. Goldstick, Robert Reese, Melwood W. Van Scoyoc and *Alexander E. Wiskup* for City of Detroit, Michigan.

Charles R. S. Anderson for Iowa Southern Utilities Company.

Sprague, Wilcox and *Houts* for St. Joseph Light and Power Company.

C. B. Dushane and *E. J. McManus* for Keokuk Gas Service Company.

John E. Fell for Kokomo Gas and Fuel Company.

R. J. Sutherland and *Eugene O. Gehn* for Wisconsin Power and Light Company.

Glen D. Evans for Missouri Public Service Commission.

James D. McKinney, Jr. and *Charles E. McGee* for Missouri Public Service Company.

Sherman S. Poland for Central Illinois Electric and Gas Company.

Thomas F. Ryan, Jr. for Citizens Gas Fuel Company and Michigan Gas Utilities Company.

Ned Willis for North Central Public Service Company.

Milo J. Fleming, Cecil A. Beasley, Jr., Arthur Weichelt and *Orville N. Foreman* for Village of Milford, Illinois.

Cecil A. Beasley, Jr., John W. Kern and *Arthur Weichelt* for Village of Louisville, Illinois.

George C. Williams, Robert C. Weber, C. William Cooper, Lawrence L. Gray and *Norman A. Flaningam* for The East Ohio Gas Company.

Jerome J. McGrath, John A. McGrath and *Charles W. Stadell* for Mid-West Coal Producers Institute, Inc.

Edwin K. Steers, Ira L. Haymaker and *Donald M. Mosiman* for Indiana Public Service Commission.

James A. Gammon, John A. McGrath and *Jerome J. McGrath* for Fuels Research Council, Inc. and The Chesapeake and Ohio Railway Company.

James A. Gammon, John A. McGrath, Jerome J. McGrath and *Robert E. Lee Hall* for National Coal Association.

James A. Gammon, John A. McGrath, Jerome J. McGrath and *Welly K. Hopkins* for United Mine Workers of America.

John F. Gaston for Iowa Electric Light and Power Company.

John H. Groves for Indiana Gas and Water Company, Inc.

Walter D. McQuie, Cecil A. Beasley, Jr., and *John W. Kern III* for City of Montgomery, Missouri.

Albert J. Feigen and *Ira D. Beynon* for The Ohio Valley Gas Corporation.

Willard S. Stafford for Madison Gas and Electric Company.

Mark McElroy, Andrew R. Sarisky and *Herbert T. Maher* for Public Utilities Commission of Ohio.

W. F. Laird, John F. Sisson, William C. Hart and *Ralph N. Mahaffey* for The Ohio Fuel Gas Company.

David R. Goller for Missouri Western Gas Company.

Paul Hess, Cecil A. Beasley, Jr. and *John W. Kern III* for City of Macon, Missouri.

U. S. Collins, Cecil A. Beasley, Jr., John W. Kern, III and *Arthur Weichelt* for City of Bushnell, Illinois.

George R. Perrine for Illinois Commerce Commission.

William C. Moore for The Waterville Gas and Oil Company.

Ralph S. Locher and *James L. Harkins, Jr.* for City of Cleveland, Ohio.

Lewis Carroll, William I. Harkaway, William E. Hynan and *Milton J. Grossman* for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

SWIDLER, *Chairman:*

On January 22, 1963, the presiding examiner issued his initial decision on the seven remaining issues in these consolidated proceedings.[1] These issues are as follows:

(1) Panhandle's application in Docket No. CP61-36 relating to a proposed direct sale to B. F. Goodrich Co. near Fort Wayne, Indiana.

(2) Panhandle's application in Docket No. CP60-40 relating to a proposed direct sale to General Portland Cement Co. in northwestern Ohio.

(3) The remaining allocation questions with respect to American Louisiana and Michigan Wisconsin in Docket Nos. G-2306, G-2327, and G-10396.

(4) The request of the City of Bushnell, Illinois, an intervener, for service from Panhandle.

(5) The request of the Village of Milford, Illinois, an intervener, for service from Trunkline.

(6) Panhandle's request for a certificate in Docket No. CP60-60 covering a 3-mile lateral at Defiance, Ohio.

(7) Staff's recommendation that an order be issued limiting the quantities of gas which are the subject of a direct sale by Panhandle to National Distillers & Chemical Corp. at Tuscola, Illinois.

The examiner would approve the two direct industrial sales proposed by Panhandle and would issue certificates to Panhandle for the transportation of the gas required for these sales.

With respect to the allocation of gas on American Louisiana's system, he found that Michigan Consolidated has a need for the entire 127,000 Mcf which it has been taking from American Louisiana since the Panhandle abandonment decision, and that Michigan Wisconsin no longer needs any part of the 127,000 Mcf to meet the demands of its customer companies. He would therefore reaffirm the allocation of American Louisiana's gas supply to Michigan Consolidated as contained in the Commission's order of December 19, 1958, in Docket No. G-10396 (20 FPC 851, 858, par. (C)), and would direct that the delivery and sale of this gas by American Louisiana be continued.

On the questions involving the requests by the City of Bushnell and the Village of Milford for gas from Panhandle and Trunkline, he would condition the certificates to the pipelines to require Panhandle to connect its line near Knoxville, Illinois, with the proposed facilities of the City of Bushnell, and Trunkline to make connection with the facilities proposed to be operated by the Village

[1] The procedural background and the history of prior decisions in these proceedings is set out at length in the examiner's decision.

of Milford, and would require the pipelines to sell gas to these interveners in the amounts requested.

Because of some uncertainties in the record, he would dismiss Panhandle's application for a lateral at Defiance, Ohio without prejudice, with the expectation that it would be resubmitted separately with a fuller explanation of the need for the lateral and the effect of the investment on Panhandle's jurisdictional customers, and that it might then be disposed of in a shortened proceeding without need for further hearing.

Concerning staff's recommendation for a "cease and desist" order limiting Panhandle's sale of gas to National Distillers at Tuscola, Illinois, he found that such an order would be premature, and that if staff has a basis for making inquiry and requiring Panhandle to examine its operations, a simple letter from staff noting the apparent discrepancies and requesting explanation would be all that is called for at this time. If thereafter some question remains, it then would be time enough to issue a formal "show cause" order and set the matter for hearing under its own docket number in a separate proceeding.

Exceptions to the examiner's decision have been filed by a number of parties. These exceptions are directed to the examiner's grant of certificates to Panhandle authorizing the transportation of gas for direct sale to B. F. Goodrich Co. and General Portland Cement Co., and to his finding that Panhandle and Trunkline should make connections to serve and should sell gas to the City of Bushnell and the Village of Milford, respectively. No question has been raised with respect to the allocation of American Louisiana's gas as made by the examiner, his disposition of Panhandle's Defiance lateral application, or his treatment of staff's recommendation to limit Panhandle's sales at Tuscola to National Distillers.[2]

On February 28, 1963, Panhandle filed notice of and petition for withdrawal of its application in Docket No. CP60–40, wherein it proposed to transport gas for sale to General Portland Cement Co.[3] This withdrawal is based on a letter dated February 21, 1963, in which Panhandle and the cement company agreed to terminate their contract for sale. We have no objection to Panhandle's withdrawal and by our order attached hereto shall grant the petition to withdraw.

In view of the withdrawal of Panhandle's application in Docket No. CP60–40, there remain only three issues in contest on exceptions to the examiner's decision: The direct sale by Panhandle to B. F. Goodrich Co., and the requests for gas service interposed by the City of Bushnell and the Village of Milford. Having reviewed the record evidence in this case, together with the briefs of the parties, the examiner's decision, and the exceptions filed, we conclude that the examiner's decision should be adopted—modified, however, to provide, *inter alia*, that Panhandle shall make connection with and sell gas to Bushnell from its Canton lateral rather than from its Galesburg lateral.

The B. F. Goodrich Co.

Panhandle proposes an interruptible service of up to 5,000 Mcf daily to Goodrich's new tire plant near Fort Wayne, Indiana. Panhandle's Exhibit No. 281 projects an annual sale of 1,050,000 Mcf by the third year of operation under its

---

[2] On August 14, 1962, Panhandle filed an application to amend its certificate in Docket No. G–2047 to increase its service to National Distillers. This application was noticed February 27, 1963. No action has since been taken.

[3] Section 1.11(d)(1) of the Commission's Rules of Practice and Procedure requires express permission of the Commission to effect withdrawal of an application in a proceeding in which a hearing has been held or convened.

contract with Goodrich. A certificate for this service has already been issued on behalf of the State of Indiana.

The gas is to be used solely for burning under boilers to produce steam needed for the manufacture of tires. Either coal or oil would serve the purpose equally well insofar as the technology of tire-making is concerned. Goodrich selected interruptible gas with oil standby for the operation of its boilers as being the most economical method of operation.

The new Goodrich plant is located adjacent to the supply lateral of Northern Indiana Fuel and Light Co., the local distributing company. Panhandle has entered into a contract with Northern Indiana which calls for Northern Indiana to deliver Panhandle's gas to Goodrich for Panhandle's account, title to remain in Panhandle while the gas is enroute and Panhandle to pay Northern Indiana 2 cents per Mcf for its transportation and incidental services. Pending Commission action on Panhandle's application in these proceedings, Northern Indiana is selling surplus gas to Goodrich on a temporary basis. Northern Indiana, however, has expressed no interest in a permanent sales contract to meet the requirements of the Goodrich plant, but rather has expressed its preference for the proposed arrangement whereby it will deliver the gas to Goodrich for Panhandle's account. Panhandle's contract with Goodrich calls for a flat rate of 40 cents per Mcf. Staff joins with the parties to the transaction in recommending Commission approval of the sale.

The Fuels Research Council, National Coal Association, United Mine Workers, and other coal interests, herein referred to collectively as the Coal Interveners, put in evidence an extensive study designed to demonstrate that, at the 40-cent rate for gas, the overall cost of the plant, fuel and operations over a presumed 20-year life, including fixed charges, would be about $18,000 a year more than if the installation had been designed to burn coal under the boilers rather than gas and oil.[4] The examiner noted, however, that the pertinent question is not whether coal would be cheaper than gas, but whether, notwithstanding the evidence that it might have been cheaper for Goodrich to contract for coal, the use of Panhandle's line for the purpose of selling gas to Goodrich is in the public interest and required by the public convenience and necessity.

The examiner treated this question of the public interest at length in his decision; and although he referred to the use of gas for boiler fuel use as an "obviously inferior use," he concluded that the sale here proposed by Panhandle to Goodrich is required by the public convenience and necessity and that a certificate authorizing Panhandle to transport the gas for this use should be issued. This conclusion is based on a number of subsidiary findings which are discussed below.

First of all, the examiner found that the evidence tending to establish a saving in the cost of steam by the use of coal of about $18,000, or about 5 percent of the cost of steam using gas and oil, would of itself hardly warrant the reversal by the Commission of the policy determination made by Goodrich to use gas with oil standby in the operation of its new $25,000,000 plant. The Goodrich decision to use gas was made after careful study of all of the available forms of energy, and was based on the best judgment of its economic experts. Moreover, the examiner found that a minor variance in cost of this kind, although resulting in a saving to Goodrich, should not be considered determinative of the public

[4] Goodrich's witness testified that although the cost of purchasing coal would have been favorable, the additional plant investment, together with additional labor and operating costs make the purchase of gas from Panhandle a more economic operation.

interest question, since the public interest is obviously much broader than that of Goodrich or Panhandle or Northern Indiana or the Coal Interveners.

To determine a proper measure of the public interest to be applied in the disposition of this case, the examiner looked to cases previously decided by the Commission in which it considered the sale of gas for boiler fuel use. He concluded as follows:

> However, it appears it is the consensus of decisions on boiler fuel use of gas that, notwithstanding the claim of this patent spoliation of a scarce, unique, wasting and irreplaceable natural resource, a sale in a reasonable amount for industrial use is accepted as justified where the denial would mean an unfair and undue deprivation to the particular industry *or* where there are net revenues spread among such wide classes and groups of customers (rather than solely to the owners of the pipeline) that the sale has a substantial element of benefit to a wide segment of the public.

Applying this test in the present case, the examiner found that there will be a substantial element of benefit to a wide segment of the public in connection with Panhandle's sale to Goodrich. In the first place, he found that there will be a substantial benefit to the distributor. Northern Indiana, and perhaps eventually to its customers, because Northern Indiana will be charging 2 cents per Mcf for transporting Panhandle's gas and for other very minor services. Northern Indiana will be transporting the gas for a distance of only 10 miles through its existing lateral facilities, and there is no suggesting that this service will add $100 a day to its cost of service.

In the second place, the examiner found that even though the sale is nonjurisdictional and its rate is not subject to FPC regulation it will to some extent benefit all of the pipeline's distributors and, presumably, their customers. The record shows that about 7.5 percent of Panhandle's total sales under its expanded program are direct industrial sales. These sales, including the Goodrich sale, the examiner noted, are interruptible sales which will dispose of "valley gas" and will not require the capacity of Panhandle's line on the peak days of its need for firm domestic and commercial customers. Moreover, and most important, the examiner found that the revenues from these sales will absorb a part of the fixed costs of Panhandle's operations which would otherwise be collectible from firm jurisdictional users. Citing Panhandle's cost allocation exhibit for the first year of its expanded program, the examiner showed the average cost of Panhandle's direct sales to be 28.76 cents per Mcf. Since a part of this cost represents fixed costs, the examiner found that the difference between this cost and the bare incremental cost of making the Goodrich sale would represent some reduction in the cost of service to Panhandle's jurisdictional customers. To give another measure of the benefit, the examiner noted that the 28.76-cent average cost is based on a total direct sale cost allocation of $14,000,000, and that of this total cost $2,720,000 represents a contribution to fixed costs of gathering, transmission, and storage. On the basis of this showing, the examiner concluded that "the benefit of the direct industrial use of the gas is not limited to the narrow ambit of the particular parties to the sale but, to some very slight extent at least, is spread among the public from one end of Panhandle's system to the other." He would regard the proposed transportation of gas for sale to Goodrich as being in the public interest, and he would certificate it as being required by the public convenience and necessity.

The Coal Interveners have filed exceptions to the examiner's grant of a certificate to Panhandle for the Goodrich sale. They except generally to the findings of the examiner discussed above. The main thrust of their exceptions, however, is to an issue not previously argued by them, namely, whether Panhandle has

shown with specificity that its pipeline east of its Glenarm compressor station will have the necessary capacity in the summertime to meet the requirements of the Goodrich plant and at the same time its commitments to its distributor and storage customers. These interveners also urge the Commission, if it is disposed to grant the certificate, to limit the authorization to no more than 2,268 Mcf per day, which is the present boiler fuel requirement of the Goodrich plant, rather than 5,000 Mcf as proposed by Panhandle, since the 5,000 Mcf will not be required until further expansion of the plant at some indefinite future time.

The Glenarm station referred to by the Coal Interveners is located in central Illinois. The question of available summertime capacity downstream from Glenarm arises from the peculiar design of Panhandle's system whereby capacity on the eastern portion of the system has been constructed in great part for summer sales, and the load is heaviest in the summer due to Panhandle's commitments to Michigan Consolidated, Michigan Gas Storage, and others. It should be noted, however, that the lateral through which Panhandle serves Northern Indiana has a capacity of 12,500 Mcf per day which should be sufficient to carry the 5,000 Mcf per day for Goodrich as well as the gas required by Northern Indiana except when Northern Indiana requires its full contract quantity of 8,000 Mcf per day. It should also be noted that Northern Indiana's summer requirements are about 5,000 Mcf less than its winter requirements, so that there should be sufficient gas available for the Goodrich service in the summer. Moreover, the Goodrich sale is fully interruptible, and Goodrich can change to its alternate oil supply for fuel without delay.

As shown, Panhandle has sufficient capacity in its system to render the proposed service to Goodrich on an interruptible basis without the construction of additional facilities other than those heretofore authorized as part of Panhandle's expansion program. The gas will be sold to Goodrich off-peak, with the expectation that the service will be interrupted perhaps 25 days a year. By using its "valley gas" for this service, Panhandle will be able to improve its system load factor and utilize its existing facilities in the most economic way. Panhandle proposes to make this sale at a rate of 40 cents per Mcf, of which 2 cents per Mcf will be payable to Northern Indiana for its transportation service. Panhandle's rate schedule for firm resale service in this area consists of a demand charge of $2.38 per Mcf and a commodity charge of 24.9 cents per Mcf. This rate results in an average charge of 32.7 cents per Mcf at 100 percent load factor. Panhandle's resale interruptible service rate schedule in this area has a rate of 32.7 cents per Mcf. As found by the examiner, and as the above rate comparison indicates, the Goodrich sale will not burden Panhandle's jurisdictional business but it will be more than compensatory and will benefit a wide segment of the public as well as the immediate parties to the sale.[5] In our judgment it is sufficient in this case to show that such benefits will be realized. It is not necessary to prescribe a definite measure of benefits to be applied as a minimum standard to justify the proposed industrial service. It is important, however, that the service, if authorized, be in fact a true interruptible sale, and that it not be permitted to preempt capacity which is needed to meet the firm demands of the pipeline's jurisdictional customers. To this end, we shall condition the certificate to Panhandle to make the service subject to curtailment and interruption if required to meet the existing or future contract demands of Panhandle's customers for firm resale service, and to require Panhandle to report to the Commission as

[5] The costs properly allocable to Panhandle's nonjurisdictional business will of course be subject to determination in Panhandle's next rate case.

of June 1 of each year the number of days on which such service was curtailed or interrupted during the preceding 12 months, together with the date and the amount of each such curtailment or interruption.

Panhandle's contract with Goodrich provides for daily deliveries of up to 5,000 Mcf. Although present operations at the Goodrich plant require only 2,268 Mcf per day, Goodrich contemplates reaching a level of operations during the initial five-year term of the contract which will require the full 5,000 Mcf contract quantity. We can see no advantage in limiting the authorization to 2,268 Mcf per day as requested by the Coal Interveners. In our judgment, the sale of gas in accordance with the contract and the use of Panhandle's facilities for that purpose are in the public interest, as found by the examiner, and Panhandle has sufficient capacity in its system to render this service on an interruptible basis as contemplated by the parties. Accordingly, we shall authorize the service as recommended by the examiner.

A word should be added in response to the dissent with respect to the proposed sale to B. F. Goodrich Co. While it is true that the examiner in this proceeding questioned the testimony by an official of the distribution company in support of Panhandle's request for a certificate to serve B. F. Goodrich, the examiner found that the direct sale by Panhandle was in the public interest. As the examiner pointed out, this is not a contest between the distributor and the pipeline. The examiner, all of the parties, and the Commission's staff are in agreement that if the sale is certificated it should be made directly by the pipeline.[6] In addition, the examiner found that the state commission has "enfranchised the sale" (p. 725). The examiner also found that the area of the sale is rural and not actually served by any distributor. We are satisfied to affirm the examiner's conclusion on this point. In our judgment if the Commission, on its own motion, is to explore the issue whether distributors or pipelines should make industrial sales the proper vehicle is in a proceeding to formulate a policy of general application. We do not believe that the public interest would be served by remanding this proceeding to the examiner for further hearing on an issue which has been resolved to the satisfaction of all concerned. This proceeding began in 1953 and already had the distinction of setting an FPC record for the longest number of days in hearing.

The City of Bushnell

The City of Bushnell was granted intervention in January 1961. The purpose of its intervention, as made clear from its petition, was to seek a condition under Section 7(e) which would require Panhandle to furnish up to 2,000 Mcf per day to the municipality. Bushnell presented alternative proposals for taking this gas from Panhandle. Its primary proposal was to build a lateral northward 30.5 miles to a point of connection with Panhandle's Galesburg lateral near Knoxville, Illinois. Under this proposal, Bushnell would also serve three small communities located along its proposed lateral. Later, as an alternative, Bushnell proposed a lateral extending eastward 32 miles to Canton, Illinois, where it would connect with Panhandle's Canton lateral. Under the Canton alternative, Bushnell would serve two of the three communities which would be served by its Galesburg proposal. A map illustrating these proposals is found on page 741 of the examiner's decision, and a tabulation of pertinent facts relating thereto is set forth on pages 738–739.

---

[6] In all of the cases cited in the dissenting opinion either the distributor claimed the right to make the industrial sale itself or one of the parties or the Commission staff raised this issue on the record.

The requested service for Bushnell has been hotly contested from the outset by Panhandle, as well as by Illinois Power Co. and Central Illinois Public Service Co. (Cipsco). (Illinois Power is presently the sole customer on Panhandle's Galesburg lateral, and Cipsco is the local public utility distributor within whose service area Bushnell is located.) Staff also, in its brief to the examiner, recommended that Bushnell's request for service from Panhandle be denied.

The major objections to this service, as presented to the examiner at the hearings and in the parties' briefs, were: (1) The failure of Bushnell to file an application for service under Section 7(a). (2) The availability of gas service by Cipsco, whose transmission line passes within 4 miles of Bushnell. (3) The high cost of the proposed municipal system in relation to the size of the community. (4) The lack of demonstrated capacity on Panhandle's laterals to render the service requested. Despite these objections, the examiner found that the public interest requires Panhandle to provide the requested service, and directed Panhandle to make connection with Bushnell's system on the Galesburg lateral near Knoxville, in accordance with Bushnell's first alternative proposal.[7]

With respect to the procedural question of the proper method of requesting gas service from a pipeline, the examiner found that it is the law of this case as determined by an earlier ruling (16 FPC 897, 898) that requests of interveners of this type shall be judged under the requirements of Section 7(a). The petitions for intervention filed by the City of Bushnell and the Village of Milford, as well as those filed by a number of other municipalities whose requests for gas have already been acted upon, are based on the Commission's general power to condition pipeline certificates under Section 7(e). These petitions were filed prior to June 1, 1961, when the Commission adopted Part 156 of its Regulations Under The Natural Gas Act setting forth detailed procedures for requesting gas service from a pipeline under Section 7(a). Inasmuch as the petitions for intervention, and the earlier order of the Commission in this case with respect thereto, reflect the practice of allowing intervention in pipeline certificate cases for the purpose of requesting gas service followed by the Commission prior to June 1, 1961, and adhered to in this proceeding with respect to other interveners, the examiner found that there was no basis for rejecting the requests made by Bushnell and Milford on procedural grounds. He would judge the requests, however, under the requirements of Section 7(a) as prescribed by the Commission's earlier order. By these standards, it must be found as a condition precedent to granting the requested service that "no undue burden will be placed upon such natural-gas company thereby," and that the order will not "compel" a sale which "would impair its ability to render adequate service to its customers."

The examiner found no substance in the argument that Cipsco's transmission line is located only four miles from Bushnell and that Cipsco could render gas service in Bushnell at lower rates than the municipality. Bushnell is a community of 3,710 which for 30 years has served its residents with a municipally owned propane air gas system. Bushnell also operates a municipal electric system serving about 50 percent of the community's electric requirements. The other 50 percent of the electric requirements is presently served by Cipsco. In

[7] There is no question of gas supply. The Commission's order of July 27, 1962, authorizing Panhandle's and Trunkline's expansion, reserved such conditions on the certificates issued as might be found necessary with respect to service for Bushnell and for Milford, and the further order of September 25, 1962, specifically reserved for possible allotment to Bushnell an allocation of 2,000 Mcf per day of peak capacity.

1960, at Bushnell's invitation, Cipsco made an offer to purchase the municipal gas and electric systems and to serve Bushnell with natural gas. Although a majority of the city council voted to accept the Cipsco offer, the vote was one short of the number required to sanction the action under local law. In view of the city's determination to operate its own natural gas system, and the fact that neither the city nor Cipsco is subject to the Commission's jurisdiction, the examiner limited his consideration to the merits of Bushnell's request for gas from Panhandle to operate its own system.

The examiner also rejected the argument that because this project would involve the largest single financing undertaken by the city it would present too much of a financial burden. This argument, he found, gives too little weight to the fact that the plan calls for revenue bonds only. Although the city had previously experienced some financial difficulties with its propane system, these, he found, were the result of high propane rates which necessarily inhibited sales, thus demonstrating the need for lower priced natural gas. He also noted that the finance firm sees no difficulty in marketing the city's bonds.

The remaining objection, that Panhandle cannot deliver the gas to Bushnell from its Galesburg lateral without impairing its ability to render adequate service to its present customer on that lateral, Illinois Power, was advanced by every party opposing the Bushnell project. Panhandle's lateral extends some 40 miles from Peoria to Galesburg. At the commencement of this action two years ago, Illinois Power was utilizing the full 20,000 Mcf-capacity of this lateral. Since then, Panhandle has been authorized to loop the first half of the lateral from Peoria to Elmwood as part of its expansion program in these proceedings; and Panhandle now plans to deliver 30,000 Mcf per day to Illinois Power at Elmwood, part of which will go through Panhandle's existing lateral from Elmwood to Galesburg, and part of which will go through a new lateral from Elmwood to Galesburg which has since been constructed by Illinois Power.[5] Bushnell claims that Illinois Power's new lateral will relieve enough capacity on Panhandle's old line to permit delivery of the 2,000 Mcf per day requested from Panhandle. Illinois Power opposed Bushnell's request for service on the ground that it has a right to continue to benefit by the full capacity of the old Panhandle lateral, and did not build the new line for the purpose of benefiting Bushnell's municipal operations. Panhandle and staff opposed Bushnell's request because it was not thought clear that the new Illinois Power lateral would leave any room available in the old lateral for the service to Bushnell.

The examiner treated the question of available capacity raised by Panhandle and staff as controlling. He noted, however, that the evidence on this question of Panhandle's capacity "was not notable for candor, clarity, and completeness." The Illinois Commerce Commission certificate to Illinois Power for its new lateral was not put in evidence, and there were conflicting statements in the record as to whether the old lateral would be needed for Illinois Power. The examiner, however, would rely on a statement of Panhandle's engineer, in answer to a hypothetical question, that half of the increased deliveries to Illinois Power could go through the new line (assuming the capacity of the new lateral line to be the same as Panhandle's old 8-inch line), which would leave only 15,000 Mcf for the old line to carry and free sufficient capacity to carry the 2,000 Mcf for Bushnell. Despite Illinois Power's protests of discrimination, the examiner

[5] Panhandle, for the present, plans to continue to use the old 8-inch line to deliver a part of Illinois Power's requirements to the distribution company at Galesburg. However, Illinois Power and Panhandle have agreed to the sale of the line from Elmwood to Galesburg to Illinois Power, and Panhandle has filed for abandonment of that section of its lateral. See Docket No. CP61–265.

could find no reason why Illinois Power should continue to monopolize the capacity on the old line when it now had sufficient capacity on its new line to meet its needs without using all of the capacity on the old line. Accordingly, the examiner would order Panhandle to make the connection with Bushnell's system near Knoxville and render the requested service.[9]

Exceptions to the examiner's disposition of this issue were filed by Cipsco, Illinois Power, Panhandle, and the Illinois Commerce Commission.

All four of these parties take exception to the examiner's finding that there will be capacity available on Panhandle's old Galesburg lateral beyond Elmwood for serving 2,000 Mcf per day to Bushnell as a result of the construction of Illinois Power's new lateral from Elmwood to Galesburg. Illinois Power and Panhandle both contend that the maximum delivery which can be made to Illinois Power for service in the Galesburg area is 27,500 Mcf, not 30,000 Mcf as had originally been hoped; that Illinois Power has a need for all of this gas (Illinois Power cites a peak day load of 27,900 Mcf for 1962–63, and an estimated load of 28,600 Mcf for 1963–64);[10] and that the service to Bushnell could only be made at the expense of impairing existing service to Illinois Power. The Illinois Commerce Commission joins these parties in contending that there is not sufficient evidence of record to support the conclusion of the examiner with respect to the availability of capacity to serve Bushnell. Illinois Power takes the position that if the Commission does not reverse the examiner on this point for lack of supporting evidence, the proceedings should be reopened to permit it to produce evidence showing that its present requirements at Galesburg are in excess of the volumes Panhandle can make available to it. In this connection Illinois Power notes that two heating seasons have passed since the testimony and exhibits on this issue were placed in the record, and that actual experience (such as that cited above) now available to show that the Bushnell service ordered by the examiner would impair Panhandle's existing service to Illinois Power. As an alternative to its exceptions, Illinois Power has therefore attached a petition to reopen the proceedings.

Illinois Power also charges error in the examiner's failure to give consideration to the matter of pressure on the Galesburg lateral. It contends that Panhandle does not have sufficient pressure at Elmwood to meet the pressure requirement at Knoxville as set forth in Bushnell's engineering exhibit. It further contends that to the extent deliveries are made to Bushnell, the pressure available for deliveries to Illinois Power at Galesburg will be reduced and will impair service to Illinois Power.

Apart from the question of the availability of capacity on Panhandle's lateral to render service to Bushnell without impairing service to Illinois Power, Illinois Power and the Illinois Commerce Commission take exception to the examiner's order as being inequitable and discriminatory. The Illinois commmission especially emphasizes this point, arguing that if there is capacity available on Panhandle's old line for service to Bushnell, it is only because of Illinois Power's new lateral, and that the examiner's order is conditioned on new capacity thus being provided by Illinois Power and not by Panhandle. Illinois Power, however, constructed its lateral, not for the benefit of Panhandle or the City of Bushnell, but for itself and its customers, and it did so in accordance with a

---

[9] The examiner stated that he was not passing one way or another on Bushnell's second-choice lateral to Canton.

[10] Illinois Power also cites a peak day delivery from Panhandle for distribution in the Galesburg area of only 24,390 Mcf in 1962–63, leaving 3,510 Mcf which had to be served from Illinois Power's emergency propane supply. These cited figures, however, are not facts of record in this proceeding.

certificate of the Illinois commission. The state commission stresses the point that no part of the cost of Illinois Power's lateral would be borne by the people of Bushnell, and it contends that they should not be entitled to benefit from it. Any new capacity thus created should be reserved for Illinois Power.

Cipsco's exceptions are directed primarily to the economics of the Bushnell proposal. Cipsco contends that there has been no showing of the economic feasibility of Bushnell's project under reasonable rates. Referring to the table on page 742 of the examiner's decision, Cipsco notes that the capital investment per customer of $890 for the Bushnell project is out of line in comparison with 13 other local projects already approved by the Commission in these proceedings, for which the highest cost per customer was $728. Cipsco also notes that the capital investment is not higher than $890 only because of Bushnell's existing propane system; and that this system, which was intalled in 1933, will have to be replaced over the next 30 years at an increased cost per customer (which Cipsco fixes at $70). Cipsco contends that many capital costs and operating costs have been understated by Bushnell, although the debt margin projected would cover these omissions at the proposed rate levels, as the examiner found. Cipsco, however, argues that Bushnell's rates are unreasonably high, and that its project would not be feasible at rates comparable to those which Cipsco would charge for the same service. It points out that the primary source of revenue is residential use, as to which Bushnell's rates are 44.1 percent higher than Cipsco's present rates. The people of Bushnell, Cipsco argues, should not be asked to bear the burden of the additional costs of 30–40 miles of transmission when Cipsco's line passes within four miles of the city and Cipsco could render the gas service needed by the people of Bushnell at rates up to 44 percent lower than those proposed by the municipal project. Panhandle's exceptions support this position as stated by Cipsco.

Cipsco also objects to the examiner's failure to find that Bushnell's alternative proposal to build a lateral to Canton should be rejected for failure to make an adequate showing of technical feasibility. This exception has reference to the question of the pressure available at Canton for delivery to Bushnell. Panhandle, on the other hand, argues that despite the pressure problem at Canton service to Bushnell through Canton is to be preferred over a connection from the Galesburg lateral, whether the service is rendered by way of the municipal system or by way of Cipsco. As noted above, however, Panhandle supports Cipsco in contending that service by Cipsco would best serve the interests of all concerned.

Panhandle's exceptions further renew its argument on the jurisdictional question, charging that the examiner erred in allowing Bushnell to seek a supply of gas without filing an application under Section 7(a). Panhandle also excepts to the examiner's order as requiring it to supply gas to Bushnell for use as boiler fuel in Bushnell's electric generating plant. Such an order, Panhandle contends, is beyond the Commission's jurisdiction as outlined in Section 1(b) of the Act, since the sale of gas to Bushnell for this use would be a direct sale and not a sale for resale. (The tabulation on page 738 of the examiner's decision shows the power plant requirements.)

Illinois Power and the Illinois commission make much of the argument that any temporary slack in Panhandle's line resulting from the construction of Illinois Power's new lateral should be reserved to Illinois Power, and that an order requiring Panhandle to use a part of this capacity, which was created by Illinois Power for its own benefit, to serve Bushnell would be unfair and discriminatory. However, our review of the record in this case convinces us that

there is no necessity for us to decide what disposition should be made of any excess capacity, since it does not appear that any such excess capacity exists. The response of Panhandle's witness to a hypothetical question indicating that Panhandle's existing line from Elmwood to Galesburg could carry Bushnell's 2,000 Mcf per day under certain assumed conditions does not support the conclusion that there is in fact such capacity available. This same witness testified that as far as he knew the full capacity of the existing line would continue to be used to serve Illinois Power. As already noted, the certificate issued to Illinois Power by the Illinois commission for the distributing company's new lateral is not in evidence, and there is no record of the capacity of this new line or of the division of Panhandle's gas at Elmwood between the new line and the existing lateral to Galesburg. In the absence of substantial evidence to show available capacity on Panhandle's lateral, we cannot find that an order directing Panhandle to deliver up to 2,000 Mcf per day to Bushnell from the Galesburg lateral near Knoxville would not impair Panhandle's ability to render adequate service to its existing customer, Illinois Power. Thus, we cannot agree with the examiner that Panhandle should be directed to meet Bushnell's need for 2,000 Mcf per day by making a connection on the Galesburg lateral.

Panhandle has expressed its preference for Bushnell's Canton alternative. It states in its exceptions that "the Canton lateral is obviously the more desirable route for service to the residents of Bushnell. . . ." In view of the capacity questions just discussed with respect to the Galesburg proposal, we find ourselves in agreement with Panhandle on this point. The examiner devoted little time to considering the possibility of service through Canton, although he has set forth the basic facts with respect to Bushnell's proposal in his tabulation on pages 738–739. Despite some question with respect to the available pressure at Canton, the record supports the conclusion that Bushnell's Canton proposal is feasible—economically and financially, and is sound as to engineering.

The question with regard to the pressure at Canton arises from the fact that Bushnell's engineering study and the testimony of its witness with respect to the feasibility of its system design are based on the assumption of an available pressure of 300 lbs. at the point of connection with Panhandle's lateral at Canton, whereas the testimony of Panhandle's engineering witness indicates that the pressure at Canton is in fact something less than 300 lbs. How much less is not explicitly set forth in the record; but there are sufficient engineering data in the record to determine the available pressure and the ability of Bushnell's system to serve its stated third year requirements with the reduced inlet pressure at Canton. We feel that we can properly exercise our expertise in making these determinations on the basis of the facts of record.

As part of its expansion authorized in these proceedings, Panhandle has looped its 6-inch Peoria-Canton lateral from Peoria to Glassford, and has changed its delivery point to Cipsco from Canton to Glassford. Cipsco is presently constructing a new 10-inch line from Canton to Glassford to take delivery of its gas from Panhandle. The existing 6-inch Panhandle line from Glassford to Canton will no longer be used to serve Cipsco, and it is through this line that the gas for Bushnell would be delivered. The evidence shows that Panhandle has contracted to deliver its gas to Cipsco at Glassford at a minimum pressure of 300 lbs., and that it has available 438 lbs. of pressure on the inlet side of its Glassford regulating station. With a minimum of 300 lbs. at the outlet of the Glassford station and at the inlet of the 9-mile 6-inch line to Canton, Panhandle would be able to deliver in excess of 2,000 Mcf per day into Bushnell's system at Canton at a pressure of about 292 lbs. With an inlet pressure of 292 lbs. at Canton, Bush-

nell's system as designed has more than enough capacity to deliver its third year requirements, and to permit distribution at the various points of delivery at the pressures contemplated by the engineering study in evidence.[11]

With respect to the other aspects of Bushnell's proposal and its request for gas from Panhandle, which have been called into question by Cipsco's and Panhandle's exceptions, we find the examiner's conclusions to be sound. The economics of Bushnell's proposal might be more favorable at the rates which Cipsco claims it would charge; but, as already stated, it is not for this Commission to tell the people of Bushnell that they should look to Cipsco rather than to their own municipal system for gas service. On the record before us the City of Bushnell is proposing to construct and operate its own natural gas system, and at the rates set forth in its economic evidence that proposal is economically feasible. The record shows, moreover, that the cost estimates made by Bushnell's economic witness have been conservatively made on the high side by as much as 20 to 25 percent, and that its system, accordingly, could be operated with rates reduced by approximately 23 percent and still be able to meet its debt service coverage. Bushnell has had a long experience in the operation of municipal utility systems, having operated its water system for 80 years, its light plant for 21 years, and its propane air plant for 26 years. Its proposed natural gas system is economically feasible and its financing is assured. On the record before us, there is no economic reason which would justify a denial of Bushnell's request for gas from Panhandle.

Panhandle contends that the Commission has no jurisdiction to consider Bushnell's request for a supply of gas in the absence of a Section 7(a) filing by Bushnell. This argument has been fully answered by the examiner in his decision as outlined above. Panhandle further contends that the Commission has no jurisdiction to order the sale and delivery of gas to Bushnell if a part of the gas is to be used as boiler fuel in the city's electric generating plant, since the sale of gas for such use would be a direct sale rather than a sale for resale. Bushnell takes the position that the gas will be resold by the gas utility to the electric utility. But even though a portion of this gas were to be used directly by the city for the purpose of generating electricity, this use would not deprive the Commission of its jurisdiction to order Panhandle to sell and deliver to Bushnell the full requirements of the city's natural gas system. This question was settled in *City of Red Bud*, 25 FPC 987, where the same argument of no jurisdiction was made, and where the Commission adopted the following disposition of the issue as made by the examiner:

> Mississippi, apparently relying upon *City of Hastings* v. *F.P.C.*, 221 F. 2d 31, cert. den. 349 U.S. 920, claims that the Commission's jurisdiction does not extend to the sale of gas to Red Bud because a part of its estimated requirements are for use in the municipal power plant. That is to say, its position is that the sale of gas for power plant use "would be a sale to Red Bud not for resale but for consumption by the customer." Counsel, however, overlook the fact that the gas used in the power plant is an integral part of a "sale for resale" and does not involve a separate direct sale transaction for consumptive use only. The ruling in the *City of Hastings* case is therefore inapplicable here. Moreover, the supposed nonjurisdic-

[11] The Bushnell system would have the capacity to deliver up to 2,800 Mcf per day to the City of Bushnell at 50 lbs., 1,440 Mcf per day to Prairie City at 105 lbs., and 900 Mcf per day to Avon at 80 lbs. The third year peak day requirements for deliveries at these communities are, respectively, 1,217 Mcf, 784 Mcf, and 544 Mcf. (The requirements for Prairie City include the requirements for Avon which is served through Prairie City.)

tional part of the gas will become indistinguishable at the point of sale from the remainder of Red Bud's purchase . . . . [25 FPC 999.]

We would further note that even if the sales by the gas system to the electric plant were eliminated, along with the revenues to be realized therefrom, Bushnell's gas system would still be economically feasible, having a debt service coverage ratio of at least 1.8.

We shall order Panhandle to make connection with Bushnell's facilities at Canton, and shall require it to sell and deliver to the city at that point a maximum of 2,000 Mcf per day as requested.

The Village of Milford

The village of Milford was permitted to intervene in these proceedings for the purpose of seeking a supply of gas from Trunkline as part of Trunkline's expansion program. Milford proposes to construct and operate a gas distribution system as authorized by Illinois law, and requests up to 906 Mcf per day from Trunkline, which is the nearest available supplier. As noted above, the Commission's order certificating Trunkline's expansion contained a reservation for any condition found necessary with respect to service to Milford. Milford's request was opposed by Trunkline, Cipsco, and by staff.

During the course of the proceedings, Milford presented three different plans. The first plan—the only one voted upon by the citizens of Milford—provided for the village to construct a municipal distribution system, to be financed through the issuance of $320,000 of revenue securities. Under this plan, Milford would receive its gas at the town border from the Midwest Gas Pipe Line Co., an as yet inoperative company controlled by the firm financing Milford's project. This plan was approved by the voters in 1960.

The second plan was presented at the hearing in 1961, at which time Midwest had dropped out of the picture. It was then proposed that the village should issue securities totalling $530,000 in order to build the distributing system as well as a 13.8-mile transmission lateral connecting with Trunkline's supply line and a small distribution system to serve the Village of Wellington located halfway between Milford and the proposed connection with Trunkline.

A year later, as the hearing drew near its close, the village returned with a third plan. This plan, which is the proposal passed upon by the examiner, calls for a $300,000 municipal system to be financed by revenue certificates. Milford would receive its gas from Trunkline through a lateral to be constructed by a contractor, the Panama-Williams Corp., which would also build the distribution system in Wellington. A preliminary agreement between Milford and the contractor calls for the signing of a lease contract under which Milford would have the exclusive right to use and operate the facilities constructed by the contractor, and would pay for all operating and maintenance costs. The village would have the option of buying the facilities within one year for a purchase price of $200,000, which could be paid either in cash or in 5 percent gas revenue bonds, which the contractor would accept at par. Otherwise, the village would pay a monthly lease charge of $1,800 (roughly one percent of the construction cost) for a period of 25 years, at which time the facilities would become the property of the village with no further payments required.

The examiner had no difficulty in finding that Milford's project is financially and economically feasible, and that the local markets can support the distribution system proposed. There was no substantial opposition to the Milford project on these points. The examiner directed his discussion mainly to the objections raised by Cipsco, and strongly seconded by Trunkline, as to the *ultra vires* ille-

gality of Milford's program. The issues thus raised concern, *inter alia*, the necessity of further voter approval, the power of the contractor to condemn the property necessary for the transmission right-of-way, the effect of a franchise previously issued by Milford to Cipsco, and the legality of the lease-purchase agreement as a form of financing under Illinois law.[12] These questions, it is claimed, go to the matter of whether Milford "is legally authorized to engage in the local distribution of natural or artificial gas" as required by Section 7(a). It is the position of Cipsco and Trunkline, as urged upon the examiner, that the apparent authority claimed by Milford on the basis of the Municipal Ownership Act of Illinois and the implementing election is deficient for the reasons cited, and that the municipality is not "legally authorized" and does not qualify for a Section 7(a) order.

The examiner found that these questions of local law properly should be tried in the courts of the State of Illinois which have primary jurisdiction and which, apparently, are available to Cipsco, to the taxpayers of Milford, or to others in interest, whether or not a certificate is issued by the FPC directing the sale and delivery of gas by Trunkline to Milford. It is enough, he found, for the Commission under Section 7(a) to find *prima facie* or apparent legal authority without determining that the municipality has complied with all the requirements of applicable state law permitting it to engage in local distribution. In his judgment, to go beyond that and try the many and devious questions peculiar to the local law of Illinois would require the Commission "to step out of its normal regulatory function and supplant the regularly established state courts which have the responsibility, the power of authoritative decision, and the special background so obviously called for."

As a test of *prima facie* or apparent legal authority, the examiner would require a showing that (1) there is a municipal ownership act which calls for a local vote, (2) the local vote has been had, and (3) the outcome of the vote is favorable. Being satisfied that Milford here had met this test and demonstrated ostensible legal authority to engage in local distribution as required by Section 7(a), the examiner ordered the connection of facilities and the delivery and sale of gas by Trunkline to Milford as requested.[13]

Exceptions to this portion of the examiner's decision were filed by Cipsco and Trunkline. Both of these parties take issue with the examiner's finding with respect to the showing of legal authority required by Section 7(a). They contend that the examiner has relieved Milford of its statutory burden of proving compliance with the conditions of Section 7(a), while at the same time rejecting the proof of Cipsco and Trunkline, which he admits is "a persuasive showing of outright *ultra vires* illegality." They not only object to his refusal to consider the issue of unlawfulness thus presented, but also to his casting the burden on them of initiating state court action after Trunkline has been directed to serve Milford.

Cipsco presses the point that even under the restricted standard of ostensible authority followed by the examiner, there has been no *prima facie* showing. It is

---

[12] Cipsco's and Trunkline's objections and Milford's response to these objections are set forth in detail at pages 748–749 of the examiner's decision.

[13] The examiner rejected staff's objection that the contractor for the lateral line would be subject to the Natural Gas Act and that in the absence of a certificate application by the contractor Milford's project must be found deficient and its application be denied. The examiner found that the function of operating and maintaining the lateral would be the sole responsibility of Milford, and that Milford, not the contractor, would be the "person . . . transporting natural gas in interstate commerce" within the meaning of Section 1(c). Apart from the lease arrangement with the contractor, staff had no objection to Milford's program.

submitted that even under this limited test the Commission must determine whether the authorizing state statute has apparently been complied with, and that in this case Milford has made no such showing. Cipsco contends that under the express terms of the Illinois statute Milford does not have the requisite authority because: (a) its plan has not been submitted to the voters; (b) its plan includes a financing device not authorized by the statute; and (c) the lease-purchase agreement purports to obligate the revenues of the gas system far in excess of the cost thereof plus 10 percent, as limited by the statute.

In support of this position, Cipsco notes that the Milford voters did not approve or even know about the present plan for a distribution system in Wellington or the lease-purchase arrangement with respect to that system and the 13.8-mile transmission line when they voted on the original $320,000 municipal system. Under the present plan, these additional facilities will cost $200,000 if purchased within one year, or $540,000 if bought on the lease-purchase plan ($21,600 per year for 25 years). Cipsco contends that under the Illinois law the ordinance to be approved by the voters is required to set forth the action proposed and describe the plant, equipment and property proposed to be acquired or constructed. Despite his recognition that the Wellington system and the transmission line were to be constructed and acquired as part of the Milford system, and even though no vote with respect thereto had been had, the examiner found that Milford had ostensible authority under the Illinois law. This conclusion, Cipsco charges, is erroneous.

Cipsco further contends that the Illinois law provides for the financing of municipal utilities only by the issuance of bonds, mortgage certificates, or special assessment bonds, to be passed on by a referendum vote of the electors of the municipality, and that the lease-purchase arrangement whereby the contractor would initially advance the $200,000 needed to construct the Wellington system and the transmission line is not a form of financing authorized by the statute. Moreover, Cipsco argues the total obligation of the lease over 25 years is more than double the cost of the facilities, whereas the law limits revenue obligations to 110 percent of the cost of the property. Here again, Cipsco claims that the examiner erred in finding apparent authority on the part of Milford rather than an apparent lack of authority.

Both Trunkline and Cipsco contend that there was no evidence of the ability of the contractor, Panama-Williams, to finance construction of the Wellington system and the transmission line, and that the examiner erred in simply relying on the requirement that the contractor furnish a performance bond. This, they contend, is particularly significant in view of the fact (not of record) that Panama-Williams, on January 31, 1963, filed a petition in bankruptcy in the United States District Court for the Southern District of Texas, Houston Division. (A copy of the petition is attached to Trunkline's exceptions.)

Cipsco also argues in its exceptions that the public interest requires a denial of Milford's request for gas from Trunkline, since Cipsco already holds a franchise from Milford and can service the people of Milford at rates which, on an annual basis, are from 32 to 44 percent lower than the rates proposed by Milford. To this end, Trunkline's exceptions support Cipsco's position. Trunkline also argues that the law of this case, as established by the Commission's order of July 5, 1962, in these proceedings with respect to competing applications for service in Montrose, Iowa, requires the Commission to withhold any order directing Trunkline to establish service to Milford until the local issues are resolved.

Trunkline's exceptions, like Panhandle's, again urge the objections of these parties to the failure of Milford and Bushnell to file applications under Section

7(a), and to the examiner's failure to find that the Commission is without authority to issue a Section 7(a) order in the absence of the filing of such applications.

The exceptions filed by Cipsco and Trunkline do not persuade us that the examiner erred in finding in favor of Milford's request for service from Trunkline. These exceptions, as well as the briefs filed by Cipsco and Trunkline, present well-developed arguments to show that Milford cannot proceed with its present plan for initiating natural-gas service without violating the laws of the State of Illinois. Milford, on the other hand, has also argued at length in its briefs in support of the legality of its proposal, setting forth with much persuasion the established precedents under Illinois law which indicate that the procedures which it has followed and proposes to follow are proper. Whether Milford needs further voter approval to enter into the lease contract with the contractor who is to build the transmission line and Wellington distribution system or to exercise its option to purchase the leased facilities, whether the lease contract is a legitimate operational arangement whereby Milford can secure the gas it needs or is an improper means of financing the acquisition of additional facilities, and whether the franchise issued to Cipsco by Milford in 1931 for 50 years was revoked by the ordinance adopted in 1960 authorizing construction of the municipal system, or was terminated by the "non-user" of Cipsco, or imposes any impediment to the construction of the municipal system by Milford, are questions of Illinois law which can, and properly should, be determined by the courts of primary jurisdiction in that state. The people of Milford have voted to have a municipal gas distribution system rather than be served by Cipsco,[14] the vote was had in accordance with the procedural requirements of the Illinois law, and Milford is prepared to construct and finance the distribution system in Milford in accordance with the ordinance adopted and approved by its citizens. Milford's plan to lease and operate the facilities to transport the gas from Trunkline's pipeline to its town border rather than to receive the gas from the owner of these facilities at the town border does not alter the essential aspects of the distribution system and requires no additional financing,[15] and in our judgment it does not alter the fact that Milford has apparent authority under the laws of Illinois and the village ordinance "to engage in the local distribution of natural or artificial gas to the public" within the meaning of Section 7(a) of the Natural Gas Act.

We find it necessary and desirable in the public interest that Milford's request for gas be granted and that Trunkline be ordered to make connection with the facilities to be operated by Milford and to sell to Milford the quantities of gas herein requested. As in the case of Bushnell, we are not persuaded by the arguments of Cipsco and the pipeline company that Cipsco can distribute gas in Milford at rates lower than those proposed by the municipality and that Milford's

---

[14] Cipsco, which presently serves electricity in Milford, waged a vigorous publicity campaign prior to the election to persuade the people of Milford that it was prepared to serve them with natural gas at rates considerably lower than the proposed municipal system.

[15] Additional financing would be required only if Milford were to exercise the option in the lease contract to purchase the contractor's facilities within the first year for $200,000 in cash or bonds. Milford contends that no further voter approval would be required even if it were to exercise this option since the Illinois statute applies only to the financing of the initial acquisition or construction of a utility and not to subsequent additions or extensions. *Illinois Power Co.* v. *City of Jacksonville*, 18 Ill. 2d 618 ,165 N.E. 2d 300 (1960).

request should therefore be denied. The people of Milford have expressed their desire for a municipal system and the system proposed is feasible on engineering, economic, and financial bases. Similarly we cannot agree with Trunkline's argument that our order of July 5, 1962, with respect to service in Montrose, Iowa, establishes a precedent which requires us to withhold action on Milford's request for gas pending the resolution of the local issues.[18] Unlike the Montrose case, Milford has made its decision as to who should distribute gas in the village. There is also no substance in Trunkline's argument that we have no jurisdiction to order the sale of gas to Milford in the absence of an application by Milford under Section 7(a). As indicated in our discussion of Bushnell's request for gas, we adopt the examiner's disposition of this jurisdictional issue.

In view of the questions raised with respect to the ability of the contractor, Panama-Williams, to undertake construction of the transmission line to Milford and the Wellington distribution system, we shall condition our order directing Trunkline to make connection and sell gas to Milford upon the filing by Milford within 90 days of an executed lease contract with Panama-Williams, or some other contractor, in substantially the same form as that contained in Milford's proposal and incorporated in this record, together with a copy of a duly executed performance bond satisfactory to the Commission.

The Commission finds:

(1) The examiner's decision, together with his formal findings and recommended order, issued on January 22, 1963, should be modified consistent with the foregoing opinion and the provisions of paragraphs (2) through (4) below, and as so modified the examiner's decision should be adopted as the decision of the Commission.

(2) The examiner's decision should be modified to eliminate the issuance of a certificate of public convenience and necessity to Panhandle for the transportation of gas for sale to General Portland Cement Co.

(3) The examiner's decision should be modified to require Panhandle to make connection with the proposed facilities of Bushnell and to sell gas to Bushnell at Canton rather than near Knoxville, and to eliminate the condition making the order for gas to Bushnell contingent upon Illinois Power's new lateral being placed in service.

(4) The examiner's decision should be modified with respect to the order requiring Trunkline to make connection with the facilities proposed to be operated by Milford and to sell gas to Milford by including as a condition thereof the filing by Milford within 90 days of an executed lease contract with Panama-Williams, or some other contractor, in substantially the same form as that contained in Milford's proposal herein, together with a copy of a duly executed performance bond satisfactory to the Commission.

(5) The exceptions to the examiner's decision, except as herein granted, should be denied.

(6) The motion of Bushnell and Milford for oral argument, filed February 11, 1963, should be denied.

(7) The petition of Illinois Power to reopen the proceedings, filed February 11, 1963, should be denied.

---

[18] The Commission, in the case of Montrose, left it up to the town to decide which of two equally qualified distributors it wanted to serve it, and ordered the pipeline company to make connection with and sell gas to the distributor selected by the town (28 FPC 41).

(8) The petition of Panhandle for withdrawal of its application in Docket No. CP60–40 to transport gas for sale to General Portland Cement Co., filed February 28, 1963, should be granted.

(9) The motion of Panhandle and Trunkline to sever the Bushnell and Milford issues for separate and later determination, filed April 1, 1963, should be denied.

The Commission orders:

(A) The examiner's decision, issued in these proceedings on January 22, 1963, is hereby modified in accordance with finding paragraphs (1) through (4) above, and as so modified the examiner's decision is hereby adopted as the decision of the Commission.

(B) In accordance with paragraph (A) above:

(i) A certificate of public convenience and necessity is hereby issued to Panhandle Eastern Pipe Line Company for the transportation of gas to the B. F. Goodrich Co. plant as more fully described in the examiner's decision and in Panhandle's application in Docket No. CP61–36. The service hereby authorized shall be subject to curtailment and interruption if required to meet the existing or future contract demands of Panhandle's customers for firm resale service. Panhandle shall report to the Commission as of June 1 of each year the number of days on which such service was curtailed or interrupted during the preceding 12 months, together with the date and the amount of each such curtailment or interruption. This report shall be filed by June 30 of each year.

(ii) The allocation of the gas supply of American Louisiana Pipe Line Company to Michigan Consolidated Gas Company as contained in the Commission's order of December 19, 1958, in Docket No. G–10396, 20 FPC 851, 858, paragraph (C), is hereby reaffirmed, and the delivery and sale thereof is hereby directed to be continued.

(iii) The certificates of public convenience and necessity issued in these proceedings to Panhandle Eastern Pipe Line Company and Trunkline Gas Company on July 11 and 27, 1962, are hereby conditioned respectively to require Panhandle to connect its line at Canton, Illinois, with the proposed facilities of the City of Bushnell, Illinois, and to sell gas to Bushnell in the amount of up to 2,000 Mcf per day, and to require Trunkline to connect its line with the facilities proposed to be operated by the Village of Milford, Illinois, and to sell gas to Milford in the amount of up to 906 Mcf per day. The order for Milford, however, is conditioned upon the filing by Milford within 90 days of the issuance of this order of an executed lease contract with Panama-Williams, or some other contractor, in substantially the same form as that contained in Milford's proposal herein, together with a copy of a duly executed performance bond, satisfactory to the Commission, assuring the performance of the contractor with respect to the construction of the Milford transmission line and the Wellington distribution system.

(iv) Panhandle's application for a certificate covering its proposed 3.11-mile lateral at Defiance, Ohio, Docket No. CP60–60, is hereby dismissed without prejudice.

(C) The exception to the examiner's decision, except as herein granted, are hereby denied.

(D) The motion of Bushnell and Milford for oral argument is hereby denied.

(E) The petition of Illinois Power to reopen the proceedings is hereby denied.

(F) The petition of Panhandle to withdraw its application in Docket No. CP60–40 is hereby granted.

(G) The motion of Panhandle and Trunkline to sever the Bushnell and Milford issues is hereby denied.

Commissioner Ross *dissenting in part.*

Commissioner Black *not participating.*

Ross, *Commissioner, dissenting in part:*

I dissent to the majority's grant of a certificate to Panhandle relative to the proposed direct sale to B.F. Goodrich Company. In my opinion, this issue should be remanded to the Examiner for the following reasons.

The issue presented is whether we adequately discharge our responsibilities under the Natural Gas Act by permitting a pipeline rather than the local distributor to make the proposed industrial sale. In the past, we have denied a pipeline's application to initiate a direct industrial sale when the sale could have been made along the existing distributor's system.[1] We have also refused to certificate industrial sales by a pipeline when the prospective buyers were currently purchasing gas from the local distributors.[2] In a case quite similar to this one where the affected distributor did not oppose the pipeline sale, the Commission nevertheless provided for the distributor to make the sale.[3] These decisions do not erect a policy whereby we reject each and every direct industrial sale proposed by a pipeline. But they do indicate the concern of the Commission in this area, and its intention to ". . . continue to consider each case on the merits as it arises and make the determinations which are commensurate with the facts and law applicable thereto." (*Southern Natural, supra,* 25 FPC 927.)

The evidence adduced thus far is anything but convincing that the public interest favors certification of Panhandle. An officer for the distributor involved, Northern Indiana Fuel and Light (which is making the sale at the present time), testified it would be highly objectionable for his company to make the sale. While the sale would permit a reduction in rates to all of the distributor's customers—including Goodrich—of about two hundred dollars a day, the officer feared that some day these concededly desirable rate reductions might be repealed if the Goodrich sale—for some unknown reason—were discontinued.

The Examiner termed Northern Indiana's reasons as patently incredible. Indeed they are. There may be several good reasons why Panhandle, rather than Northern Indiana should make this sale. There may be reasons why we should permit Panhandle's stockholders rather than the ultimate consumers of Northern Indiana to reap the benefits of this lucrative sale. If such reason exists, they do not appear in this record and I would therefore remand this issue for the taking of further evidence.

---

[1] *Southern Natural Gas Company,* 25 FPC 925 (1961).

[2] *American Louisiana Pipe Line Co.,* 20 FPC 575 (1958).

[3] *Panhandle Eastern Pipe Line Co.,* 13 FPC 301 (1954). This was a case in which the Examiner found Panhandle had coerced the distributor into the arrangements it had made. The Commission adopted the Examiner's findings regarding this matter except for the jurisdictional nature of the distributor's sales.

INITIAL DECISION

OF THE PRESIDING EXAMINER ON THE REMAINING ISSUES IN CERTIFICATE APPLICATIONS

(Issued January 22, 1963)

TABLE OF CONTENTS

	Page
Nature of the case	720
Procedural background	720
The Goodrich tire plant sale	722
Sale to General Portland Cement Company	727
Allocation of the American Louisiana system capacity	733
Municipal gas project for the city of Bushnell, Illinois	737
Service from Trunkline for Milford, Illinois	745
Panhandle's request for a certificate covering a 3-mile lateral at Defiance, Ohio	751
Direct sale to the National Distillers	752
Further findings and order	754

ELLIS, *Presiding Examiner:*

Nature of the case: This is a group of certificate proceedings under the Natural Gas Act which, being interrelated, were consolidated for hearing and which have hitherto been covered in part by initial decisions on particular issues. Under the principal dockets, there now has been authorized a major expansion of the Panhandle Eastern pipeline and of the line of its subsidiary, The Trunkline Gas Company. Orders for service to a number of communities along the Panhandle line have also gone into effect. All questions and applications remaining in these dockets are covered below. Mainly, they relate to certain direct industrial sales, service to new areas, and some pipeline allocation problems.

Procedural background: The Commission's order of December 1, 1960, consolidated with the above dockets the then highly controverted application of Panhandle Eastern (Docket No. G–11061) to abandon its substantial and long-continued sale at Detroit to the Michigan Consolidated Gas Company. This, in turn, brought into the case certain unsettled questions relating to the final allocation of the gas available to two major pipelines with which Michigan Consolidated is affiliated; that is, the American Louisiana Pipe Line Company and the Michigan Wisconsin Pipe Line Company. The question raised by the petition to abandon Panhandle's sale at Detroit, which has now been settled by agreement, had been a controversy in litigation for many years between Panhandle Eastern and the American Natural Gas System, of which Michigan Consolidated, American Louisiana, and Michigan Wisconsin are constituent parts.

When the present phase of the proceeding began by the order of December 1, 1960, the abandonment application was before the Federal Power Commission for a new and further hearing as a result of the remand by the Court of Appeals for the District of Columbia of the Commission's order of 1959 which had undertaken to authorize abandonment of the sale (20 FPC 851, *Michigan Consolidated Gas Company* v. *F.P.C.* (1960), 283 F. 2d 204). According to the Court's opinion, the abandonment matter was required to be reconsidered largely because of the Commission's failure, in the process of comparing the overall needs of Panhandle and Michigan Consolidated, to take into account the data relating

to the distributor companies affiliated with the Michigan Wisconsin line. This need, as it then existed, to examine, weigh and consider the market needs of the Panhandle line, as expressed through all of its customers, and the market needs of all of the customers of the various affiliates of Michigan Consolidated which comprise the American Natural system, resulted in a hearing which was perhaps the most extensive in the history of the Commission, continuing for about 200 days with a record of over 31,000 pages. The hearing was conducted with all possible dispatch with few and brief recesses and then only such as the parties concurred in. Nevertheless, the hearing was ending its first year before the process of cross examination gave promise of coming to a conclusion.

At that point, that is on January 8, 1962, Panhandle Eastern and Michigan Consolidated entered into a settlement of their controversy, and this settlement has now been approved by the Federal Power Commission. In general, the settlement provides for the continuation of the sale near Detroit of the same annual quantity as heretofore, but with the delivery made only during the seven off-peak months of the year instead of the prior delivery of 127,000 Mcf daily throughout the year.

The hearing continued for some weeks after the settlement was entered into because of the many changes in Panhandle's expansion program which became necessary. By agreement, some matters were severed while the hearing was still going on because their particular issues were separable and were ripe for the issue of a decision. After the final briefs were received early in June 1962, two other initial decisions were issued on the non-controversial portions of the Panhandle expansion program, permitting the decisions to become effective promptly, in order to facilitate construction of the new pipelines during the current 1962 season and to provide for distribution of the added supply to the many municipalities along the line in time for attachment of new heating customers before the beginning of the new heating season. There follows a list of the initial decisions heretofore rendered in the present phase of the proceeding:

(A) Initial decision of April 11, 1962, which, after exceptions filed, was affirmed by the Commission's order of May 17, 1962—Ordered new service to be undertaken by Panhandle, Trunkline and Michigan Wisconsin for the use of 13 communities along their respective lines. All had intervened, either directly or through the local utilities, or had filed under Section 7(a) of the Natural Gas Act for such orders. This concluded dockets numbered CP61–114, CP61–115, CP61–54, CP61–191, CP61–192, CP61–160, and CP61–68.

(B) Decision of May 21, 1962 on the application of two distributor companies for a connection from the Michigan Wisconsin line to bring new service to Montrose, Iowa, which, after exceptions, was reversed in part and adopted in part by the Commission's order of July 5, 1962, upon which rehearing was denied on September 4, 1962.

(C) Decision of July 11, 1962, approved (i) the expansion program of Panhandle in Docket No. CP60–60 (with certain exceptions noted below), (ii) Panhandle's sales authorization to Michigan Consolidated Gas Company during the off-peak months, as proposed in the settlement agreement (this in replacement of the previous year-around sale, upon the basis of which there was concluded the docket raising the abandonment question, G–11061, (iii) Panhandle's application with respect to Howell storage field and its utilization for peak day requirements of 65,000 Mcf (CP61–136), and (iv) the final certification of the expansion of the Trunkline Gas Company and the allocation of its supply, as contained in Docket No. CP60–22 (Phase 2). In order to expedite the remaining

construction program, the determinations contained in the July 11, 1962, decision included only the non-controverted features of Panhandle's program; accordingly, no exceptions were filed and the initial decision was adopted by the Commission and affirmed in its order of July 27, 1962.

(D) Initial decision of August 23, 1962, undertook to conclude the remaining issues upon which immediate action was necessary in order to permit current construction, including therefore, the certificate approval of Panhandle's program for distribution to its customers of the entire expanded capacity of its line, as set out in its Fourth Amended Application filed in February 1962, *et seq.* (CP60–60), but excluded the two direct industrial sales which are covered below. Also, the certificate authorized the operation of the Waverly storage field on a provisional basis. The Commission's order of September 25, 1962, affirmed the initial decision, except its coverage of Waverly storage field.

In the group of dockets listed in the caption of this paper there remain the following issues for determination, all of which are covered below:

(1) Panhandle's application in Docket No. CP61–36, which is related to the proposed sale to the B. F. Goodrich Company plant in Indiana.

(2) Panhandle's application in CP60–40, relating to a proposed sale to the General Portland Cement Company in Ohio.

(3) The remaining allocation questions with respect to the American Louisiana Pipe Line Company and the Michigan Wisconsin Pipe Line Company which are contained in Dockets Nos. G–2306, G–2327 and G–10396.

(4) The reservations or conditions sought by interveners for service to Bushnell, Illinois (from Panhandle).

(5) The reservations or conditions sought by interveners for service to Milford, Illinois (from Trunkline).

(6) Panhandle's request for a certificate covering a 3-mile lateral at Defiance, Ohio (CP60–60).

(7) The recommendation contained in the brief of the FPC staff, pages 64–69, with respect to the transportation of gas by Panhandle to the National Petro-Chemicals plant at Tuscola, Illinois.

(1) *The Goodrich Tire Plant Sale:* For direct service to a new industrial plant of the B. F. Goodrich Company located near Fort Wayne, Indiana, Panhandle has filed a separate application (CP61–36) for an authorization from the FPC to transport its gas for the purpose of making this sale. Since the gas would be consumed in the boilers of the Goodrich plant the sale would not be "for resale" and hence would not as such be subject to regulation under the Natural Gas Act. However, the transportation of the gas in interstate commerce for this purpose is subject to FPC regulation, and accordingly, a certificate of public convenience and necessity (that is, a permit) is the subject of Panhandle's application. A certificate has already issued on behalf of the State of Indiana, by its Public Service Commission (11T1732).

The plant is a new one; construction began in 1960, about the time the present proceeding was set for hearing, and during the course of the year the major construction was virtually completed, three large boiler units were installed, gas service on a temporary basis began through the nearest local distributor, and tires are being produced. It is said that the plant will occupy 800,000 square feet, cost something over $25,000,000 and will provide employment for as many as 1,000 persons. The vast significance and importance of the plant to the local as well as the national economy are obvious.

The quantity of natural gas originally proposed was 580,000 Mcf per year but the maximum quantity set forth in the contract with Goodrich speaks in terms

of up to 5,000 Mcf per day, subject to interruption when, in the judgment of Panhandle, its supply is needed to meet the requirements of its firm customers. It is now evident from the testimony and Panhandle's current exhibits that the anticipated annual quantity will roughly double the originally planned figure.[1]

The gas is to be used simply for boiler fuel, quite in contrast to the allegation contained in the sworn application of Panhandle which reads:

> The natural gas to be purchased from Panhandle will be used by Goodrich almost exclusively in processing operations, for which natural gas has been found to be the most suitable fuel on the basis of a careful study undertaken by Goodrich.

Since application was attested under oath by the vice president of Panhandle, who stated that the matters set forth are true to the best of his information, knowledge and belief, it can only be assumed that the actual program had not been revealed to Panhandle at the time of the application in August 1960. At the hearing during 1961 and 1962 the Goodrich company's witness produced by Panhandle made it abundantly clear, time and again, that the gas is solely for burning under boilers to produce steam, that either coal or oil would serve the purpose equally well, so far as any technological reason is concerned, and that Goodrich made its selection of interruptible gas, with oil standby, solely on the basis of its study and conclusion to the effect that this form of fuel would most economically serve the purposes (11T1738, 184T29,042, 184T29,100). It was developed that the steam produced in the boilers is essential in the processing of rubber for tire making, but there is no support for the claim that the gas itself is in any wise to be used for processing.

When the application for the certificate to cover this transportation was consolidated by the Commission's order of December 1, 1960, with Panhandle's expansion case (CP60–60), Panhandle's application to abandon its sale to Michigan Consolidated and the allocation of available supplies within the rival American Natural system, it apparently became evident that the Goodrich matter would not be passed upon in a short time, hence Panhandle in June 1961 requested a temporary authorization which was denied by the Commission on June 27. Thereupon arrangements were made for temporary service through the nearby distributor, the Northern Indiana Fuel and Light Company. Permanent service through that distributor's line was in contemplation anyway because the new plant is located adjacent to the Northern Indiana company's supply lateral, about 10 miles downstream from its origin at Panhandle's Edgerton compressor station. Panhandle has contracted with Northern Indiana to deliver the gas to Goodrich for Panhandle's account, title to remain in Panhandle while the gas is en route and Panhandle to pay Northern Indiana 2¢ per Mcf for its transportation and incidental services. This will come out of the revenue of the sale to Goodrich, which Panhandle has contracted to make at a flat rate of 40¢ per Mcf. The lateral line through which the gas will flow is the same pipe which feeds Northern Indiana's distribution systems in the towns some miles to the north and the west, although there is now evidence that its capacity may require to be supplemented (151T24,357). Thus, in the first 10 miles of Northern Indiana's supply lateral there will be contained and commingled up to 8,000 Mcf per day (the new contract demand between Northern Indiana and

[1] Exhibit 281 projects an annual sale of 1,050,000 Mcf by the third year of operation under the contract. The figure for the first year of operation is 750,000 Mcf, or nearly half again more than was proposed two years ago.

Panhandle, Exhibit 277) and up to 5,000 Mcf per day of Panhandle's gas being delivered to the Goodrich plant by Northern Indiana for Panhandle. If the two maxima were coincidental, the added construction adverted to at the hearing might be required since the supply lateral will carry only about 12,500 Mcf. But the Goodrich sale is interruptible and is expected to be cut off perhaps 25 days a year—which would be the days of Northern Indiana's maximum take. Also, it may be some time before the plant reaches the 5,000 maximum.

The temporary sale is being made from surplus gas already available to the distributor, and some small "over-runs" from Panhandle's supply, and the sale is under Northern Indiana's interruptible industrial rate (Exhibit 98–M), which is in several steps down to 50¢ per Mcf for larger quantities, with the result that Goodrich's present cost of gas from Northern Indiana is 51.2¢ per Mcf (184T29,082). This service has continued to date and is expected to be replaced from the direct sale by Panhandle as soon as it is authorized. The immediate and obvious question is why a direct sale from Panhandle is proposed at all since the facilities of the distributor are there and available and, in actual fact, will physically be used for the direct sale when it comes to be made. The answer is far from clear and satisfactory, but it is true that Northern Indiana's witness (its secretary and comptroller) flatly indicated a number of times that his company is not interested in assuming the burden of this large sale, perhaps would not take it under any circumstances, and much prefers a proposed arrangement under which it will carry the gas for Panhandle's account and collect 2¢ per Mcf for its service.[2] This abnegation by the distributor otherwise enfranchised for the area was extensively probed at the hearing, but, notwithstanding the patent incredibility of the reasons set forth in the footnote (*cf.* 152T24,585), the staff brief joins with those of the parties to the transaction in recommending that the direct sale by Panhandle to Goodrich be approved.

At the time of the hearing before the state commission Northern Indiana filed its answer consenting to the proposed service by Panhandle (11T1751) and the information was doubtless available to the state commission that the net result of the 40¢ sale would be to allow Goodrich a discount of 20% or so below the industrial rate charged by Northern Indiana to all others in the area (among the customers paying Northern Indiana's rate of something over 50¢ there is included another rubber company). However, the great difference in the quan-

[2] The first objection mentioned by the witness was that his company (or at least the managing officer—it seems not to have been taken up by its board of directors) felt unwilling to undertake the risk involved in such a large transaction as the sale of up to 5,000 Mcf a day to Goodrich. After it became apparent that their purchase from Panhandle would be on the interruptible rate schedule of the pipeline (Item I, p. 27) under which the distributor-purchaser would be free to cut off its take, and therefore its burden, at any time its resale would not be called for, thereafter the objection to this sale developed to the effect that the net revenues (amounting to about $200 a day) necessarily would have their reflection on their company's cost of service and would work a significant reduction in their retail rates throughout their area. It was not, of course, claimed that a rate reduction is objectionable, but it was attempted to be stated that the proposal to sell through the distributor would be highly objectionable because, after this benefit and betterment to their customers, there would be serious dislocations and public reactions should some misfortune transpire which might later on cause Goodrich to break off their purchase, the distributor thereafter not to receive the revenues in the amount stated, and their reduced rates therefore required to be restored to their present levels (151T24,392–24,595). These two reasons, or so-called reasons, were all that could be given by the witness as the basis for its declination of the sale through its books. However there was no objection to the use of the distributor's facilities, and it is noteworthy that the eventual plans calls for a physical delivery by exactly the same methods and facilities and program that would be in use if the sale were made through the local distributor (151T24,397).

tity projected would doubtless justify the difference between the 40-cent rate being charged to Goodrich and the 50-plus cent rate being paid by the other industries. Whatever the considerations, the state commission approved the program and enfranchised the sale. It is not the case of conflict between the distributor and the pipeline; in fact, when Goodrich's need came to Northern Indiana's attention, it was Northern Indiana which immediately decided in effect to refer the business to Panhandle. Most significantly, it is not an industrial sale in the midst of an urban area served by a distributor. Rather, the area is entirely rural and is not actually served at all as of now. Thus the rate benefit to Northern Indiana's customers which could be expected to follow such a sale if made by the distributor would not affect the area surrounding the factory, at least until that area has experienced a new growth and develops its own residential and commercial market for gas. Neither would it help the rates in the nearest city (Ft. Wayne), since that metropolitan center is served by another distributor. In these circumstances there does not seem applicable the principle recently applied in the case of Southern Natural Gas Company calling for the sale to be made by the distributor serving the area immediately surrounding the plant (25 FPC 925, 937).

A brief on behalf of the Fuels Research Council, National Coal Association, United Mine Workers and others, presents an unrelated but quite pointed objection to the certification of the sale under any circumstances. Their witness, an engineer with special experience in the field, presented a rather extensive cost study designed to demonstrate that, at the 40¢ rate for gas, the overall cost of the plant, fuel and operations over a presumed 20-year life, including fixed charges, would cost the Goodrich Company about $18,000 a year more than if the installation had been designed to burn coal under the boilers instead of the gas and oil type boilers which have now been installed. There was some disagreement about the assumed cost of the coal, their first computation showing a saving in favor of coal of $27,599 per year. The $18,000 figure resulted from using the same coal price which the Goodrich witness used in his demonstration as to why gas and oil were selected instead, and this margin or apparent saving amounts to about 5% of the annual cost of the entire steam-producing operation. The net difference resulted from a showing that the fuel itself would deliver to Goodrich for $61,000 less than the cost of the natural gas at 40¢ (and of the oil during the periods of interruption), from which figure there are subtracted $21,000 as the extra labor costs and $22,000 as the extra fixed charges for coal operation (Ex. 304; 198T31,371). The showing made is most convincing, indeed it was attacked on the ground of its applicability rather than validity, and for present purposes it may be concluded that a saving of $18,000 annually would have resulted had coal been selected as the fuel—presuming, of course, that no significant change in the figures would develop over the coming 20 years.

However, the showing is attacked on other grounds. In the first place, Panhandle points out that the major gas and oil installation has been completed (all after the application was filed here), therefore, if a comparison must be made it is claimed that the comparison would have to included the loss from the dismantlement of the present boiler plant or at least the considerable cost of conversion from gas to coal. But the answer to this is obvious: It was not for Goodrich or Panhandle to anticipate the Commission's approval and issue of a certificate which they knew had to be obtained, nor to prejudice the Commission's determination, on whether this transportation is in the public interest, by so arranging their program that a denial of a certificate would be costly.

Cf. 60 C.J.S. 286. The net question, therefore, is this—whether, notwithstanding the evidence that Goodrich could make or could have made a certain saving by the use of coal, is the use of the Panhandle gas line for the purpose of this transportation in the public interest and required by the public convenience and necessity, the test set out in section 7(e) of the Natural Gas Act.

The answer, so far as the evident saving is concerned, is rather clear. The B. F. Goodrich Company which is to buy the gas and pay for it has presented adequate testimony that it fully considered all forms of power and energy and has concluded, after a thorough study, that the gas-oil arrangement would be preferable because it is the most economical one, considering all factors (184T29,047). The case presented by the coal association should, it would seem, have been addressed to the Goodrich company. (Indeed, the coal association witness testified that he has made many cost studies of this type for diverse industries including the B. F. Goodrich Company.) If the difference in cost developed were a very considerable amount or were even much greater than the 5% here shown, it is possible that further examination would be called for upon this ground, but it is the conclusion that evidence *tending* to establish a saving of 5% in the cost of the steam is hardly of such magnitude as to warrant the reversal by the Federal Power Commission of the policy determination made by the management of Goodrich in the operation of their $25,000,000 plant.

Indeed, minor variances either way showing a saving to the industrial user by gas or by coal would hardly seem to be determinative of the public interest question which, according to the language of the statute, underlies the decision. The public interest is obviously much broader than that of Goodrich or Panhandle or Northern Indiana or of the Coal Association. As shown by a number of cases, the public interest is greatly involved in the use of gas in large quantities for this obviously inferior use. See for example, *F.P.C.* v. *Transcontinental Gas Pipe Line Corporation*, 365 U.S. 1 (1961); *El Paso Natural Gas Company*, 22 FPC 900 (1959); *South Georgia Natural Gas Company*, 22 FPC 211, 215. All appear to have been sales of large quantities to electric plants' steam boilers without evidence of compensating benefits. However, it appears it is the consensus of decisions on boiler fuel use of gas that, notwithstanding the claim of this patent spoliation of a scarce, unique, wasting and irreplaceable natural resource, a sale in a reasonable amount for industrial use is accepted as justified where the denial would mean an unfair and undue deprivation to the particular industry *or* where there are net revenues spread among such wide classes and groups of customers (rather than solely to the owners of the pipeline) that the sale has a substantial element of benefit to a wide segment of the public. 22 FPC 900; 25 *id.* 987, 998; 26 *id.* 319, 325. In the case of such sales by distributor companies (not by the pipeline as here proposed), this benefit accrues through the betterment of the load factor and the reduction in their overall net cost to be recouped from the consuming public. In fact, it was even testified that home heating sales would not be possible without it (131T21,368). Thus, in the case of the American Natural system, their distributors' industrial sales are something over one-fourth of their total volume (10T1639).

The question resulting is whether like benefit is to be found where the local distributor declines the sale and the pipeline itself proposes to make it. In the first place, it is true there will be substantial benefit to the distributor here, and perhaps eventually to its customers, because Northern Indiana will be charging 2¢ per Mcf for its carriage of the gas for about 10 miles and for certain very minor services. There was no suggestion that this work will add $100 a day to Northern Indiana's cost of service.

In the second place, even though the sale is "non-jurisdictional" and its rate is not regulated by F.P.C., it is evident that it will to some extent benefit all of the pipeline's distributors (and, presumably, *their* customers). Panhandle's current Exhibit 280, summarizing its annual sales under its expanded program, shows direct industrial sales of about 7½% of its total volume. The sales are interruptible, will dispose of "valley gas", and will not require the capacity of the line on the peak days of its need for the firm domestic and commercial customers. Most important, in some part its revenues will absorb a part of the fixed costs otherwise collectible from the domestic rate payers. Panhandle records the average cost of its direct sales as 28.76¢ per Mcf (189T30,080)[3] and allocates that amount to its cost of service. To the extent that this portion of the revenue from the 40¢ sale to Goodrich exceeds the bare incremental cost of providing the gas, it tends to reduce somewhat the cost of service to be collected from its jurisdictional customers (189T30,179). To ascertain that specific benefit, we turn to Panhandle's "Allocation of Cost of Service" for its first year under the expanded program authorized in Docket CP60-60 (Ex. 275), where there is shown the derivation of the 28.76¢ figure for the cost of each Mcf of non-jurisdictional or direct sales. That cost figure comes from allocating to direct sales nearly $14 million out of the total interstate cost of service of $181 million, or 7.6%. $14-million divided by the volume sold, in Mcf, equals 28.76¢. Most of that of course goes to pay for gas produced and sold, but a substantial amount, $2.72 million, goes to pay for the *fixed* costs of gathering, transmission and storage, including a charge for off-peak use of capacity. The total so charged ($2.72 million) amounts to about 3⅓% of the total fixed costs of gathering, transmission, and storage to be incurred in the first year of operation under Panhandle's expanded program, and the total fixed costs are nearly half of Panhandle's total cost of service. Thus the direct industrial sales contribute to that extent to the costs otherwise to be reimbursed through the rates charged to the distributors and eventually to the consuming public. Specifically, the jurisdictional cost of service of $167,322,706, upon which Panhandle bases its rates to its distributors, would be increased by $2,720,968, if the direct industrial sales were not available to share in paying the fixed costs (189T30,180). Upon that showing, it is evident that the benefit of the direct industrial use of the gas is not limited to the narrow ambit of the particular parties to the sale but, to some very slight extent at least, is spread among the public from one end of Panhandle's system to the other.[4] I conclude, accordingly, that the sale meets the tests of the decisions last cited, is to be regarded as in the public interest, and should be certificated accordingly as meeting the test of public convenience and necessity.

(2) *Sale to General Portland Cement Company:* For use in the manufacture of cement at their plant located in a rural area in northwestern Ohio, about half

---

[3] It is evident that the margin between that cost and the 40¢ sale price to Goodrich, or 11¼¢, will go, in part, to Northern Indiana for its services (2¢) and the rest (9¼¢) will be for the benefit of Panhandle and, of course, the income tax gatherer. (Figures herein are rounded off for clarity.)

[4] It is possible a claim could be made that too low a percentage of the fixed costs is collected from the direct sales, that it should be fairly related to the proportion of the volume so sold with an increase in the benefit to all distributor customers accordingly (*cf.* 127T20,762 for a comparable, or at least referable, policy of one of the distributors related to its own sales). But such a question belongs in a rate case, where all similar sales could be treated alike. It is enough, for the purpose of passing upon the initiation of a single sale, that the expected benefit be shown to be at least significant, if not substantial, in proportion.

way between Toledo and Fort Wayne, the General Portland Cement Company has undertaken to purchase a substantial quantity of gas on an interruptible basis to be served from the Panhandle line, which passes under a corner of their property. There is no retail distributor in the vicinity—the town of Paulding is five or six miles away—hence the plan calls for a direct sale by Panhandle. As in the case above, the sale is not directly subject to Federal Power Commission jurisdiction. But Panhandle's transportation of the gas in interstate commerce for the purpose of making the proposed sale is subject to Section 7 of the Natural Gas Act, and the use of Panhandle's facilities for the purpose of this transportation requires first a finding and order by the Federal Power Commission to the effect that such use is required by the public convenience and necessity. 23 FPC 795. Panhandle's application for a certificate to that effect (Docket CP60–40) was filed in 1960 and consolidated with the numerous other subjects of this proceeding by the Commission's order of December 1, 1960. No local certificate of authority was presented because, so the forum was advised, the Ohio Commission does not exercise jurisdiction in such cases as this.

Not only is the sale fully interruptible on either side (that is, Panhandle may interrupt whenever its available supply is needed for its firm customers or perhaps for any or no reason at all, and the cement plant may take the gas at any time, or not take it, as it chooses), but the "contract" calls for service only during the off-peak months; that is, from March 15 to November 15 of each year (Exhibit 128). The price is 32¢ per Mcf, subject to renegotiation annually during the five years of the contract. The maximum quantity is 10,000 Mcf per day, which would mean, therefore, a possible maximum of 2,450,000 Mcf during the year, but Panhandle's Exhibit 281, its projected annual sales by classes of service, shows the estimated sales for the cement plant at 2,232,000 Mcf per year. The revenues, at the flat rate of 32¢ would be somewhat under three-fourths of a million dollars a year.

In order to assay the various objections which the application has given rise to, it is necessary to note carefully the nature of the proposed use. Significantly, it is not a sale for boiler fuel use at all. At the hearing, the process of cement making was explained in detail and unchallenged; there was described the direct application of the burning fuel to the mixture of raw materials while they are moving gradually toward the lower end of the kiln, the result being to heat the materials to 2,700° and fuse them into Portland cement, with, in the case of coal, a part of the ash becoming an important constitutent of the final product. When gas is substituted for coal at some plants, this extra constituent is supplied through a special additive to the raw materials; at others, including the plant in this case, the change from coal can be adjusted to within 24 hours by a slight alteration in the proportions of the raw materials which enter the tube or kiln (185T29,245–63). The result is that, while the coal is thus directly used in the processing operation, it is not regarded as technically essential, in fact, it was testified that, in the cement plants in this country, the fuel supply (comprising about 20% of the total cost of the final product) may come from either coal, oil or gas as local conditions warrant. The motivation for Portland Cement's contract is therefore economic, not technological. Portland Cement's witness makes it plain that its purpose is to locate the cheapest fuel available. Both coal and gas equipment will be maintained so that either can be turned on as current prices indicate (185T29,265). Since the coal is bought within the state under relatively short-term arrangements and comes to the plant by truck delivery rather than by rail, the advantage to Portland Cement in having in

force the gas contract at 32¢, whether used or not, and its effect to stabilize the price of coal are rather obvious. Coal used in 1961 amounted to 75,000 tons (185T29,255).

The objections to the proposed sale come from two quarters—the mining and coal interests, which face the possible loss of most or nearly all of their sale at the plant, maintain stoutly and quite credibly that the cement company is mistaken in envisaging a saving of $18,000 a year by the use of gas during the eight months of the contract season. Coal claims instead that gas throughout the year would cost $47,000 more than coal.[5] The Federal Power Commission staff brief recommends against the issue of a certificate for the transportation of gas for the Portland Cement sale on a number of diverse grounds, which are discussed below. So far as cost is concerned, the staff concludes that coal is substantially equal to gas in cost and that the sole reason apparent for the change to natural gas is one of price (Brief, p. 58).

After extensive probing at the hearing, it became apparent that only one of two points of difference remained about the relative costs, once there had been arrived at a common denominator for the measurement and agreed premises as to the cost of the supply and the quantities to be compared. Converting the various elements to the final heat units produced, that is, a million British thermal units (Mmbtu) it is evident that (a) the gas cost alone, including the overhead for the gas service and gas-supply equipment, comes to 33.6¢ per Mmbtu, (b) that the bare cost of the coal at 1961 prices is 29.3¢, (c) that the wages and all overhead for coal handling and equipment based on the 1960 figures applied to 1961 quantities, came to about five and six-tenths cents (depending upon a number of variables), making the coal arrangement on its face appear at first to be more expensive.

However, Coal points out quite convincingly that the fixed overhead cost of the coal equipment (or about two-thirds of the wage-and-overhead charge referred to) must be allocated as much or even more to the gas program as to the coal, since the gas service from March to November *at* the low rate of 32¢ is available and utilizable because, and only because, the plant will keep its coal equipment ready for use and will, in fact, avoid plant shut-downs by actually using the coal whenever there is an interruption of the gas service on the interruptible gas service contract. The plant operates continuously seven days a week, 24 hours a day throughout the season and the season lasts throughout the year, winter as well as summer, if the business justifies it. It would be infeasible to shut down for a matter of hours or days during a period of possible gas interruption, hence the equipment to use coal in the case of such interruption is an essential part of the proposed gas program. The coal burners to use during the periods of gas interruption are quite as necessary to the gas program as are the gas burners used during the periods of actual gas service. To claim the benefit of the extraordinary low price of gas which the interruptible contract furnishes, without recording the cost of the standby fuel equipment essential to its availability, is rather like eating one's cake and having it too. In that view, the cost of the gas service must include not only the cost of the gas fuel and the gas equipment but also a share ($^{8}/_{12}$) of the fixed annual charges for maintenance and so forth on the coal burning equipment. With that addition it is evident that at the 1961 price and quantity of coal disclosed at the hearing,

[5] These figures are to be related to a total plant budget upwards of $3 million (185T29,294).

there is a small saving to the cement company by the use of coal.[6] There can be no simple finding of the amount of such saving because the fixed elements of the cost will, of course, reduce on a unit basis as the quantities used increase. The coal interest's claim is that this figure on an annual basis is $47,148.68 (or 2.505¢ per Mmbtu), equalling perhaps a 7% savings. However, as Panhandle pointed out, this was computed upon a 12-month operation by either fuel arrangement. Of course, the only plan is for the gas service during the eight off-peak months of the year and for coal to continue to be used during the four winter months, if the plant stays in operation, which on its face would reduce the claimed saving by one-third.

But the figures contain inevitable uncertainties and in any event assume the premise that the rates used will remain as they were set at the end of the year, including the price of coal and gas, wages and other costs. If the question be solely which fuel is cheaper, manifestly it is the cement company's management which has the responsibility to make the determination for the operation of its own plant and the responsibility should carry with it the prerogative to do so. Panhandle points out quite cogently that if coal is indeed cheaper, no gas will be bought; hence, again, it would seem that Coal's presentation should be addressed to General Portland Cement Company.

For the purpose of determining under Section 7 of the Natural Gas Act whether the proposal to transport this gas for this purpose is in the public interest, the cost comparison is useful only to show that the gas arrangement sought for cannot promise any real or evident or significant savings at present prices and that, accordingly, if some public interest considerations along other lines indicate a denial of the application, such denial would not amount to an undue or unfair detriment to the cement company. Beyond that, cost comparisons would seem to be irrelevant, since the cement company showing that, as they first viewed it at least, the gas purchase would be cheaper, would not, even if true, establish that the sale necessarily has the elements of *public* convenience and necessity which the law requires.[7] As in the case above, the public interest is very much broader than that of the Cement Company or of Panhandle. The obvious effect of the gas contract to promote a stabilization of the price of the coal and to provide at least a standby fuel in times of national or other emergency will help to insure the continuance of the company's operation and may, indeed, be of consequence in keeping the plant open and running rather than shut down during such periods, which is certainly and obviously in the public interest (185T29,268). In that view, the proposed contract has its purpose in the service of the public interest even if the cement company, after a recheck of current costs, should determine that, so long as present coal prices hold, coal operation is more economical and should continue.[8]

---

[6] Thus, taking the intervener's basic figures, the existing coal cost is 34.9¢/Mmbtu (29.3 plus 5.6 for labor and overhead). The gas sells for 32.6¢ per Mmbtu plus 1¢ for gas equipment overhead. Two-thirds of the 5.6¢ coal overhead are fixed items (Ex. 304, sched. 2) chargeable to gas for an expected two-thirds of the year, which comes to 2.5¢. Thus the comparable gas cost is 36.1¢/Mmbtu, or a difference favoring coal at 1.2¢. (Ex. 304, 10T1673, 197T31,011–31,109.)

[7] Conversely, it has not been supposed that a gas sale otherwise in the public interest must lose its badge of "public convenience and necessity" solely from a showing that a competing fuel offers itself with some demonstration of a saving. No decision is cited to that effect. Note, e.g., that only a few days ago the staff recommended approval (under the "shortened procedure") of a cement plant sale in Illinois to be made by Panhandle's subsidiary (Trunkline), where the price of the gas is to be 45¢ (CP63–40).

[8] See Stocking and Watkins, *Monopoly and Free Enterprise*, Twentieth Century Fund, 1951, p. 11.

Turning now to the other objections expressed, the staff brief suggests first that Panhandle's line in this area is fully occupied during the summer months, second, that if the gas is available it might better be added to Panhandle's storage reserves, third, that the use for this purpose for which coal is equally suitable amounts to a wastage of an irreplaceable natural resource, and that, accordingly, the certificate should be denied. The first objection stated is on the ground that in the design of Panhandle's system the facilities at the eastern, or destination end (that is, from Illinois to the Canadian border at Detroit), are rather fully used during the summer season during which period the line east of the Tuscola junction is fully loaded (198T30,598) particularly in view of the large summer sale to Michigan Consolidated ner Detroit. It is thought to be obvious that some capacity must be constructed to make the delivery to the cement plant and that the cost of these facilities might at some indeterminate time in the future bring about a request for a "tilt" in Panhandle's rates. shifting some cost to the demand charge component of its regular tariffs which would adversely affect the distributor customers along the line. The argument, if understood, answers itself. The only sale proposed is an interruptible one, to be made if, as and when Panhandle has the gas to sell during the months of March to November. The sale itself is not subject to the Federal Power Commission jurisdiction and all that is requested is authority to use its pipes to carry gas for this purpose, if, as and when there is gas available. If the objection is that there is no gas available because of the summer load at the eastern end of the line then there will be no gas sold and the objection becomes irrelevant (185T29,281). If the objection is to the construction of facilities for this purpose (none of which is pointed to, cited, or perceived) the answer is the expansion program has been authorized by the initial decision of July 11 in this case, approved by the Federal Power Commission on July 27, 1962, and now final. If, finally, the objection is to the possibility that at some future date a new rate filing by Panhandle would contain a shift to the distributor companies of the cost of building of this unnamed, undisclosed, unidentified, and undetermined facility for the cement plant sale, the answer, of course, is that any such eventually will be to be dealt with when it arises.

Next is the staff suggestion that if Panhandle is denied the permit to use its line for the purpose of this sale, the capacity would otherwise be available for the injection of additional quantities of gas in Panhandle's storage fields. This is in the face of the showing on Exhibit 297, Panhandle's summer flow diagram, that 35,000 Mcf per day is provided for to inject into the Howell (Michigan) Storage Field near the eastern end of the line and a like amount for the proposed Waverly Storage Field, in Illinois. Aside from the fact that injection at those rates would be ample to maintain the storage program, there now appears to be available all or nearly all of the 35,000 Mcf per day proposed for the Waverly Storage Field since, after the staff's brief was filed, the Commission's decision of September 25, 1962, has, as recommended by the staff, denied Panhandle's application to utilize Waverly Field.

Staff's remaining objection is that the Commission must weigh and here give effect to the consideration that the "conservation of gas, a wasting resource is paramount . . .", citing *F.P.C.* v. *Transcontinental Gas Pipe Line Corporation*, 365 U.S. 1. The argument is certainly a good one, at least in the abstract. Since, by definition, this use of gas in a substantial quantity for a purpose for which a far more abundant fuel is equally available, useful and economical, must be classified as an inferior use, then, in any program of conservation of natural resources for uses that are not inferior, the sale proposed for the cement

plant would seem to be among those which would qualify to be dropped. But that is a long way from proving that this one sale to this one plant (out of many competitors in the industry) by this one pipeline (out of many in the industry) should be singled out for proscription upon a general policy of conservation which manifestly should be applied equally, fairly and without discrimination.

Staff's concern for conservation of gas does not seem to have emerged at the time its recommendation for the Goodrich rubber plant sale (the case just discussed above) was in formulation. That one is patently inferior, a naked use for boiler fuel, and the benefit to Panhandle's rate payers is not one whit greater from the Goodrich sale than from this one, since in both cases the revenue credited to cost of service is 28.76¢ per Mcf (Exhibit 275). It would be most extraordinary to discriminate against the Portland Cement Company's efforts to purchase gas in favor of the less justifiable Goodrich Company purchase. It would be most extraordinary to apply the principals of conservation to Portland's attempted purchase while ignoring it for all the other industrial sales made and to be made by Panhandle as listed on Exhibit 280, pages 4, 5 and 6.

But even more pointedly, the cement business is, or is supposed to be, highly competitive.[9] In other cases, one of them very recent, and while this case has been going on, the Commission has considered and authorized the transportation of gas for sale to cement plants.[10] Moreover, when the present Section 7(c) of the Natural Gas Act was recommended to the Congress for enactment, the use of gas in cement kilns was commented upon favorably by the Commission in its presentation to the Congress.[11] Conservation is a perfectly valid inquiry,[12] and doubtless needs much more exploration than it has had, but no ground is perceived for singling out a single plant out of the entire cement industry for application of its philosophy.[13] Staff's presentation could well be made in proposing a rule-making type proceeding looking to the equal and just limitation of gas for the entire industry, or for boiler fuel use if that were the subject matter in question, or in proposing a legislative solution, if found required.[14] Applied here to a single industry in competition with many, and against a single pipeline out of many, the plea of the need for conservation (*if* any such need there be) is misplaced and does not by itself operate to remove the label of public convenience and necessity otherwise demonstrated. See Koplin, "Natural Gas Allocation Policy", 64 Y.L.J. 840 (1955); Pegrum, "The Natural Gas Industry: An Economic Appraisal of Public Policy", 29 J. of Land and P.U. Econ. 168 (1953).

As in the case of the Goodrich sale, the revenues from the Portland Cement sale up to 28.76¢ per Mcf are expected (in fact, on this record, required) to be used to pay all the incremental costs of the sale plus a small but evident part of the fixed costs of the operation of the Panhandle line which would otherwise be to be collected from the jurisdictional rate payers. In view of the benefit

---

[9] *Federal Trade Commission* v. *Cement Institute*, 333 U.S. 683.

[10] *Southern Natural Gas Company*, G–14740, August 3, 1962, citing 18 FPC 57, 25 FPC 288, 24 FPC 836.

[11] See the quotation in *F.P.C.* v. *Transcontinental Gas Corp.* (1961), 365 U.S. 1, 11.

[12] *F.P.C.* v. *Hope Natural Gas Co.*, 320 U.S. 591, 612 (1944).

[13] ". . . nor do we authorize . . . the denial of a certificate to any arbitrarily chosen group of purchasers." *F.P.C.* v. *Transco*, 365 U.S. 1, 30–31.

[14] "Careful study of the entire problem [of conservation] lead to the conclusion that use of natural gas should be restricted by functions rather than by areas." FPC Annual Report, 1940, p. 79.

to them (as discussed under the heading of the Goodrich sale)[15] and of the benefit to the Portland Cement Company (as discussed herein)—not to mention the obvious benefit to Panhandle—the proposed use of gas for sale to the cement company has the essential elements of public convenience and necessity and the transportation for that purpose must be authorized accordingly.

(3) *Allocation of the American Louisiana System Capacity:* The Commission's order of December 1, 1960, which established this proceeding, consolidated with it certain remaining issues of allocation of the supply of two subsidiaries of the American Natural system (that is, the American Louisiana Pipe Line Company and the Michigan Wisconsin Pipe Line Company) which had been outstanding for some time under Dockets G–2306, G–2327 and G–10396. The point is that, when the Commission in 1958 ordered the abandonment of Panhandle Eastern's sale to another American Natural subsidiary (Michigan Consolidated, the local distributor in the Detroit area), the loss of that supply to Michigan Consolidated was made up in large part by the allocation to Michigan Consolidated of three quantities of natural gas amounting to 127,000 Mcf per day of the American Louisiana capacity which had been previously reserved in G–2306 or made available from an American Louisiana expansion program in G–10396 and not yet finally allocated. 20 FPC 851. This was the order (permitting the abandonment of service at Detroit) which was set aside on review by the Court of Appeals for the District of Columbia circuit;[16] hence there now remains for final order of the Commission the proper allocation of those three quantities comprising a share of the daily capacity of the American Louisiana Pipe Line system.

FPC's order of December 1, 1960, severed those allocation issues from any and all other matters appearing in the three dockets and directed they be heard in connection with the abandonment case and Panhandle's expansion program.

The details, so far as now material, are as follows: In a series of decisions ending at 17 FPC 657 (and see 19 FPC 1113, 20 FPC 575, 604, 613), American Louisiana's then capacity of 300,000 Mcf per day was allocated one-third to Michigan Wisconsin Pipe Line Company and two-thirds to Michigan Consolidated Gas Company, but a part of that allocation was purely on a temporary basis, with 51,600 Mcf reserved and assigned *pro tempore* to Michigan Consolidated and 8,285 Mcf to Michigan Wisconsin. Later on, there developed a program for expansion of the American Louisiana system, which was authorized by an order of the Commission in 1958 (20 FPC 475). The increase was assigned on the basis of 31,000 Mcf to Michigan Wisconsin and 26,000 Mcf to Michigan Consolidated "until further order of the Commission", but none of the "expansion gas" was to be used for firm loads. These two actions made a total of 59,885 Mcf per day of "reserve gas" and 57,000 Mcf per day of "expansion gas" available for final assignment. When the Panhandle abandonment decision issued on December 19, 1958, 20 FPC 851, 856, these two amounts of 59,885 and 57,000 were allocated to Michigan Consolidated in order (along with an amount of 10,115 otherwise available) to replace the Panhandle delivery of 127,000 Mcf per day whose abandonment was to be permitted. Shortly thereafter, the corresponding capacity of the Panhandle line was allocated by Commission order to a number of communities along the Panhandle line. Both orders, that is the order for the abandonment of the Panhandle service at Detroit and the order distributing the abandonment gas to other Panhandle customers,

[15] *Cf.* Opinion No. 367 of October 25, 1962, 28 FPC 731 at p. 734.
[16] See page 720, above.

were promptly taken to court and eventually set aside by the Court's orders of April 29 and July 11, 1960.

In the meantime, however, the distribution of the Panhandle capacity of 127,000 Mcf per day to its other customers had, with the Court's sanction, been permitted to go into effect on a more or less provisional basis.[17] The Panhandle distributor witnesses explained at the present hearing how their several allotments were promptly taken advantage of mostly by the attachment of additional domestic heating customers. With a few exceptions, there was not noted much evidence of provision made by them for meeting the nascent emergency should it transpire that the abandonment order be upset and the allocation of the abandonment gas canceled. Instead, the distributor companies, supported by their several state commissions, discharged their felt duty in this regard by protesting repeatedly at the hearing to the effect that the loss to them of the allocation of the abandonment gas would be serious, indeed, catastrophic.

These apprehensions were allayed when, in January of 1962, Panhandle and Michigan Consolidated filed their settlement agreement (Item BZ by reference) which converted Panhandle's obligation to deliver 127,000 Mcf per day throughout the year to Michigan Consolidated at Detroit into a summer-only delivery program, that is, a program to deliver the same annual quantity, but all of it during the seven off-peak months from April 1 to October 31 of each year. This change, together with the increase of about one-third in Panhandle's total peak-day capacity which has now been authorized by the orders in this proceeding in Docket CP60–60, has permitted the retention by the Panhandle line's distributor companies of the abandonment gas which they received beginning in 1959, and the addition of substantial quantities from Panhandle's expansion, with the result that all of the Panhandle distributor companies have agreed to accept and settle for the new totals so made available. Letters from the several companies (indicating in some cases a certain amount of compromise which has been helpful in effecting final settlement) are in evidence as Exhibit 276. Hence, no question remains as to allocation of the abandonment gas on the Panhandle system, but there does remain the question of the proper final allocation of the American Louisiana capacity which was consigned to Michigan Consolidated at Detroit in substitution of the abandonment gas.

The amount mainly in question is the total of the 57,000 Mcf per day of American Louisiana "expansion gas" and 59,885 Mcf per day of American Louisiana "reserve gas." The greater part of these two amounts has been the subject of delivery to Michigan Consolidated for some time, first by the orders mentioned above which allocated the gas temporarily to Michigan Consolidated and later on by force of the Commission's decision in the abandonment case. Since the Court *pendente lite* permitted the abandonment order to go into effect in 1959,[18] and since the winter delivery which was permitted to be stopped has not been and is not to be resumed, there has continued to date the delivery of the entire two substitute quantities to Michigan Consolidated by force of the Commission's allocation contained in the order of 1958, 20 FPC 851, notwithstanding this order was set aside by the Court of Appeals in its decree of April 29, 1960.

The court pointed out on page 31 (p. 221 of 283 F. 2d) that the quantity of 59,885 Mcf per day of "reserve gas" in G–2306 originally had been reserved for distribution to new Wisconsin markets of the Michigan Wisconsin Pipe Line

[17] *Michigan Consolidated Gas Co.* v. *F.P.C.* (1960), 282 F. 2d 854.
[18] See footnote 3 at page 209 of 283 F. 2d.

Company. Similarly, 31,000 Mcf (out of the 57,000) of "expansion gas" was originally assigned to Michigan Wisconsin "until further order of the Commission." Accordingly, the Court's opinion directed that in these proceedings the Commission further consider the extent of the needs of the communities requesting gas service from Michigan Wisconsin. In that posture, the obvious question would be whether to return to Michigan Wisconsin at least that share of American Louisiana's capacity in which Michigan Wisconsin previously had an interest but which, in 1958, was ordered withdrawn from Michigan Wisconsin and transferred to Michigan Consolidated in replacement of the abandonment gas.

During the first year of the hearing, the needs of the distributors off the Michigan Wisconsin line were thoroughly explored, in order to assay their needs along with those of the Michigan customers and of the distributors along the Panhandle Eastern Pipe Line. At that time it was the proposal of American Louisiana to reallocate the reserve gas in the same manner the volumes had formerly been allocated by the Commission on a temporary basis prior to the abandonment order (that is, to return 39,285 Mcf to Michigan Wisconsin). See 13T2043–76 and Exhibit 136.

But a great deal has occurred in the four years since the abandonment order, and as one of the effects, this return of American Louisiana gas to Michigan Wisconsin is no longer the proposal of the American Natural System (of which both companies, along with Michigan Consolidated Gas Company, are constituent parts). The joint brief on behalf of all three companies recommends that "the allocations of the American Louisiana gas which are now in effect pursuant to the Commission's prior orders in those dockets [G–2306, G–2327 and G–10396] should be made permanent." (Page 3) The point is that, in the meantime, the capacity of Michigan Wisconsin has been considerably enlarged through several other proceedings and the 39,285 Mcf per day (8,285 plus 31,000) are no longer needed by Michigan Wisconsin to meet the demands of their many distributor customer companies. These increases in the Michigan Wisconsin capacity have taken place in the *Midwestern* case, 22 FPC 775, in the *Laverne* case, 24 FPC 177, in the *Northern Natural* case, 25 FPC 1234, and in a very recent expansion program considered and authorized by the Commission under Docket CP62–212, orders issued July 25 and November 1, 1962. Michigan Wisconsin's brief in the present case at page 18 certifies that as a result of these proceedings (including the 1962 application) all of Michigan Wisconsin's "customers will receive the volumes they have nominated."[19] This is said to be true also as to the new communities which sought service from Michigan

[19] A terse example of the working out of this proceeding and of the recent Michigan Wisconsin expansion case (CP62–212) is the supply now provided for the Michigan Gas Utilities Company, which has two divisions, one purchasing gas from Panhandle for service to various communities in southeastern Michigan and the other division purchasing gas from Michigan Wisconsin for service in southwestern Michigan. With respect to its Panhandle supply, the brief of Michigan Gas Utilities requests that its contract demand (formerly 23,700) be increased to 30,000 Mcf per day. The Commission's order of September 25, 1962, approved the sale by Panhandle of the several amounts proposed in their Fourth Amended Application at page 4, which specifies 30,000 for the Michigan Gas Utilities Company. With respect to its Michigan Wisconsin supply, the Michigan Gas Utilities brief points out that its request in this proceeding was to increase its maximum daily quantity from 42,714 Mcf to 47,300 Mcf, but that, as a result of Michigan Wisconsin's most recent expansion program (CP62–212), Michigan Gas Utilities has entered into a service agreement with Michigan Wisconsin whereby its maximum daily quantity would be increased to 49,202 Mcf per day. The net result is to give Michigan Gas Utilities exactly what is now requested in the case of its Panhandle supply and somewhat more than was originally testified to in the case of its Michigan Wisconsin supply.

Wisconsin and which were of concern to the Court of Appeals, as noted at footnote 51 to the opinion of April 29, 1960, in *Michigan Consolidated Gas Company* v. *Federal Power Commission*, 283 F. 2d 204, 222.

This conclusion—that the Wisconsin and Iowa distributor companies of the Michigan Wisconsin line have been otherwise fully supplied—was verified through the following procedure. At the hearing on March 23, 1962 (191T30,-279), counsel for the American Natural System stated very fully the background as set forth above and the new position of the two pipelines (as now contained in their brief), stating specifically that, with its increased capacity, Michigan Wisconsin will be able to meet the increased nominations of all of its customers and still have some 7,600 Mcf per day available for possible sale to new markets. Further, that, upon the basis of its new application, Michigan Wisconsin assumes "that the presently effective allocation of American Louisiana's gas would not be changed." (191T30,283) Their position was then stated that the Commission should now make permanent the allocation of the reserved American Louisiana gas which is now in effect—which is taken to mean specifically to recommend that there now be confirmed on an indefinite basis the allocation to Michigan Consolidated of the entire 57,000 Mcf per day and the entire 59,885 Mcf per day as outlined above (together with the remaining small balance, to make a total of 127,000 as discussed at pp. 856 and 858 of 20 FPC, as to which there has been no question raised). Through the cooperation of counsel, the transcript of their statement of March 23, 1962, was sent to their distributor companies appearing in the case, and no protest or objection or counter-suggestion has been received from any of them, or indeed from any other source.[20] In the service list of the March 23 transcript there appears also the Wisconsin Public Service Commission and the Michigan Public Service Commission, and the latter has responded both by letter and in its brief in support of the proposed allocation.

The need of Michigan Consolidated for the entire amount has been amply demonstrated in the crucible of actual experience through the two winters which followed the actual taking effect of the Panhandle abandonment order, and is further demonstrated by Exhibit 200, Exhibit 201, and through the testimony of its management. See principally the transcripts for September 8 and 14, 1961.

In fact, it is now evident that, if the 39,285 Mcf portion of the American Louisiana capacity were now restored to Michigan Wisconsin, the net result would be to expect or require Michigan Wisconsin to resell it right back to Michigan Consolidated, either through the latter's preemptive rights as a customer of Michigan Wisconsin or through its sale to Michigan Consolidated under the category of surplus gas on the Michigan Wisconsin system. The staff brief joins all the others which comment on this question, and recommends the confirmation to Michigan Consolidated of the 116,885 Mcf per day of American Louisiana capacity. Accordingly, and with no contrary suggestion appearing and that solution being definitely and obviously in the public interest, it is so ordered hereinafter, together with a re-confirmation of the remaining

---

[20] Despite what is said in Opinion No. 371 of December 11, 1962, 28 FPC 979 at p. 982, I do not understand that this failure of those affected to respond in any way is required to be ignored and given no weight or significance since, in this case, each and every one of the distributor companies is an active participant in the case, either as a formal intervener, or as an active witness presenting its needs through testimony and exhibits (with or without the aid of its own separate counsel), or as an affiant furnishing documentary testimony.

balance cited above so as, in effect, to reinstate the order of December 19, 1958, 20 FPC 851, 858, in this regard.

(4) *Municipal Gas Project for the City of Bushnell, Illinois:* Soon after the present phase of this proceeding began in December 1960, the City of Bushnell, Illinois, filed its petition for leave to intervene, which was granted by the FPC order of January 13, 1961. The petition made it plain that its purpose is an order under Section 7(e) of the Natural Gas Act (comprising in effect a condition upon Panhandle's certificate) calling upon Panhandle to furnish natural gas for distribution by the municipality in an amount of something more than 2,000 Mcf per day, the supply lateral line to be built by Bushnell for a distance of 28 miles or so. Their plan was to serve not only Bushnell itself, but three smaller towns enroute and to receive the gas at a connection at a point near Knoxville, Illinois, which is some miles west of Peoria and is located on a lateral line of the Panhandle system which runs west and north out of Peoria for a distance of about 40 miles out to Galesburg, Illinois, just beyond Knoxville. It is the law of this case, as announced in a previous ruling in this same "lead docket" (16 FPC 897, 898), that requests of interveners of this type shall be judged under the requirements of Section 7(a) of the Natural Gas Act, providing that, when it is in the public interest, the Commission may direct a natural gas company to make connection and sell gas to any person or municipality "engaged or legally authorized to engage in the local distribution of natural or artificial gas to the public."

The statute has certain prerequisites or essentials, most of all of which have become the subject of sharp controversy among several parties in the case of Bushnell. In the first place, the Commission must first find "that no undue burden will be placed upon such natural-gas company thereby." In the second place, the Commission may not "compel" the sale of natural gas "when to do so would impair its ability to render adequate service to its customers."

Two or three alternative plans were presented by Bushnell at a number of different sessions of the hearing and all of them are stoutly objected to by Panhandle itself, also by two important public utility distributors in the nearby area (Illinois Power Company and Central Illinois Public Service Company). Further, two particular phases of the program are thought by the staff of the Power Commission to be so questionable as to require its recommendation against the allowance of an order for gas from Panhandle. As in the other matters written up herewith, in view of this very sharp and spirited controversy, there were issued in July and September the certifications on the construction and operation phases of Panhandle's expansion with a reservation of later decision on the subject of Bushnell's intervention. Specifically, the initial decision of July 11, 1962, adopted by the Commission's order of July 27, issued the certificate covering Panhandle Eastern Pipe Line Company's expansion program with, however, a reservation or condition to the effect that the certificate is subject to such further conditions as may be found to be necessary with respect to service for Bushnell, Illinois. In the initial decision of August 23, 1962, confirmed in this respect by the Commission's order of September 25, there were authorized the various increased sales which constituted the end purpose of the expansion program, but in the allocation of Panhandle's available capacity for all of its authorized customers, there was specifically reserved for possible allotment for service to Bushnell, Illinois, the amount of 2,000 Mcf of peak day

capacity (see 28 FPC 529). Hence, no question remains as to the availability of the supply for Bushnell or the jurisdiction of the Commission by order to require service through the technique of a condition now to be attached to Panhandle's certificate.[21]

THE BUSHNELL MUNICIPAL PROJECT

Population in area to be served	Estimated number of customers in third operating year				Reference
	Total	Residential	Others	Percent of potential	
5,490 [a]	1,522	1,323	199	75	Ex. 41, p. 2.
5,643 [b]	1,522	1,323	199	75	Ex. 303, p. 1.

THIRD YEAR GAS REQUIREMENTS

	Mcf	Reference
Peak day	2,000	Ex. 41, p. 2; T. 344.
Annual firm	360,000	T. 5230.
Power plant	90,000	Ex. 41, p. 16.

THIRD YEAR OPERATIONS

Gross revenues	Operating cost	Gas cost	Net revenues	Reference
$383,534 [c]	$17,700	$136,488	$229,346	Ex. 41, p. 16, 19.
329,534 [d]	17,700	102,648	209,186	T. 5230-1, 5241.

ESTIMATED MAXIMUM CONSTRUCTION COST

Length of lateral transmission line	Transmission line	Distribution system	Reference
30.5 miles [a]	$638,155	$327,000	Ex. 41, p. 24, 20, 21.
32 miles [b]	727,906	315,375	Ex. 303, p. 2, p. 1.

[a] If Bushnell builds to Galesburg lateral.
[b] If Bushnell builds to Canton lateral.

[21] Panhandle has raised the technical, but perhaps very valid, question, that since Section 7(a) of the statute provides its methodology for those seeking gas to obtain it by Commission order, this specific coverage of the subject matter in Section 7(a) precludes the use of Section 7(e) to solicit the same end through the general power to condition a certificate of convenience and necessity. As a matter of statutory construction, the point has a great deal of merit (especially since June 1, 1961, when the Commission adopted part 156 of its regulations calling for very detailed procedures to be followed by those who would seek a Section 7(a) order for natural gas from a pipeline). But the petition here was filed before those regulations became effective and in any event it is not understood that the point is open since the Commission has determined otherwise in this very docket in the order cited from volume 16. Anyway, this petition (as well as that of Milford, which follows) is treated on the merits exactly as if it were under Section 7(a), and it is regarded that if it could not qualify for a Section 7(a) order, it should not be the subject of a certificate condition under Section 7(e).

ESTIMATED MAXIMUM COSTS

Miscellaneous plant	Administrative	Total project	Reference
$90,452 [a]	$294,000	$1,350,000	Ex. 41, p. 2; T. 30, 908.
90,719 [b]	296,000	1,480,000	Ex. 303, p. 1.

DEBT SERVICE COVERAGE RATIOS WITH THIRD YEAR LEVELLING OF REVENUES

$1,350,000–30-Yr. Bonds @ 5%	$1,350,000–20-Yr. Bonds @ 5%	$1,430,000–30-Yr. Bonds @ 5%	$1,430,000–20-Yr. Bonds @ 5%	Reference
[c] 2.6	2.1	2.4	2.0	T–30910–19.
[d] 2.4	1.9	2.2	1.8	Exs. 314, 315.

[c] Assuming sales by Bushnell to its power plant.
[d] Assuming no sales by Bushnell to its power plant.

The table above shows enough of the details to indicate the scope and nature of the project with its alternative forms, but in view of the nature of the objections raised by the various commentators (to the effect that (1) the project is not wanted by the citizens of the town, (2) service is available on a much more practical basis from the Central Illinois Public Service Company's line only four miles away (instead of 30.5), (3) the application does not comply with Section 7(a), (4) the order would impair Panhandle's ability to serve its other customer on the Galesburg lateral, (5) Panhandle is not the closest source of supply, (6) the sale includes an unauthorized power plant use, and (7) it is technically infeasible and its finances are out of line), it will be necessary to review the background in order to assay the objections and to weigh the required statutory findings.

Bushnell is a thriving community of 3,710, located athwart the Burlington Road out of Chicago and 60 miles or so west of Peoria. For 30 years it has maintained a municipal gas system for its residents, which now operates on propane air. With other cities in the locality long since served by the advantages of natural gas, the city authorities of Bushnell have for several years sought an allocation of natural gas for its residents and for those of two or three nearby small towns also supplied by a propane system, but Bushnell has not succeeded in effecting an arrangement for natural gas which would still permit the continuation of their municipal distribution operation. The nearest available source is the line of the Central Illinois Public Service Company, a retail distributor for large areas of the central part of the state and a customer company of the Panhandle line. Central Illinois' pipeline crosses the Bushnell area only four miles to the south and is obviously the most feasible potential source of supply, if agreeable arrangements could be made. As Panhandle's chief engineer tersely testified (195T30,774) ". . . for the life of me I can't see why that [the Central Illinois line near Bushnell] wouldn't be the more practical and more economical way to serve the town of Bushnel." Central Illinois is quite ready and willing to serve "the residents" of the town of Bushnell and in fact, has made an offer to buy out both the electric and the gas distribution systems operated by the municipality. Only a year ago, soon after Central Illinois received an increased allocation from FPC which put it in a position to take on some additional customers, a majority of the city council voted to abandon their proposed

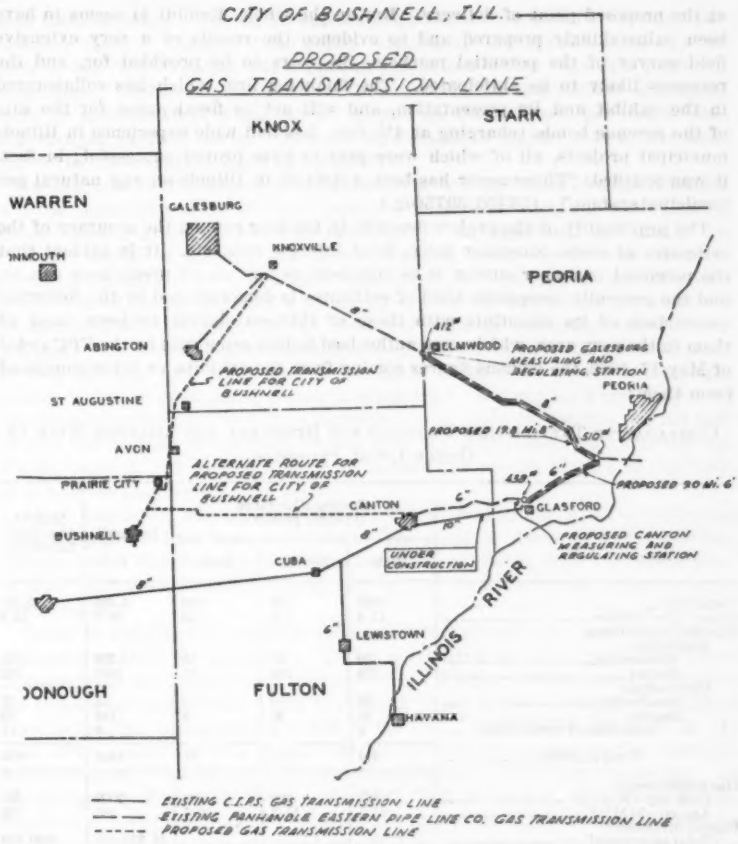
municipal natural gas project and sell out to Central Illinois, but the vote was one short of the plurality required under local law. On the other hand, both before and after that vote, the city council has gone on record unequivocally reasserting its determination to continue municipal operation and seek an allocation of natural gas for it. One such resolution was passed April 3, 1961, confirming the testimony of Mayor Varner at the hearing (Exhibit 41–B); another was passed February 19, 1962, under the aegis of Mayor Lyons, and is in evidence as Exhibit 41–C.

The city's efforts to get a supply of gas from the Illinois Power Company have likewise been unavailing; while the supplier, Panhandle, joins the others in opposing the petition here. It is evident that natural gas service for the people of Bushnell will be denied unless the present petition is successful, or unless the city authorities decide to abandon municipal distribution and sell out their plant to Central Illinois, or unless Central Illinois could be moved (by local law or otherwise) alternatively (a) to furnish the municipal system the supply it needs (which Panhandle is prepared to make available to Central Illinois), or (b) to furnish a transportation or "wheeling" service to carry the gas to a convenient Bushnell connection for an appropriate charge, the gas to come through Central Illinois' line off the Canton lateral of the Panhandle Eastern pipeline. If either arrangement could be effected, the order for the provision of the supply by Panhandle could apparently be accomplished without controversy. But, as the matter now stands, none of those sensible, obvious, practical and economical plans for service of gas to the people of Bushnell appears to be available since the governing authorities of the city prefer municipal operation and the available supplier, Central Illinois, declines to supply gas for the purpose except upon an arrangement for purchasing and operating the distribution system in Bushnell *and* apparently for purchasing Bushnell's electric distribution system also.

In view of that impasse, and mindful of the public demand to find natural gas for the town by some proper means, the city authorities have sought out the help of very capable consulting engineers and financiers and have produced the program or programs which are the subject of their present request for an order from the Federal Power Commission.

To understand the project as well as the objections to it, it is necessary to refer to the map herewith (Exhibit 303) and note the 30–50 mile triangle with Bushnell at the southwest corner, Peoria at the southeast corner and Knoxville near Galesburg at the apex.[22] Panhandle's Galesburg lateral extends northwesterly about 40 miles from Peoria, and it is near the terminus that Bushnell proposes to attach its own lateral (the left leg of the triangle), which will run 30.5 miles southwesterly and through several towns to be served by it on the way to Bushnell. The staff's principal objection seems to be that the length of the lateral makes the project unduly expensive and perhaps infeasible, while all the objectors join in the view that Panhandle's 8-inch line, comprising the downstream or northwesterly half of its Galesburg lateral, does not have available the capacity to serve 2,000 Mcf per day to Bushnell without impairing its service to the Illinois Power Company which serves Galesburg and other towns in the immediate area. On that question, Illinois Power is the only customer so affected because it is the only customer on the latter half of the lateral, that is, from Elmwood on, and Panhandle has recently received authority to "loop" and increase the capacity of the first half of the lateral leading from Peoria as far as Elmwood.

[22] See map on next page.



(From Exhibit No. 363)

It is those issues—the expense of the 30.5 miles supply lateral to be built by Bushnell and the effect of the proposed delivery on Illinois Power—which are the principal subject of the rather strenuous contentions outlined below. In addition, Central Illinois, feeling quite earnestly that its plan for ownership of the distribution system and service by its own staff is the better one for the interests of the people of Bushnell, has undertaken to point out a number of defects believed to cast doubt on the merits and feasibility of the Bushnell program.

Before considering the objections, attention should be paid to the able and helpful exhibit prepared by Bushnell's consultant, E. B. Murer, an engineer with experience in 37 municipal projects. Not surprisingly, some questions were left to be answered at the hearing—for example, it was asserted that no one had made contact with Panhandle at any time before the case began to inquire whether gas was available or whether suitable gas pressure could be provided

at the proposed point of delivery. But on the whole, Exhibit 41 seems to have been painstakingly prepared and to evidence the results of a very extensive field survey of the potential markets, the costs to be provided for, and the revenues likely to be anticipated. The financing firm which has collaborated in the exhibit and its presentation, and will act as fiscal agent for the sale of the revenue bonds (charging at 4% fee), has had wide experience in Illinois municipal projects, all of which were said to have proved successful; in fact, it was testified, "There never has been a default in Illinois on any natural gas municipal system." (3T466, 30T5042.)

The practicality of the project depends, in the long run, on the accuracy of the estimates of costs, consumer sales, bond interest rate, etc. It is evident that the potential customer survey is as complete as any set of predictions can be, and the generally acceptable level of estimates is demonstrated by the following comparison of its essentials with those of thirteen similar projects, most of them in the very area, which were authorized in this same case by the FPC order of May 17, 1962, the various figures coming from the exhibits, or being computed from them:

COMPARATIVE TABLE—NEW PROJECTS FOR BUSHNELL AND MILFORD WITH 13 OTHER LOCAL PROJECTS

	Comparative range (13 other projects)			Bushnell	Milford (see pages following)
	High	Median	Low		
Population	1687	750	230	5,490	2,223
Miles to the pipeline	17.4	1.8	.25	30.5	13.8
Number of customers:					
Residential:					
Non-heating	119	12	18	320	221
Heating	279	215	56	1003	382
Commercial:					
Non-heating	29	6	2	53	21
Heating	20	30	5	143	53
Industrial or institutional	2	2		3	1
Total customers	449	265	81	1522	678
Gas requirements:					
Peak day—Mcf	680	496	102	2000	906
Annual—MMCF	65.2	51.2	10.7	360	109
Capital investment:					
Total as proposed				$1,350,000	$300,000
Per customer	$728	$577	$412	$890	$443
Operating revenue:					
Income				$383,534	$134,060
Expense				154,188	86,680
Net operating revenue	35,440	8,110	2,358	229,346	47,380
Percent of investment	14.2	5.78	2.49	17	15.5
Comparative data:					
Heating saturation (percent)	100	75	64	75	64
Home heating use (cu. ft./DDD)	28.2	25.6	21	28.5	27.8
Peak day Mcf/population unit	1.18	.483	.286	.364	.407
Residential peak day use per population unit	1.07	.316	.22	.3	.285
Peak day Mcf per customer	2.62	1.57	1.26	1.41	1.34
Population units per residential customer	6.83	3.95	1.39	4.15	3.7

Thus the estimates are quite "in line" as to the number of customers expected and the peak day usage in relation to the population, the usage relied upon for the average customer, and the heating saturation to be expected (75%). The net revenues as a percentage of the investment are extraordinarily high, suggesting the costs be scanned with greater care, since the debt service ratio depends

upon their accuracy. The figure outstandingly out of line is the investment per customer ($890). Plainly, if the homes "signing up" for space heating fall far short of the 76% expected, the confident predictions would require a profound reappraisal.[23] Offsetting this a little is the substantial present number of propane users for heating, all of whom can be counted on since natural gas will be one-fifth cheaper, perhaps better. Oil users may expect to convert over a time since gas will be one-seventh cheaper (Exhibit 41).

Turning now to the battery of criticisms—the first and most obvious objection is to the duplication in the 30.5-mile lateral to be built and paid for while Central Illinois' line is available only four miles away. As explained, this line is not available except on unacceptable terms. Nothing would—or at least should—prevent Bushnell and Central Illinois from even now arranging an equitable sale or carriage of gas for Bushnell's municipal system (in which case a transfer of Panhandle's delivery point for the 2,000 Mcf could be authorized without controversy); nor does any other solution so clearly comport with the public interest, as long as those who speak for the residents of Bushnell prefer a municipal system, which, it would seem, is their prerogative.[24] But any such obviously more desirable solution must be left to suggestion only, since the parties are not subject to the controls of the Natural Gas Act. Central Illinois offers to buy out the city system, but only as a tie-in to include the electric plant also; anyway, as of now the plants are not for sale.

As to feasibility, the protestants point out several minor items of operating costs supposed to have been overlooked. The response shows all but one or two were included and that ample revenue margin is available, since the debt service of about $100,000 a year will take up only half of the net revenues projected after three years.

There is disagreement whether the capital cost should add something for the right of way along the state road. If that is required, the 25% contingency added to the installation estimate will take care of it. Further, we are asked to construe an Illinois statute of 1961 which is thought to put a road block in the right of way by denying condemnation rights to the city. Central Illinois' brief (p. 17) asks FPC to apply the rule of *expressio unius exclusio alterius* for this statutory interpretation. The proper rejoinder to that plea is *forum non conveniens*. As it was put by Examiner Weston (G–16842, Nov. 9, 1962, p. 25), "It is not the function of this Commission to consider and decide the highly technical questions of Illinois municipal law advanced by CIPS in opposition to the proposals of the three municipalities for new gas service." If this problem should operate to debar the right of way, the line will not get installed, the gas will not be sold, and no harm will ensue from the FPC certificate issued for it.

Panhandle objects that one-fifth of the annual sale will be used by the city in its electric power plant, which has all the appearance of a non-jurisdictional direct sale. But the law does not in so many words delimit the new sale to that quantity resold by the buyer in local distribution. Finally, if there is a problem of which tariff rate applies, that will come up when the service agreement is filed.

Staff's objection that the bond issue of over a million dollars is too great a burden on the city seems not to give adequate weight to the plan which calls for revenue bonds only. That the city had one default on one payment of bonds in the past is hardly surprising for a city running four utilities for many years; also it occurred on the propane system whose high rates have inhibited sales, an

---

[23] In the case of two other Illinois towns, the Illinois Power Company witness predicts an 80% saturation (32T5480).

[24] *Panhandle E. P. L. Co.*, FPC order dated February 2, 1956, G–1705, 12 PUR 3d 376.

obvious demonstration of the need for gas. Anyway, the finance firm sees no difficulty about marketing the bonds.

There remains the serious and not easily disposed of problem about whether the supply is available, at least without impairing Panhandle's "ability to render adequate service to its customers" (§ 7(a), N.G.A.). The point is this. Panhandle's lateral runs from Peoria out to Elmwood (20 mi.), thence about the same distance on to Galesburg, near which point (i.e., at Knoxville, near the far end of the line) Bushnell wants to tie in its supply lateral. When this case began two years ago, Panhandle's lateral was more than fully occupied by the needs of the Illinois Power Company for Galesburg, which took up its full capacity of 20,000 per day. But two developments have altered the picture. Panhandle's expansion program now authorized calls for a duplicate, parallel pipe for the first half (Peoria to Elmwood), and the plan now is to deliver 30,000 Mcf per day to Illinois Power at that point, or at least meter it there. Part of that "take" will go through the present line on to Galesburg; the rest through a new paralleling pipe built or to be built by Illinois Power. Bushnell sees the old pipe (Elmwood to Galesburg) thus relieved of quite a part of its burden and wants the 2,000 Mcf per day for them put through the Panhandle capacity so left over. Illinois Power protests strongly they have a right to continue to benefit by the full capacity of the old line; that they did not build the new one for the purpose of benefiting the municipal operation of Bushnell (even refusing to let Bushnell share in its use *and* its costs, 33T5499).

Both Panhandle and the staff object to the Bushnell plan because the present (or old) lateral to Galesburg is *now* fully taken up by service to Illinois Power and it was thought not clear that the new Illinois Power parallel lateral would leave any room available for reassignment in the old Panhandle lateral. That latter question plainly is controlling, and the evidence on the subject was not notable for candor, clarity, and completeness. By the time this program was developed at the hearing in relation to Panhandle's latest expansion, the Illinois Power witness had long since come and gone. The Panhandle witness knew of the new Illinois Power pipe but did not know whether it was or is yet completed (195T30,783). At one point it was said that even with the new one, the old lateral will still be needed for Illinois Power, but at another point it was made clear that the new sale to Illinois Power (30,000 per day, increased from 20,000) could equally well be split evenly between the two lines (195T30,716, *et seq.*). Just why it was thought this split should be for Illinois Power to decide was not made clear. Bushnell points to an Illinois Commerce Commission certificate to Illinois Power for an 8" line at this point, thus positing the same 20,000 capacity as the present Panhandle lateral. But this certificate was not in evidence and need not be relied upon since the Panhandle engineer was clear that half the new sale could go through the new line, which would leave only 15,000 for the old one to carry and a capacity remaining of 5,000 to carry the 2,000 for Bushnell. Illinois Power protests this is a discrimination against it, but just how this is so is not perceived. The order herewith is to be effective when the Illinois Power line goes into service; *this* order does not require it to be built. But when it is built and available, the previous need of Illinois Power for all of the old capacity, and its entire dependence upon it, will disappear, and with it whatever pre-emption the former use resulted in. It is hardly fitting for Illinois Power to continue to monopolize the old line *after* its new construction provides it another route in part to satisfy its needs. There is no evidence that Illinois Power can or will use both lines to capacity, nor any reason apparent why the delivery cannot be equal, or nearly so, through

the two lines, with ample margin of capacity left in the old one for Panhandle's sale to Bushnell.

The foregoing conclusion is without reference to Panhandle's plan to "abandon" its old lateral (Elmwood to Galesburg) and sell the facility to Illinois Power, of which this record is not unaware (195T30,729). But Panhandle's petition for FPC authority for this action is still pending and unheard (under CP61–257), and is not part of this otherwise omnibus proceeding. As the staff pointed out at the hearing, there would be no difficulty in providing for continued service for Bushnell in the event Panhandle's sale of its line is found to be in the public interest (195T30,840). If there is doubt on this score it would not be inappropriate to sever the Bushnell issue at this time and consolidate it with CP61–257 (assuming this would not require a repetition of the expense of the proofs already developed on all sides), but this proposal is not within the jurisdiction of the hearing examiner.

Neither does this decision pass one way or another on Bushnell's second-choice lateral to the east, to connect with Panhandle's Canton lateral, consideration of which will not be necessary unless the other solutions above discussed shall all fail of consummation.

One final word. The objectors point out a substantial retail rate differential favoring Central Illinois' tariff in effect should they buy out the Bushnell system. There can be no doubt this apparent betterment was not lost upon the citizens of Bushnell and their representatives who voted nevertheless to pursue their pleas here; anyway, Bushnell's brief points out their Exhibit 41 uses outside, maximum rates which may, if there is success and prosperity, be reduced.

Of the many choices of possible solutions, and out of the welter of conflicting recommendations, it is concluded the people of Bushnell are best served by an order for a Panhandle connection near Knoxville, effective when the new Illinois Power lateral goes into operation, and upon the bases stated, it is found that no undue burden will be placed upon Panhandle thereby, nor will it impair its ability to render adequate service to its customers.

(5) *Service from Trunkline for Milford, Illinois:* Like Bushnell the Village of Milford, Illinois, was permitted to intervene in the expansion case of Trunkline Gas Company (CP60–22, phase two), upon the averment that the Village is authorized under the law of Illinois to own and operate a gas distribution system, which it proposes to construct, for the service of which an allotment order upon the nearest supplier, Trunkline Gas Company, was sought in the amounts of 906 Mcf (peak day) and 109,800 (annually). It was agreed at the hearing that Trunkline now has the supply available, and when the expansion certificate issued to Trunkline in July 1962, the order adopted by the Commission on July 27 contained a reservation for any condition found necessary with respect to service to Milford.

Briefs in opposition have been filed by Trunkline, by a nearby distributor (Central Illinois Public Service Co.), and by the staff of the Federal Power Commission. The latter is here first treated.

The staff brief points to the lateral-line leasing arrangement which is part of Milford's plan and rests upon the legalistic objection that the lessor of the lateral pipe (13.8 miles) would somehow become subject to the Natural Gas Act, *ergo*, lacking a certificate application from the lessor, "the Milford project is deficient" and Milford's application must be denied. Except for the town's lease from the contractor-builder, the staff recites no objection to the program.

The objection is put simply in the staff brief at p. 77 to the effect that the lessor (Panama-Williams Corporation) "is a person who would be transporting

natural gas in interstate commerce, within the meaning of Section 1(c) of the Natural Gas Act." But at page 74 it is put contrariwise that the functions of operation and maintenance will be performed by Milford.

It is unimaginable that the arrangement has any such legal consequence for Panama-Williams, which is nothing more or less than a contractor with a title lien to secure its price.[35] The preliminary agreement is in evidence (Ex. 40–D) and contains nothing to suggest that the lessor-builder will or could operate the facility or control it; the responsibility as well as the activity are all Milford's. So is the burden of paying the expenses of operation. It would be novel doctrine that bare legal title makes the title lien holder subject to the Natural Gas Act for the acts of the lessee. *El Paso*, 19 FPC 371, 373.[36]

Turning now to the merits of Milford's program, it is thought significant that the present one is the third plan devised and submitted at the hearing. The first program—the only one which the voters have been called upon to consider—provided for the Village to construct and operate its municipal distribution system, financing it through the issue of revenue securities in the amount of $320,000 and the gas to be received at the town border from the Midwest Gas Pipe Line Company, an organization which had not at the time engaged in such business (or apparently any other) and which was controlled by the financing firm employed to market the securities referred to. This was the plan approved by a two-to-one vote of the electorate during 1960.

The second plan was that presented at the hearing in 1961, by which time participation of the Midwest company had dropped out of the picture. It was then proposed that the town should issue securities to a total of $530,000 in order to build the distribution system as well as the 13.8-mile transmission main leading south and east to a connection with the Trunkline Gas Company and also a small distribution system in the village of Wellington, which would be on the line half way between Milford and the Trunkline connection. By this time there was produced an ordinance of the village board of Wellington, enfranchising the Village of Milford to distribute gas in Wellington. The village authorities of Milford are advised it was not and is not necessary to return to the voters with the new plan. However, at the hearing in 1961, after certain questions had been raised and doubts expressed, it had been indicated the village board would be advised to the contrary.

A year later, as the hearing was drawing to a close, the village returned with its third and present plan. Under this one, the Milford distribution system is to be built as before through the issue of revenue certificates, but the capital cost to the distribution system has now been cut to $300,000 (Exhibit 40–G). To get the gas from Trunkline the village has entered into a preliminary agreement with a contractor, the Panama-Williams Corporation, to build a 13.8-mile transmission line and also to build the distribution system in Wellington, the small village to be served enroute.

It is this phase of the new program which has given rise to the major controversy. The preliminary agreement (Exhibit 40–D) calls for a "lease contract" to be entered into under which Panama-Williams will construct the transmission line and the Wellington distribution system, and grant to Milford

---

[35] For a like view as to a similar arrangement of Panama-Williams with other Illinois towns, see the initial decision of November 9, 1962, in *Tennessee Gas Transmission Co.*, G–16842, at p. 772, *infra*.

[36] Compare, for a ready example, the Howell storage field already certificated to Panhandle in this case, to operate as a facility in interstate commerce. No one suggested that Panhandle (the "Natural gas company") owns or should own the land comprising the storage area, instead of depending on gas storage *leaseholds*.

the exclusive and irrevocable right to use and to operate both facilities, the plan being for the Village to pay all expenses of operation and to keep the facilities in repair. The Village also has an option to buy both facilities within one year for a purchase price of $200,000, which may be paid either in cash or in 5% gas revenue bonds, which the contractor agrees to accept at par. Otherwise, the ownership remains in the contractor, subject to a "monthly lease charge" of $1,800 (or roughly 1% per month on the estimated construction cost) for a period of 25 years, at which time the facilities will become the property of the village and no further payments will be made. Whether this contract is called a lease or a contract of sale or something else, its provision is clear that the contractor is the builder only, and that it has no responsibility or powers in connection with the operations, while the village is the renter or purchaser, is the exclusive operator, pays all the maintenance expense, and is eventually the owner when it gets it paid for. It is also clear that the payment obligation of the village is limited to the revenues to be derived from the operation; it does not appear to be a general obligation of the town.

The new program sets up the monthly lease payment to the contractor not as a debt service or as a repayment of capital, but instead as an expense item similar to the cost of the gas itself. The result is to project annual revenues for the third and subsequent years at $134,060, from which three items of cost are to be subtracted, leaving a net anticipated revenue of $47,380. The three cost items are as follows:

Estimated gas cost	$53,802
Estimated operating expenses	11,278
Annual lease charge	21,600
Total	86,680

Subtracting the total expense from the anticipated revenue of $134,060, there is predicted the net revenue of $47,380. Turning to the new exhibit 40–G, the annual debt service for the $300,000 bond issue for the Milford distribution system is seen to range from $17,750 up to $23,000 (30-year basis), which means a ratio of 2.4X. This appears to leave a little over $5,000 a year for bond reserve, a like amount for depreciation, and an annual surplus upwards of $25,000. Figured on a 20-year basis, there still remains a debt coverage of 2.0 times the debt service cost. This is an average figure, with none of the annual figures falling below 1.7.[27]

The data offered to demonstrate the reality of this net revenue of $47,380 is listed for convenience on the table on page 742, above. Serving a population area of 2,223 (all but 500 of them being in Milford), there are expected to be attached 678 customers, 64% of them for heating, and there will be needed 906 Mcf on a peak day and about 109,000 Mcf annually. Note that the net revenue is 15.5% of the basic investment.[28] Note also that the comparative figures are quite in line as to the predicted usage per customer and per unit of population. Finally, the investment per customer is $443, which is much less than Bushnell's since the transmission line is not counted in.

The data referred to is from a program prepared by the same engineering firm that produced Bushnell's plan; the bonding house is also the same. Exhibit

[27] Note that even regarding the lease payment as an added burden of the debt service, to a total of about $43,600 per year, the planned net revenues of $68,980 exceed that figure by a ratio of 1.58X, well above the minimum standard (1.5).

[28] If the option plan should work out to pay for the transmission and Wellington lines through revenue bonds toward the end of the first year, the investment figure becomes $500,000 and the annual net becomes 13.7%.

40 indicates a careful weighing of the potential markets, costs and revenues. It results, in view of what has been said, that the feasibility of the project for Milford and its neighboring town must be regarded as acceptably established."

That the town's markets can support a gas distribution system is also shown by the case in opposition—Central Illinois has said a number of times it stands ready and willing to serve Milford when it has the gas available (30T5098; 167T26,629; Brief, pp. 11, 20). Central Illinois still stands on the validity of its gas franchise issued by Milford in 1931, while Trunkline's Reply Memorandum filed June 1, 1962, advises us that Central Illinois has now contracted for an adequate gas supply to exercise its franchise. There was some talk of Central Illinois planning to apply for a state commission certificate,[30] but no evidence of any such action came in by the time the record closed in April. If these assertions of readiness and supply are true, the obvious question is: Upon what does Central Illinois await action in proof of its protestations? Their brief filed here in May 1962—long after their supply problem had been the subject of agreed settlement[31]—calls flatly for the denial of Milford's petion but not one word appears asking for the help of FPC to get gas to Central Illinois for Milford. If Trunkline's brief is correct that they have arranged for the gas, no further order from FPC would be required. The inaction casts telling doubt on the basis for the opposition here.

With the feasibility of the project established—indeed admitted by the paucity of the contradiction—it remains to consider the objections which Central Illinois moves for consideration, strongly seconded by Trunkline. Central Illinois' brief is an extremely able and persuasive showing of outright *ultra vires* illegality of the program, so much so that in another forum it might well be prevailing. A mere listing of the legal defects charged is enough, without discussion—

(a) The voters' approval was on the first plan, for a distribution system costing not over $320,000, and there has not been taken the statutory vote on the present plan, which involves at least $200,000 more.

(b) The Milford voters did not approve, or even know about the present plan for the distribution system (and program) in Wellington or the lease-purchase program on that system and on the 13.8-mile transmission line. The two will cost $200,000 if bought within one year, or $540,000 if bought on the lease-purchase plan at $21,600 per year over 25 years. Under Illinois law, the ordinance to be approved by the voters "shall set forth the action proposed, shall describe the plant, equipment, and property proposed to be acquired or constructed . . ." (Chap. 24, Sec. 11–117–3).

(c) Although the contractor apparently is to provide the right of way for the line, there is no showing it has the power of eminent domain [as to which see p. 743, above].

(d) Central Illinois' franchise is still in effect, it has not expired for non-user, and their service to Milford would be at rates lower than those projected for Milford.

---

[30] Trunkline casts the doubt that Panama-Williams has not been here to show it can finance the $200,000 construction. But this seems to give too little weight to the lease-purchase agreement, under which the contractor must furnish a performance bond (Ex. 40–D).

[30] A private utility needs one in Illinois, a municipality does not (167T26,649).

[31] In February 1962, Central Illinois agreed to a new winter contract demand of 94,000 Mcf, up from 53,833 (Ex. 276), and this was agreed to by Panhandle in its application filed February 19 and by FPC in its rulings in July and September.

(e) The lease-purchase agreement is in law a purchase and sale, in a form not authorized by statute and without the required voters' approval. That is, the lease-purchase is a form of financing but not one of the particular forms the statute specifies. The total obligation of the lease over 25 years is far more than double the cost of the facility (excluding, of course, interest), while the law limits revenue obligations to only 110% of the cost of the property.

(f) The municipal bond counsel's opinion offered in evidence (Exs. 40–E, 40–F) covers only the original $320,000 issue, not the further obligations of the lease-purchase agreement.

(g) For the reasons stated, Milford is not "legally authorized" to engage in local distribution, a requirement of Section 7(a) of the Natural Gas Act.

Trunkline's memo seems to endorse the above and add one or two more—

(h) The attachment order under Section 7(a) must be with "the facilities of" an authorized distributor, which Panama-Williams (the legal owner) is not.

(i) There is a conflict between the ordinance and the lease-purchase contract as to whether the two obligations may share ratably in the revenues of the system.

The staff brief adds the further doubt (apart from that disposed of above) to the effect that the $200,000 optional purchase from Panama-Williams is cost plus financing to its most unprotected degree.[30]

This battery of objections does not go unnoticed in Milford's reply brief, which covers 33 pages, citing 33 cases and other authorities (14 of them Illinois court decisions). Its principal answer is that the demand for a new vote of the townspeople overlooks that the lease-purchase plan "does not provide for the construction and ownership of the transmission lateral by Milford." (P. 10.) [But note that it does call for *ownership* by Milford after the 25 years of "rental" payments, Ex. 40–D.] *Second*, the formal opinions obtained from the bond counsel make another election unnecessary. *Third*, the authorities cited by McQuillin, the authority relied upon for the claim the lease is really a purchase, do not support the result asserted (pages 13 and 14 analyze the cases cited in McQuillin on Municipal Corporations, none of them Illinois cases, while the next five pages analyze the Illinois cases). *Fourth*, the lease-purchase is not a matter of financing at all, but rather an operating mechanism to bring in the gas, i.e., a current expense. As such it is not subject to the statute regulating acquisition of a utility, but is *infra vires* under the implied powers of municipal corporations acting in their proprietary capacity, not subject to judicial revision. *Fifth*, the approval by bond counsel should allay any doubt (Exs. 40–E and 40–F, but *not* Appendix I to the reply brief, which is received out of time and is inadmissible). *Sixth*, the Central Illinois rates may not turn out to be lower; anyway the voters knew of the comparative levels. *Seventh*, the 1931 franchise is not exclusive, it is forfeit for non-user, and it has been revoked.

In this conflict of authority on the law of Illinois, the jurisdictional question must precede the merits. When there appears a conflict between two competing private utilities for the same town, the Commission wants the local authorities to decide (see the Commission's order of July 5, 1962, in this case, rehearing denied September 4, one Commissioner dissenting). When the conflict is between an authorized utility distributor and a proposed municipal operation, the Commission wants it to be determined locally, not by the FPC (Panhandle Eastern P. L. Company, G–1705, February 2, 1956, as noted at 12 PUR 3rd 376).

---

[30] It is true the contractor *might* profit by 25% or so on the whole job, or *might* lose the same amount or even more. That is not "cost plus" financing at all—see generally Reyes, "The Responsibility of a Government Cost Type Contractor" (1962), 22 Fed. Bar J. 68.

As applied to the present question, unless the Natural Gas Act requires the Commission to recapitulate the functions of the courts of Illinois, it would seem the same policy would apply where the only question is one of interpretation of the local statute and a reading of the judicial opinions as to whether the particular type of program proposed meets all the technical requirements of the local law. In Illinois (unlike Iowa, which was the subject of the July order just cited), the state public service commission stands ready to make initial determination of these questions so far as concerns the authority or power of a private utility, while the courts of Illinois appear to stand ready, willing and able to decide any such question as to the powers and prerogatives of the municipality and whether a particular plan proposed to go into effect meets the various detailed requirements of the statute—the very question such as here posed by Central Illinois (see the many decisions cited in the briefs of Milford and Central Illinois, and especially *People* v. *City of Paris*, 380 Ill. 503, 44 NE 2d 1954, which was a *quo warranto* proceeding to test the power of the city to issue certain public utility certificates, that is, preliminary revenue bonds, under the Municipal Ownership Act).

The problem of course is that, while the town has asked for a condition on Trunkline's certificate under Section 7(e) of the Natural Gas Act, it is the understanding, as stated, that the case is to be tried according to the tests of Section 7(a), which is the statute's specific coverage of the subject matter. That subsection is the basis for the Commission's proposed order on the pipeline to sell natural gas to, as the statute says, "any person or municipality engaged or legally authorized to engage in the local distribution of natural or artificial gas to the public . . ." It is the opposition's case that the apparent authority claimed by the Village of Milford on the basis of the Municipal Ownership Act of Illinois and the implementing election is deficient for the many and various reasons outlined above, *ergo*, the municipality is not "legally authorized" and does not qualify for a Section 7(a) order.

If there were no Illinois common law courts with primary jurisdiction to decide the question so well raised, it is evident Section 7(a) would require the Federal Power Commission to delve into and pass upon this question of local law. But as the many cases cited in the briefs so eloquently demonstrate, the Illinois courts are available, apparently to Central Illinois or anyone else, and whether a certificate is issued by FPC as requested or is not issued, the entire body of questions raised may be taken to the competent court by Central Illinois or by a taxpayer or others in interest. In contrast, the commanding purpose of Section 7(a) of the Natural Gas Act is to provide under federal law the order on the interstate line to furnish the gas, which, it will be recalled, the state law is not competent to give—as decided in a case involving this very protestant, *Illinois Natural Gas Company* v. *Central Illinois Public Service Company* (1942) 314 U.S. 498, which was an appeal from the Illinois Supreme Court.

The opposition briefs here, which assume without argument that the FPC must pass upon this collection of local legal issues, evidently read the words of Section 7(a) "municipality engaged or legally authorized to engage" to mean or at least to intend and be interpreted as "municipality which the Commission determines has complied with all the requirements of applicable state law permitting it to engage." It seems quite unnecessary to the purpose of the federal law so expansively to interpret the language quoted. If, rather, the words "legally authorized" mean merely "prima facie or apparently legally authorized", then the Commission's responsibility is discharged by noting (1) there is a municipal ownership act which calls for a local vote, (2) the local vote has

been had, (3) the outcome is favorable, and therefore the ostensible legal authority is fully demonstrated. To go beyond that, and try the many and devious questions peculiar to the local law of Illinois which are recited above would seem to call upon the Commission to step out of its normal regulatory function and supplant the regularly established courts of the State of Illinois which have the responsibility, the power of authoritative decision, and the special background so obviously called for. It is this sort of approach which is the very foundation of the doctrine of *forum non conveniens* as discussed above in the case of Bushnell, and it seems even more applicable here. Compare the notes at 94 L. ed. 879, 883; 3 L. ed. 2d 1827, 1828, citing cases to the effect—

> The United States Supreme Court has increasingly recognized the wisdom of staying actions in the federal courts pending determination by a state court of decisive issues of state law.

It would seem to be enough that Milford has shown that there is a law under which towns in Illinois may undertake such programs and they have received the favorable vote along the lines called for by that act. That makes a case of *prima facie* legal authorization and complies with Section 7(a). The many and diverse further problems of local law should, it would seem, be addressed to the courts of Illinois in an appropriate proceeding.

Accordingly, the order here subjoined makes provision for a supply of gas for the Village of Milford.[23]

(6) *Panhandle's Request For a Certificate Covering a 3-mile Lateral at Defiance, Ohio (CP60–60)*: The pipeline construction program presented by Panhandle in its Fourth Amended Application filed in February 1962 (designed to accomplish a one-third increase in the capacity of its entire system), involved "looping" of its main line for many miles at about a dozen different points, adding compressor station capacity and lateral line looping or replacing of 127 miles at 10 different points, all coming to about $68 million dollars of investment. Each and all of the items except one, a 3.11 mile lateral of 6-inch line at Defiance, Ohio, costing $87,000, was authorized by the FPC order of July 27 in this proceeding, with no question or objection raised as to any of the rest of the many pipeline construction projects. In view of the objections raised in the staff brief to this one item, it was reserved from the authorizations previously granted, and now remains to be decided.

An exhibit with the application (F–4) shows that the new line replaces or duplicates the *latter* half of the Defiance lateral off the main Panhandle system, the new pipe attaching at the mid-way point where there is also the connection for service for distribution to the city of Defiance. The new pipe extends beyond that point for a little over three miles and apparently is to serve two factories located a mile or two to the east of town. To the FPC staff, the new facility appeared to be entirely for service to the two interruptible industrial customers, whose need for the increase was thought not to have been explained. Nor, apparently, was it clear whether the cost was planned to be added to Panhandle's total rate base, and if so, why. Panhandle responds that the need was fully explained at the hearing, citing the transcript at 194T30,678–94.

A review of the materials does leave one or two uncertainties; particularly it is not quite clear which increase in service is the occasion for the added in-

---

[23] Surely no answer is really needed to Panhandle's point (see par. (h) on p. 749, above), which seems to be that a section 7(a) order for attachment to "the facilities of" a distributor must somehow be read to mean facilities owned, but not facilities leased, by the distributor.

vestment. Compare, for example, the answer given on page 30,678 with that on 30,693. On the other hand, the item is extremely minor compared to the tremendous scope of the entire program and it would be surprising indeed if fuller attention to and better explanation of this minor phase could not have (or could not now) result in an entire allaying of the staff's doubts. When the questioning of a proportionately very small item does not reach its turn until the 194th day of the hearing, it is also not too surprising that the inquiry fails to satisfy all parties. Conceivably, by a full study of the exhibits, the testimony and the several briefs, it might be possible for the initial and the final decisions in this matter now to come to a satisfactory or at least a sustainable conclusion, but the real doubt is whether the Commission should be called upon to make this minor determination at this stage of the record. The three pages of the February application which refer to this 3-mile pipe were perhaps rather lost in the two-inch volume containing the entire expansion program; anyway, since the hearing had already gone on for over a year, there was no opportunity for extensive staff studies and for working out such details as this at the staff level, as would normally be expected. The better course at this time would seem to be to reserve approval on this small item, by means of denial of the application without prejudice, in the expectation that it can be resubmitted separately, in small compass, and without expense since the present records can be incorporated by reference. Upon such resubmittal, with somewhat fuller explanation of the need and clearer indication of the effect of the investment on the jurisdictional customers, it would seem quite possible that a satisfactory solution could be worked out by the staff and could be processed under what is known as the shortened procedure, without the need for further hearing. Upon that basis—it being made clear that this is not a definitive ruling on the merits—this small and particular phase of Panhandle's application is herein dismissed without prejudice.

(7) *Direct Sale to the National Distillers:* Not listed in the Commission's general order of December 1, 1960, as one of the subject matters of this consolidated proceeding, and not adverted to in any way until the closing sessions of the 199-day hearing, a new subject is discussed in the staff brief (pp. 64–67), namely, the transportation and delivery of gas by Panhandle to an industrial firm located at the junction of the Panhandle and Trunkline pipelines at Tuscola, Illinois. The point is that this interstate transportation was authorized by FPC some years ago in a decision (12 FPC 686) that, according to the present brief, imposed certain limitations on the daily quantities delivered which come out to 5,156,000 Mcf per year, but the deliveries projected at the completion of the present expansion program are said to exceed that limit somewhat, for a total of 5,508,000 Mcf. It is said the delivery has a substantial effect on all rate payers beyond the plant; that is, in Indiana, Ohio, Michigan and Ontario, because the effect of the sale is to "strip" from the natural gas stream its hydrocarbon content in excess of about 983 Btu,[84] which results in the customers along the line receiving gas at about the minimum heat content which the tariff provides for, with, it says, the revenues retained for the benefit of Panhandle and no credit to its jurisdictional cost of service. Staff's recommendation is for a "cease and desist order against the deliveries of natural gas" to the National Petro-Chemicals plant in excess of the authorized quantity.

---

[84] For a discussion of this phase of Panhandle's operations, see Opinion No. 350 of January 15, 1962, 27 FPC 35, 47; also Opinion No. 344 of April 27, 1961, 25 FPC 787, 797.

There were a few questions and answers at the hearing which, it now appears, related to this suggestion made, but the actual point was never fully disclosed, responded to or comprehended. Panhandle's reply brief, filed two weeks after the staff brief, says the ownership of the plant referred to is now in the National Distillers and Chemical Corporation, but Panhandle pointedly denies the staff's suggestion that the jurisdictional customers along their lines are disadvantaged, also denies that its delivery exceeds the authorized totals, and generally protests the proposal for a cease and desist order. "Neverthless", adds the brief, "Panhandle is currently reviewing estimates of the usage at Tuscola, and will, if necessary, obtain such modifications of the contract and of the authorization, as may be indicated."

It is obvious from this brief summary that the issues upon this point are not clearly defined, the evidence is not fully developed, and there is nothing ripe for decision. For example, both briefs refer to Exhibit 281 for the data as to the proposed delivery in the coming three years, but nowhere in that exhibit is there found the name of this putative buyer, either in the version used by the staff or the version reported by Panhandle. (The coincidence of the figures listed in Exhibit 281 for three sales to the "U.S. Industrial Chemical Company" suggests that firm may quite possibly be the one the parties are referring to, and it was so testified when this new subject was first heard of on the one-hundred ninety-fourth day of the hearing, T30, 249). Among other deficiencies of the record, there is no indication that the buyer—by whatever name known—has been placed on notice of the question raised in this proceeding about the full continuance of its supply.

A "cease and desist" order as recommended by the staff carries with it most serious implications[36] and is, or should be, issued only after a full adjudicatory process as contemplated by Section 5 of the Administrative Procedure Act. As in the case of other types of administrative action, those charged and called upon to defend their conduct are entitled to advance notice of the nature of the accusation and of the evidentiary conclusions to be drawn against them.[37] This is seen as a specific requirement of Section 5 of the Administrative Procedure Act, Section 14 of the Natural Gas Act, Section 1.6, 1.9, 1.19 and 1.20 of the Commission's rules, perhaps also of due process, and, indeed, of elementary ethics.[37]

What is more, on purely practical grounds there is not called for at this stage the indictment which a final cease and desist order of the Federal Power Commission would necessarily imply. Panhandle is one of the largest and oldest of the major interstate pipelines and has been subject to the Natural Gas Act ever since its enactment in 1938. The staff is not dealing with a fugitive, nor is there the type of situation which in another field (internal revenue) induces a jeopardy assessment of taxes. It is clear enough that the staff has a basis for making inquiry and for requiring Panhandle to examine its operations in depth and to respond in full detail, all of which should be completed *before* the Commission is expected to pass upon the alleged dereliction. In that view, all that is called for at this stage is a simple letter from the staff, pointing out the questionable appearances and calling upon Panhandle for such explanations and reformations, if any, as may be indicated. It will then be time enough to issue

---

[36] *N.L.R.B.* v. *Colton* (CCA 6, 1939) 105 F. 2d 179, 183.

[36] *Anglo Canadian Shipping Co.*, v. *U.S.* (CA 9, 1959) 264 F. 2d 405.

[37] Compare, for example, the Commission's 1948 orders in *Panhandle*, 7 FPC 1033, and in *Phillips*, 7 FPC 983.

a formal "show cause" order, if some question still remains, and set the matter for separate hearing under its own docket, uncomplicated by its admixture in the present proceeding, which involves a dozen or more parties, two dozen or more separate issues, 50 or more interveners, 700 or more exhibits and items by references, and 30-odd thousand pages of transcript.[38]

FURTHER FINDINGS AND CONCLUSIONS

Upon consideration of the record and briefs, it is further found and concluded that:

(1) Panhandle Eastern Pipe Line Company, Trunkline Gas Company, American Louisiana Pipe Line Company, Michigan Wisconsin Pipe Line Company, severally are "natural-gas companies" within the purview of the Natural Gas Act, able and willing properly to do the acts and to perform the services herein proposed and to conform to the Act and the requirements of the Commission thereunder, and their facilities, and interstate transportation and sales for resale, are subject to the jurisdiction of the Federal Power Commission and the requirements of Section 7(c) of the statute.

(2) The transportation of gas by Panhandle for the service of the B. F. Goodrich Company in Indiana and the General Portland Cement Company in Ohio will be in interstate commerce and is and will be required by the public convenience and necessity.

(3) The continued delivery by American Louisiana to the Michigan Consolidated Gas Company of the gas allocated therefor by the Commission's order of December 19, 1958, G–10396, 20 FPC 851, 858, par. (C), is required by the public convenience and necessity.

(4) The certificates of convenience and necessity issued to Panhandle and Trunkline by the decision of July 11 and order of July 27, 1962, herein, are required by the public convenience and necessity and desirable in the public interest to be conditioned to require service by Panhandle to the City of Bushnell, Illinois, and by Trunkline to the Village of Milford, Illinois, as set forth above. Bushnell and Milford are municipalities authorized to engage in the local distribution of gas to the public. No undue burden will be placed upon Panhandle and Trunkline hereby, nor will this action impair their several abilities to render adequate service to their customers, respectively.

(5) The approval of Panhandle's Fourth Amended application, CP60–60, for a certificate authorizing a 3.11-mile pipeline for its Defiance lateral should be withheld.

ORDER

Accordingly, *it is ordered*, Subject to review by the Commission, that:

(A) Certificates of public convenience and necessity are hereby issued to Panhandle Eastern Pipe Line Company covering:

(i) The transportation of gas to the B. F. Goodrich Company plant in Indiana, as described above; and

(ii) The transportation of gas for sale to the General Portland Cement Company plant in Ohio, as described above.

(B) The allocation of the gas supply of the American Louisiana Pipe Line Company to the Michigan Consolidated Gas Company as contained in the Commission's order of December 19, 1958, G–10396, 20 F.P.C. 851, 858, par. (C), is

[38] *Cf. F.T.C.* v. *Gratz*, 253 U.S. 421, 427; *N.L.R.B.* v. *International Union* (CA 9, 1961) 287 F. 2d 605, 611; *States SS Co.* (Mar. Sub. Bd., 1962) 12 Pike & F. Adm. L. 2d 64; *Waukesha Sales & S. Co.* (N.L.R.B., 1962) 12 Pike & F. Adm. L. 2d 420; *Stokeley-Van Camp et al.*, 130 N.L.R.B. 869, 872.

hereby reaffirmed and the delivery and sale thereof is hereby directed to be continued.

(C) The certificates of public convenience and necessity issued in this proceeding on July 11 and 27, 1962, to Panhandle Eastern Pipe Line Company and Trunkline Gas Company are hereby conditioned respectively to require Panhandle to connect its line near Knoxville, Illinois, with the proposed facilities of the City of Bushnell, Illinois, and sell gas to the City of Bushnell in the amount of up to 2,000 Mcf per day, and to require Trunkline to connect its line with the facilities proposed to be operated by the Village of Milford, Illinois, and sell gas to the Village in the amount of 906 Mcf per day. The order for Bushnell is to be effective when the new Illinois Power Company lateral into Galesburg is placed in service.

(D) Panhandle's application for a certificate covering its proposed 3.11-mile lateral at Defiance, Ohio, is hereby dismissed without prejudice.

WILLIAM L. ELLIS,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, Harold C. Woodward, and David S. Black.

MONSON GAS COMPANY, DOCKET NO. CP62-196

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTIONS OF FACILITIES AND SALE AND DELIVERY OF NATURAL GAS

(Issued September 17, 1963)

Monson Gas Company (Applicant) filed an application on February 16, 1962, as supplemented on June 26, 1963, pursuant to Section 7(a) of the Natural Gas Act, for an order directing Tennessee Gas Transmission Company (Tennessee Gas) to establish physical connection of its facilities with those which Applicant proposes to construct and to sell and deliver to Applicant volumes of natural gas for distribution and resale in the towns of Monson and Palmer and their environs and to the Diamond National Corporation at Thorndike, all located in Massachusetts, as more fully described in the application.

Applicant proposes to construct and operate approximately 9.4 miles of 6-inch lateral pipeline extending from the 24-inch transmission line of Tennessee Gas to the Diamond National Corporation's plant at Thorndike together with delivery points along the course at Monson and Palmer. Distribution systems will be constructed and operated in the said towns by Applicant. All such proposed facilities have been authorized by the Massachusetts Department of Public Utilities.

Applicant estimates the natural gas requirements for the gas service to all its above named customers by the end of the third year to be 2,244 Mcf per day on peak days and 488,835 Mcf per year, both volumes at 14.73 psia. Approximately 90% of the gas to be taken by Applicant will be sold and consumed for industrial purposes by Diamond National Corporation.

The estimated cost of construction of the proposed facilities to the Applicant at the end of the third year is $396,891 including the annual increments. These costs will be financed by the sale of first mortgage bonds together with the sale of 4,900 shares of common stock and a deposit from the Diamond National Corporation.

Tennessee Gas offers no objection to applicant's request in this proceeding.

The Commission finds:

(1) Tennessee Gas Transmission Company, a Delaware corporation with its principal place of business at Houston, Texas is a "natural gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of July 15, 1947, Docket No. G–910, (6 FPC 777).

(2) Applicant, Monson Gas Company, a Massachusetts corporation with its principal place of business in Monson, Massachusetts is a corporation legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and convenient and in the public interest that Tennessee Gas Transmission Company be directed to establish physical connection of its transmission facilities with the facilities proposed by Applicant and to sell and deliver to it through such connecting facilities volumes of natural gas of 2,244 Mcf per day and 488,835 Mcf per year, at 14.73 psia.

(4) The requirement that Tennessee Gas serve Applicant, as hereinafter ordered, will not place an undue burden upon it, nor will the requirement that facilities be added to its transmission facilities impair ability to render adequate service to existing customers.

The Commission orders:

(A) Tennessee Gas Transmission Company be and is hereby directed to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant as hereinabove described, and to sell and deliver up to 2,244 Mcf, at 14.73 psia, of natural gas daily to applicant for distribution and resale as hereinbefore described. Such service shall be rendered pursuant to Tennessee's appropriate rate schedule now on file.

(B) Tennessee Gas shall report to the Commission in writing the date of commencement of service to Applicant within 15 days thereafter.

(C) Applicant shall prepare to receive service as directed within three months from the date of issuance of this order.

Commissioner Black *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward, and David S. Black.

NORTHERN STATES POWER COMPANY, DOCKET NO. E–7118

SUPPLEMENTAL ORDER AUTHORIZING THE ISSUANCE OF FIRST MORTGAGE BONDS

(Issued September 18, 1963)

By order issued September 4, 1963, *supra*, p. 644, in the above-entitled matter, the Commission authorized Northern States Power Company (Applicant) to issue and sell at competitive bidding $15,000,000, principal amount of First Mortgage Bonds, due 1993, subject to the provisions, among others, set forth in Paragraph (B) of that orders, as follows:

(B) The proposed issuance and sale of Bonds at competitive bidding shall not be consummated until:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(k)(3) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(k)(4) of those Regulations relating to affiliation, and have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.

(ii) The Commission, by further order, shall have approved the price to be

received by Applicant for the proposed issuance of Bonds and the interest rate thereof.

Applicant, on September 18, 1963, filed an amendment, pursuant to the requirements of the afore-mentioned Commission order, setting forth, among other things, that it proposes to accept, as providing the lowest annual cost of money to it, the bid of Halsey, Stuart & Co. Inc. to purchase the proposed issuance of $15,000,000 principal amount of Bonds for the price of 99.19% of principal amount with an interest rate of 4⅜%.

The Commission finds:

(1) Applicant has satisfactorily complied with the requirements of paragraph (B) of the Commission's order issued September 4, 1963, in the above docket, and under the bid it proposes to accept for the Bonds, the price to be received by Applicant therefor and the interest rate thereof are reasonable.

(2) The proposed issuance and sale of Bonds, as hereinafter authorized, will be for a lawful object, within the corporate purposes of the Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by the Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purposes.

The Commission orders:

(A) The price to be received by Applicant for the proposed Bonds and the interest rate thereof under the bid referred to above are approved as reasonable.

(B) The proposed issuance and sale of Bonds referred to above, upon the terms and conditions and for the purposes specified in the application, as supplemented by the amendment referred to above, are hereby authorized subject only to the provisions of paragraphs (A), (C), (D), and (E) of the Commission's order issued September 4, 1963 in the above docket.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward, and David S. Black.

ARKANSAS LOUISIANA GAS COMPANY, DOCKET NO. G-15187

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 19, 1963)

On April 10, 1963, as supplemented on July 1, 1963, Arkansas Louisiana Gas Company (Applicant) filed an application to amend the Commission's order issued October 14, 1958, in Docket No. G-15187, as amended on January 28, 1959, by extending the terms of said order for an additional year in accordance with a letter agreement between Applicant and Mississippi River Fuel Corporation (Mississippi) dated March 6, 1963, amending the original agreement between the parties, so that the certificate authorization will terminate with the termination of said amended agreement, all as more fully set forth in the subject application to amend.

The order of October 14, 1958, as amended, authorized Applicant, among other things, to sell and deliver 35,000 Mcf per day of natural gas at 15.025 psia to Mississippi for resale from October 15 of each year through April 16 of the succeeding year for a five-year period ending April 16, 1963, and to sell and deliver 1,000 Mcf per day of natural gas at 15.025 psia from April 16, 1963, until May 1, 1963, the termination date of the original contract between the parties. The price of gas for sale to Mississippi is 26 cents per Mcf under the original

agreement dated February 5, 1958, which is on file as Applicant's FPC Gas Rate Schedule No. XFS–16, Original Volume No. 2.

The subject application for amendment seeks to extend the terms of the original agreement between the parties for an additional year in order to authorize Applicant to sell and deliver 35,000 Mcf of natural gas per day to Mississippi from October 15, 1963, to April 16, 1964, and to sell and deliver 1,000 Mcf of natural gas per day from April 16, 1964, until May 1, 1964, at the original price of 26 cents per Mcf. It appears that Mississippi urgently needs this additional gas for the coming heating season, and cannot replace this purchase with a like purchase at a similar price.

Applicant has tendered for filing its First Revised Sheet No. 190 superseding Original Sheet No. 190 of its FPC Gas Tariff, Original Volume No. 2, which has as the effect of extending the existing agreement an additional year through May 1, 1964, as described above.

Due notice of the filing of the motion to amend and opportunity for hearing thereon has been given by publication in the Federal Register on August 16, 1963 (28 F.R. 8430). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

(1) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order in Docket No. G–15187 issued October 14, 1958, as amended on January 28, 1959, be further amended as hereinafter ordered.

(2) First Revised Sheet No. 190 to Applicant's Gas Rate Schedule No. XFS–16, Original Volume No. 2 should be accepted for filing as hereinafter ordered.

The Commission orders:

(A) The Commission's order in Docket No. G–15187 issued October 14, 1958, as amended on January 28, 1959, be and the same is hereby further amended by authorizing Arkansas Louisiana Gas Company to extend the sale and delivery of 35,000 Mcf of natural gas per day to Mississippi River Fuel Corporation from October 15, 1963, to April 16, 1964, and the sale and delivery of 1,000 Mcf of natural gas per day from April 16, 1964, until May 1, 1964, at the price of 26-cents per Mcf at 15.025 psia, all pursuant to the letter agreement dated March 6, 1963, in this proceeding.

(B) First Revised Sheet No. 190 to Arkansas Louisiana Gas Company's Gas Rate Schedule No. XFS–16, Original Volume No. 2, is hereby accepted for filing, to be effective on the date of issuance of this order.

(C) In all other respects said order, as amended, shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, Harold C. Woodward, and David S. Black.

CONTINENTAL OIL COMPANY, THE ATLANTIC REFINING COMPANY, TIDEWATER OIL COMPANY, AND CITIES SERVICE PRODUCTION COMPANY, DOCKET NO. RI64–129

ORDER TO SHOW CAUSE WHY RESPONDENTS SHOULD NOT BE REQUIRED TO COMPLY WITH REQUIREMENTS OF THE NATURAL GAS ACT

(Issued September 19, 1963)

This is an order directing Continental Oil Company, The Atlantic Refining Company, Tidewater Oil Company, and Cities Service Production Company to

show cause why they should not be required to comply with Sections 7 and 4 of the Natural Gas Act, and Commission regulations thereunder. Each of the above-named producers has executed an agreement, dated May 10, 1961, with Tennessee Gas Transmission Company for the sale of natural gas from Blocks 198 and 199, offshore Louisiana, referred to as the Ship Shoal Field. In our opinion and order issued concurrently herewith in Docket Nos. G–16842, *et al.*, we concluded that the arrangement between these producers and Tennessee constitutes a sale of natural gas for resale and therefore subject to the applicable provisions of the Natural Gas Act.

The Commission orders:

(A) At the hearing provided for in paragraph (B) hereof, Continental Oil Company, The Atlantic Refining Company, Tidewater Oil Company and Cities Service Production Company shall show cause, if any there be, why they should not be found to be or to have been engaged in the the sale of natural gas for resale to Tennessee from the Ship Shoal Field subject to the jurisdiction of this Commission without having secured requisite authorization therefor pursuant to Sections 7 and 4 of the Natural Gas Act and the Commission's regulations thereunder.

(B) Pursuant to the authority contained in, and subject to the authority conferred upon the Federal Power Commission by the Natural Gas Act, including particularly Sections 7, 14, 15 and 16, and the Commission's Rules and Regulations under that Act, a public hearing shall be held concerning the issue presented by paragraph (A) hereof, at a date to be fixed by the Presiding Examiner following a prehearing conference to be held on or commencing October 18, 1963 at 10:00 a.m. (EDST) in a hearing room of the Federal Power Commission, 441 G Street NW., Washington 25, D.C.

(C) Protests or petitions to intervene in this proceeding may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the Rules of Practice and Procedure (18 CFR 1.8 or 1.10) on or before October 7, 1963.

Commissioner Black *not participating.*

OPINION NO. 403

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NOS. G–16842 AND CP60–94; TENNESSEE NATURAL GAS LINES, INC., CP61–27; MIDWESTERN GAS TRANSMISSION COMPANY, CP62–116; ALABAMA-TENNESSEE NATURAL GAS COMPANY, CP62–133; CITY OF MARSHALL, ILLINOIS, CP62–187; CITY OF CASEY, ILLINOIS, CP62–188; CITY OF MARTINSVILLE, ILLINOIS, CP62–189*

OPINION AND ORDER ON APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 19, 1963)**

Syllabus

1. To extent that public interest is satisfied by pipeline's recently certificated expansion to higher design day delivery capacity, *a fortiori*, it is satisfied by expansion to lesser capacity here. P. 764.

*Five 7(a) applications were severed from this proceeding and applications disposed of by order issued April 24, 1963, 29 FPC 835.

**Initial decisions appear on pp. 772 and 798. Rehearing denied 30 FPC 1287.

2. Based on reserve showing in recently approved docket, pipeline has sufficient reserves to justify certification of instant facilities. P. 764.
3. Transaction between CATCO companies and Tennessee is sale for resale in interstate commerce within provisions of Section 7(c) of the Natural Gas Act. P. 764.
4. Instant transaction constitutes sale of definite volumes of gas, at specified price per Mcf, which is destined for sale in interstate commerce—not a mere sale of underdeveloped leases. P. 766.
5. Certificate authorizing sale of natural gas should be issued before, not after, gas begins interstate journey—contention that gas must be flowing under an in-place purchase before Commission jurisdiction attaches is *rejected*. P. 766.
6. Commission *discusses* deficiencies of Ship Shoal transaction requiring denial of application. P. 766.
7. Under instant circumstances contractor-lessor is not required to apply for a Section 7(c) certificate. P. 768.
8. Under Section 7(a) it is sufficient that communities-applicants make a *prima facie* showing that they are legally authorized to engage in the distribution business. P. 768.
9. Commission *issues* certificates of public convenience and necessity; *defers* action on Ship Shoals lateral; and *directs* interconnection of facilities and sale of gas, in proceedings arising under Sections 7(c) and 7(a) of the Natural Gas Act. P. 769.

Commissioner WOODWARD *concurring in part; dissenting in part.*

Harry S. Littman, Jack Werner, Stanley M. Morley, W. C. Braden, Jr., W. W. Bedwell, A. T. Beckstand and *B. J. Williamson* for Tennessee Gas Transmission Company and Midwestern Gas Transmission Company

Orville N. Foreman for Cities of Marshall, Casey and Martinsville, Illinois

James L. Bomar, Jr., for Tennessee Natural Gas Lines, Inc., and City of Clarksville, Tennessee

William C. Hart, Tilford A. Jones, Giles D. H. Snyder and *R. K. Talbott* for United Fuel Gas Company

William C. Hart, Tilford A. Jones, Giles D. H. Snyder and *W. F. Laird* for The Ohio Fuel Gas Company

William C. Hart, Tilford A. Jones and *Giles D. H. Snyder* for The Manufacturers Light & Heat Company

J. Harry Mulhern, Edward S. Kirby, James R. Lacey and *William R. Duff* for Public Service Electric & Gas Company

John W. Glendening, Jr., and *John S. Schmid* for The Berkshire Gas Company, Connecticut Gas Company, Gas Service, Inc., Haverhill Gas Company, The New Britain Gas Light Company and Worcester Gas Light Company

John W. Glendening, Jr., John S. Schmid and *Daniel F. Wheeler* for The Bridgeport Gas Company

John W. Glendening, Jr., John S. Schmid and *Charles H. Toll, Jr.* for Concord Natural Gas Corporation

John W. Glendening, Jr., John S. Schmid, Halcyon G. Skinner and *William R. Cook* for Fitchburg Gas & Electric Company.

John W. Glendening, Jr., John S. Schmid and *Frank J. Coyle* for The Greenwich Gas Company.

John W. Glendening Jr., John S, Schmid and *H. Bissell Casey, Jr.*, for The Hartford Electric Light Company.

John W. Glendening, Jr., *John S. Schmid* and *George N. Beauregard* for City of Holyoke Massachusetts Gas and Electric Company.

John W. Glendening, Jr., *John S. Schmid* and *Edmund L. Twomey* for Lowell Gas Company.

John W. Glendening, Jr., *John S. Schmid* and *Charles H. Toll, Jr.*, for Manchester Gas Company.

John W. Glendening, Jr., *John S. Schmid*, *Halcyon G. Skinner* and *William R. Cook* for Springfield Gas Light Company.

John W. Glendening, Jr., *John S. Schmid* and *Ernest N. Agresti* for Valley Gas Company.

John W. Glendening, Jr., *John S. Schmid* and *Edward M. Lee* for City of Westfield Gas and Electric Light Department.

Norman A. Flaningam and *Thomas G. Roderick, Jr.* for Consolidated System Companies.

C. William Cooper and *H. B. Griffith, Jr.* for Con-Gas Service Corporation.

George C. Williams for The East Ohio Gas Company and Lake Shore Pipe Line Company.

Thomas A. White and *J. J. Schimdt* for Hope Natural Gas Company.

G. Kirby Herrington and *Richard B. Gordon* for New York State Natural Gas Corporation.

James B. Sayers for The Peoples Natural Gas Company.

Morrell S. Lockhart, *Theodore J. Carlson* and *M. Wade Kimsey* for Central Hudson Gas & Electric Corporation.

John A. McGrath, *Jerome J. McGrath* and *James A. Gammon* for Fuels Research Council, Inc., National Coal Association, United Mine Workers of America, Mid-West Coal Producers Institute, Inc., and Anthracite Institute, Inc.

Harry L. Bristol for New York State Electric & Gas Corporation.

Reuben Goldberg, *George Spiegel* and *Charles E. Thomas* for Pennsylvania Gas & Water Company.

Edwin F. Russell and *Harry G. Hill, Jr.* for The Brooklyn Union Gas Company.

Thomas F. Brosnan and *George J. Meiburger* for Lincoln Natural Gas Company and Western Kentucky Company.

James O'Malley, Jr., *H. G. Skinner*, *R. D. Jones* and *E. R. Thomas, Jr.* for Orange & Rockland Utilities, Inc. and Consolidated Edison Company of New York, Inc.

Kent H. Brown, *Barbara M. Suchow* and *Charles J. Cox* for New York Public Service Commission.

Albert J. Feigen for Cities of Grandview, Indiana and Morgantown, Kentucky and Alabama-Tennessee Natural Gas Company.

D. K. Kadane, *E. M. Barrett* and *Bernard Hulkover* for Long Island Lighting Company.

Sherman S. Poland for Allied Gas Company, Central Illinois Electric and Gas Company and Portland Gas Light Company.

Charles F. Dugan and *George B. Mickum, III* for Granite State Gas Transmission, Inc.

J. David Mann, Jr., *John E. Holtzinger, Jr.*, *David A. Sutherland* and *Frederick Moring* for The United Gas Improvement Company.

Justin A. Stanley and *Robert A. Helman* for Northern Illinois Gas Company.

I. R. Reif for Iroquois Gas Corporation and Pennsylvania Gas Company.

Elmer Nafziger for Central Illinois Public Service Company.

Richard B. Williams for The Village of Provencal, Louisiana.

Alan R. Squires and *Herbert E. Squires* for Pennsylvania Public Utility Commission.

Robert L. Russell and *John J. Keating* for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, Harold C. Woodward and David S. Black.

Ross, *Commissioner:*

Background of the Proceeding

This proceeding involves a proposal by Tennessee substantially to enlarge its system, and related applications by certain wholesale customers of Tennessee to expand their systems to meet increased market demands. In Docket No. G–16842, Tennessee requests authority to construct and operate 18,300 compressor horsepower on its Delta-Portland line in lieu of expanding the capacity of its Agua Kinder-Portland (K–P) line, which was previously authorized.[1] Docket No. CP60–94 proposed additional compressor horsepower on Tennessee's Delta-Portland line, substantial looping of Tennessee's main line between station 87 and its storage fields, and compressor horsepower and looping northeast of storage. The facilities proposed by Tennessee would increase its design day capacity from 2,669,031 to 2,785,000 Mcf. With this increase, Tennessee would meet 161,699 Mcf additional firm daily contract demand requirements and 10,120 Mcf of storage. About 9,000 of the unallocated 10,939 Mcf would satisfy the requests for new service of the intervenors herein. The cost of the facilities involved was estimated at $62,749,000.

Of the above sum, approximately $8½ million represents the cost of constructing 58 miles of 20" line to connect the Ship Shoal reserves. These reserves, estimated at 533,402,000 Mcf of gas (and 12,244,898 barrels of oil) were sold in-place by the CATC companies to Tennessee through two wholly-owned affiliates at a price of $97⅓ million of which $85⅓ million—or 87.67%—was attributed to gas. Tennessee's mineral rights extend to the MI Sands (13,076' to 13,123') and no lower. The gas would be taken over 26 years and paid for by a series of sixteen annual promissory notes, in addition to the down payment. Thus far, Tennessee, through Tennessee Gas Supply Co., has paid $21,166,666.08 for Ship Shoal gas, and through Tenneco, $6,750,000 for oil.[2] On a unit basis, the cost of the gas, in place, figures to 16¢ per Mcf. However, the operation and maintenance expenses incident to production, as estimated by Tennessee, raise the price to 28.3¢ per Mcf at 15.025 psia. After the sixth anniversary of the contract, redetermination of the gas reserves is permitted. The result of this determination would be reflected in amendment of the gas promissory notes at a 16¢ per Mcf rate (in place).

Beginning in 1960, the Commission granted a series of interim temporary certificates to Tennessee to construct and operate many of the facilities requested herein. In short, all of the additional compressor horsepower on the Delta-Portland line was temporarily authorized. The same is true regarding all of the looping and compressor horsepower northeast of Tennessee's storage. The cost of the temporarily authorized facilities represents about $32,000,000 of the $62,000,000 total facilities requested. While Tennessee's requests for temporaries were granted, temporary authority for related facilities and sales sought by other parties hereto were also issued. At the same time, producer applica-

[1] 21 FPC 653 (1959).

[2] Under the agreement, the CATC sellers agreed to purchase, and are purchasing all the Ship Shoal oil. In effect, Tenneco is merely the operator for the CATC companies, and the sale of the oil is a wash item for all practical purposes.

tions requesting certificates to sell gas to Tennessee in connection with Tennessee's expansion were severed and granted temporary certificates.[3]

In his initial Initial Decision (November 9, 1962), the Examiner considered only Tennessee's requirements for the 1962–1963 winter heating season and deferred decision regarding the alleged overbuilding of Tennessee's system and the propriety of the Ship Shoal Transaction. He did recommend certification of that portion of Tennessee's system already constructed under temporary authority, as well as the other applications herein. He further recommended certification of the Ship Shoal lateral to permit Tennessee to obtain some benefit from its already large expenditure for these reserves. The Commission then directed the Examiner to issue his decision on the deferred issues.

This decision was issued March 4, 1963. The Examiner found that the Ship Shoal acquisition is subject to the Commission's jurisdiction. He concluded that the Commission could not compel the producers to file appropriate certificate applications but recommended that the Commission apply to a U.S. District Court for an injunction restraining Tennessee from making further payments. Because of the possibility the Ship Shoal reserves would not be connected, he excluded them in calculating Tennessee's deliverability. Applying Staff's arithmetical relationship to Tennessee's initial deliverability study, he found 11.5 years of deliverability. However, his independent analysis of Tennessee's exhibits, not described in any detail in his decision, resulted in a coverage of from nine to ten years. The Examiner concluded that Tennessee had inadequate gas supplies to support its proposed expansion and recommended denial thereof as well as all related applications. He did not, however, reverse his previous determination to authorize those facilities northeast of storage and those facilities included in Docket No. G–16842.

Virtually all of the parties seeking an allocation of gas in this case filed exceptions to the effect that they needed the requested allocations and related facilities, irrespective of what the Commission does regarding the Ship Shoal leaseholds. As stated above, most of these applications have been temporarily certificated.

Due to the extremity of the 1962–1963 winter season, and the immediate need for increased deliverability to satisfy the firm demands of its customers, Tennessee filed an application for a further expansion of its transmission facilities involving a cost of $35,308,600 (Docket No. CP63–247). The proposal was to loop its Delta-Portland, Ohio, and Mercer-Hebron lines[4] and to add compressor horsepower, largely on the Delta-Portland line. With these facilities, Tennessee's design day delivery capacity would be increased to 2,840,000 Mcf compared to the figure of 2,785,000 Mcf proposed herein. This application was expressly predicated upon the Commission's approval of the facilities sought herein. The latter application was subsequently amended to specify all those facilities sought herein (excluding however, the Ship Shoal lateral) which had not previously been temporarily certificated, i.e., loop lines and compressor horsepower on Tennessee's main line between station 87 and its storage facilities. This application, as amended, was approved via the abridged hearing procedure on May 16, 1963. In addition certain 7(a) applicants and one intervenor who requested quite small allocations of gas herein filed a motion requesting severance and immediate grant of their applications in view of the time problem regarding their proposed financing. These applications were severed and granted by our orders of April 24, and May 29, 1963.

---

[3] Virtually all of these applications are consolidated in the So. Louisiana certificate proceeding—*Union Producing Co.*, Docket No. G–13221, *et al.*

[4] Over 150 miles principally of 36" line.

Our decision on the issues raised by the Examiner's decisions and exceptions thereto follows.

Feasibility of Tennessee's proposed expansion

The facilities remaining in issue are those on the Delta-Portland line (compressor horsepower), and those northeast of Tennessee's storage which received temporary authorization and which have been constructed. While Staff and Columbia companies initially contended some of these facilities were not required, no exception was taken to the Examiner's first decision to certificate a portion of them, i.e., those included in Docket G–16842 and those northeast of storage. Moreover, no party excepted to the Examiner's subsequent recommended denial of the remaining facilities solely on the basis of inadequate gas supply.

From a practical standpoint, the remaining facilities raise no real issue. In Docket CP63–247, Tennessee was permanently certificated to enlarge its system, mostly its Delta-Portland line with respect to which the facilities technically at issue here are proposed. Tennessee's recently authorized facilities will really be superimposed on those sought herein. Moreover, as stated above, Tennessee's application was premised upon permanent authorization of the facilities herein. To the extent that the public interest is satisfied by the proposed expansion of Tennessee's design day delivery capacity to 2,840,000 Mcf in CP63–247, *a fortiori*, it is satisfied by the expansion to 2,785,000 Mcf here, particularly since the same segments of Tennessee's line are involved in both proposals. In this connection, denial of the facilities remaining in issue here would preclude the use—at least the effective use—of the facilities certificated in Docket CP63–247.

Based on Tennessee's showing in Docket No. CP63–247, we were satisfied that it had adequate gas reserves to support its proposed expansion in that case. On that basis, we conclude that Tennessee has sufficient reserves to justify certification of the instant facilities. We therefore find it unnecessary to resolve the particular issues raised in this proceeding with respect to the question of reserves.

Ship Shoal Transaction

The examiner found the Ship Shoal transaction subject to the Commission's jurisdiction and concluded that the existing agreements were contrary to the public interest. He recommended court action to enjoin Tennessee from making further payments and the institution of a new proceeding looking toward the amendment of the transaction in a conventional manner.

We agree with the Examiner that the transaction between the CATC companies and Tennessee is a sale for resale in interstate commerce included within the provisions of Section 7(c) of the Natural Gas Act. An analysis of the transaction reveals that in financial effect and impact on the parties, it is a sale of gas.

The producer-sellers, before May 10, 1961, had erected three drilling platforms at Ship Shoal and had drilled about 12 wells, with multiple completions therefrom. With the knowledge obtained from this activity, the producers were able to estimate the amount of reserves underlying the subject leases involved. The Act of Sale and Mortgage and Pledge transfers only those oil and gas reserves down to and including the MI Sands, reserving to the producers all rights to hydrocarbons lying beneath this geological formation. Another significant factor relates to the provisions providing for acceleration of payment of the promissory notes if production is increased over that contemplated in the agreement. Moreover, provision is made for the execution of additional notes

or the elmination of existing notes if the reserves are subsequently determined to be more or less than that specified in the agreement. As noted by the Examiner, the sale of the oil reserves is essentially a wash transaction by virtue of the contractual provisions under which the CATC companies agreed to purchase all of the oil, including other liquid hydrocarbons, from the Ship Shoal properties.

These factors clearly demonstrate that the essential nature of the instant transaction is a sale of a definable volume of gas the price for which is geared to the actual volume found, and payment for which is directly related to its production. Thus, this situation is essentially analogous to the *Rayne Field* case[5] and easily distinguishable from that prevailing in the *Panhandle* case[6] cited by Tennessee. In the latter case, the leases were undeveloped so that the transfer did not resemble a sale of gas as does this one. Morever, the gas ultimately developed in the *Panhandle* case, *supra*, was sold in instrastate commerce whereas here the sale contemplates the transportation and sale of the gas in interstate commerce, as shown in more detail *infra*.

In addition to these controlling distinctions, the *Panhandle* case was decided in 1949, five years before the Supreme Court's Phillips decision.[7] A description of the impact of that and related cases on this issue is contained in our opinion in *Rayne Field*, *supra*, and is affirmed here.

The record further demonstrates that the Ship Shoal gas is destined for transportation and resale in interstate commerce. The Ship Shoal leases are located in Federal territory well beyond Louisanna Territorial domain, and it is evident that this gas could not be dedicated to an intrastate market.[8] More importantly, Tennessee has consistently maintained its intention to use Ship Shoal gas to meet the requirements of its resale customers. Throughout this proceeding, it heavily relied on Ship Shoal reserves in support of the proposed expansion of its jurisdictional pipeline facilities. It specifically requested certification of a lateral which would connect the Ship Shoal Field to its interstate pipeline in this proceeding. In its Reply to Exceptions, Tennessee states:

> The sole purpose for acquiring the leasehold interests in the Ship Shoal Field was to provide additional reserves and deliverability to meet the natural gas requirements of Tennessee's jurisdictional customers.

The facts demonstrate and we conclude that the instant transaction constitutes a sale of a definite volume of gas at a specified price per Mcf—and not a mere sale of undeveloped leases—which gas is destined for resale in interstate commerce. The transaction, therefore, comes within the provisions of Section 7(c) of the Natural Gas Act which requires certification of such sales by this Commission.

In *Rayne Field*, we made the following finding regarding the jurisdictional question which is equally applicable here:

> * * * Any other result would exalt form over substance, would give greater weight to the technicalities of contract draftmanship than to the achievement of the purposes of the Natural Gas Act, and would impair our ability to control the price received for gas sold to the pipelines in interstate commerce to the detriment of the ultimate consumer. Control limited to approving the costs of the gas to the purchasing pipeline is, of course, not

---

[5] *Texas Eastern Transmission Corporation*, Docket No. G–12446, *et al.* Opinion No. 378 issued February 6, 1963 and Opinion No. 378–A issued July 12, 1963, 29 FPC 249 and 30 FPC 153, respectively.

[6] *F.P.C. v. Panhandle Eastern Pipe Line Co.*, 337 U.S. 498.

[7] *Phillips Petroleum Co. v. Wisconsin*, 347 U.S. 672.

[8] *United Gas Pipe Line Co.*, Docket No. CP62–161, Opinion No. 401, issued August 26, 1963, 30 FPC 560.

an effective way to regulate producer prices because in the large a pipeline must be allowed to pass on its purchased gas costs to the ultimate consumer or it cannot continue to discharge its public service responsibilities.

In its exceptions, Staff contends that the critical factor in *Rayne Field, supra,* is that the gas was actually flowing in interstate commerce when the Commission assumed jurisdiction. Staff states that situation differs materially from this one where the Ship Shoal gas is lying in its natural state and may never be sold in interstate commerce.

Section 7(c) of the Natural Gas Act provides in part:

> No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefor, or acquire or operate any such facilities or extensions thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations:

This section contemplates that certificates authorizing the sale of natural gas should be issued before, not after, gas begins its journey in interstate commerce. Thus, producer certificates authorizing the sale of gas to interstate pipelines are customarily requested and granted before the contemplated sale and delivery occurs. Staff's contention that gas must be flowing under an in-place purchased in order for Commission jurisdiction to attach would create the anomalous situation of requiring a violation of the Act before jurisdiction would lie and must therefore be rejected.

The jurisdictional nature of the *Rayne Field* sale did not rest upon the fact that the gas was flowing in the pipeline's facilities. Rather, as our decision here makes clear, it was based upon our conclusion that the essential elements of the transaction constituted a sale of natural gas for resale in interstate commerce, the regulation of which is prescribed by the Natural Gas Act.

Apart from the jurisdictional question, Tennessee contends:

(1) the Commission is without authority to direct that presently effective contracts be rescinded and replaced by new agreements; (2) that rights have vested under the existing arrangements which would be adversely affected by the Examiner's proposal; (3) that purported abrogation of the existing contracts would result in a denial of due process to Tennessee and the CATC companies; and (4) that the benefits attendant to the present arrangements demonstrate that the Ship Shoal transaction is in the public interest.

There are certain deficiencies of the Ship Shoal transactions which require denial of Tennessee's application for a certificate to construct a line to connect these reserves, and to transport and sell the gas in interstate commerce. Initially, the absence of appropriate authorization on the part of the producers to sell the gas to Tennessee requires denial. Approval of Tennessee's request in such circumstances would be tantamount to sanctioning a transaction which was effected in part without the authorization required under the Natural Gas Act.

The uncertainty surrounding the cost of this gas constitutes another factor which precludes certification. The Examiner noted there is no way of predicting, even within a range, the market value of oil and condensates in future years. There is no way of forecasting royalty expense, which is based on the going price for gas in the Ship Shoal area, and which will fluctuate as prices change through the years. There is no way of predicting within a reasonable range the amount of depreciable property which will be needed at Ship Shoal, and

depletion and amortization will be subject to change throughout the estimated production schedule of the field. Return and income taxes constitute another item which cannot be presumed to remain constant for the next 26 years. Tennessee did not except to these findings of the Examiner and they are adopted.

Even if the estimates submitted by Tennessee could be considered reliable, they show that the unit cost of Ship Shoal gas on a 26 year production schedule would be 28.3¢ per Mcf at 15.025 psia. This is a cost 45 per cent higher than our present ceiling in that area of 19.5¢. Further evidence of the inordinate cost involved in the instant transaction is found in Docket CI64–5 wherein Humble requests a certificate to sell a particularly large volume of gas from the same area to United Fuel at 20.625¢ per Mcf with no price escalations.

In our opinion, none of the alleged benefits outweigh the initial price factor. In the light of the Supreme Court's injunction to hold the price line on the introduction of new gas into the interstate market,* we would be remiss in our obligations if we permitted Tennessee to attach the large Ship Shoal field at a cost which, under the only evidence submitted, is clearly excessive.

In addition to price, there are other questionable factors incident to the Ship Shoal transaction. Under the Natural Gas Act, the price that producers receive is a matter over which we have jurisdiction under Sections 4(e) and 5(a) of the Act. Under the proposed in place sale, the CATC producers would to a large extent be immune from such jurisdiction. This results from the fact that final payment of Ship Shoal gas within 16 years is required whereas a 26 year production schedule is contemplated. Thus application of a just and reasonable rate to be determined in any 4(e) or 5(a) proceeding would have only limited effect on the instant transaction. Since the terms of the promissory notes do not provide for any adjustment to comply with the exercise of the Commission's rate regulation, it is difficult to envision how we could exercise our regulatory authority within the framework of such an arrangement.

Contrary to Tennessee's legal arguments, we do not believe that our decision results in a denial of due process or forces the parties to enter any particular kind of new agreements. We have simply refused to approve an arrangement subject to our jurisdiction which we have concluded is inconsistent with the public interest.

Similar to our Rayne Field decision, we believe the parties should have ample opportunity to work out new arrangements which would not involve the problems herein described. In this connection we shall issue an order directing the CATC companies to show cause why they should not submit an application for a certificate under Section 7 of the Natural Gas Act covering the sale of Ship Shoal gas to Tennessee. Pending the final decision in that case, we shall defer decision on Tennessee's application for authority to construct a lateral connecting the Ship Shoal reserves to its interstate pipeline facilities. To afford some measure of protection to Tennessee's customers in the interim, we shall require Tennessee to keep an accurate record of all of its expenditures relating to the existing Ship Shoal arrangements.

Marshall, Casey, Martinsville, Illinois

These municipalities presented a joint proposal to establish a gas distribution system to serve their communities. The proposal is to tap the Midwestern line, and to construct a 6" lateral eight and one-half miles to Marshall, another ten miles to Martinsville, and six miles more to Casey. Panama Williams, Inc. would construct this line, and lease it to the communities under an agreement

* *Atlantic Refining Co.* v. *P.S.C.*, 360 U.S. 378.

giving the cities an option to purchase. The Examiner found the market, comparative fuel costs, feasibility and financing aspects of the cities' proposals to be satisfactory, and recommended the requested attachment and sales. We adopt his findings on these issues.

Exceptions to his recommendation were filed on three grounds: (1) Staff contends Panama Williams must apply for a certificate under Section 7(c) of the Natural Gas Act; (2) Central Illinois Public Service Company (CIPSCO), a privately owned distributor in the area,[10] contends the communities are not legally authorized to engage in the distribution of gas in the manner proposed herein; (3) CIPSCO also claims that the transportation agreements of the cities are not supported by prior appropriations as required by Illinois law.

In its exception, Staff distinguishes the *El Paso* case upon which the Examiner relied,[11] contending that the Commission had jurisdiction over the lessor in that case whereas the Commission would not in this case. Under the contracts, the municipalities have the sole and exclusive right to operate and to maintain the leased lateral. Once the lateral has been constructed, the lessor has no active role in the transportation or sale of gas for resale in interstate commerce. We therefore agree with the Examiner's findings on this issue.

CIPSCO's exceptions essentially claim that the Examiner improperly refused to consider the issue of the legal power of the communities to engage in the distribution business. In our opinion, it is sufficient under Section 7 if the record contains a prima facie showing that these communities are legally authorized to engage in the distribution business. We conclude that the record contains such a showing.

In its first argument, CIPSCO refers to the Illinois law which permits a municipality to acquire and construct a gas distribution utility only if an ordinance describing the plant and equipment has been submitted to and approved by the electors of the municipality. This law relates only to plant and equipment which is purchased and does not apply to that which is leased. The lateral to be constructed by Panama Williams, Inc. was not included in the ordinance approved by the voters of these municipalities. Because, in CIPSCO's opinion, the arrangement between Panama Williams, Inc. and the cities constitutes a sale of the lateral, CIPSCO asserts the referendums of the municipalities are fatally deficient. We disagree with the critical allegation of CIPSCO that the subject transaction is a sale. While CIPSCO correctly alleges that the cities have the irrevocable right solely and exclusively to use and operate the facilities, it failed to demonstrate that this provision changes the nature of the agreement from a lease to a sale.

With respect to CIPSCO's second argument, we note that the three cities executed Transportation Agreements whereby Marshall will transport, through the lateral it leases, the combined gas requirements of Martinsville and Casey at the rate of one cent per Mcf, payable by Casey. Casey will charge Martinsville six cents per Mcf for transporting Martinsville's requirements through a portion of the lateral leased by Casey. CIPSCO argues that these Transportation Agreements are invalid because they are not supported by prior appropriations, as required by Illinois law. However, we note that the Illinois law requiring prior appropriations applies only to the general obligations of municipalities. CIPSCO does not assert nor does the record demonstrate that the transportation agreements executed by the cities constitutes a liability payable from the general

---

[10] At the hearing, CIPSCO stated it was interested in providing service to these communities but it has not requested any allocation of gas to serve them.

[11] *El Paso Natural Gas Co.*, 19 FPC 371.

funds of the cities involved. Rather the testimony shows that the lease and gas payments precede the bond payment on the distribution system, which indicates that the liability of the cities under the Transportation Agreements is payable from the gas funds of those cities which are derived solely from revenues.

For the foregoing reasons, we conclude that Marshall, Casey and Martinsville have made an adequate legal and economic showing supporting their applications.

On March 1, 1963, CIPSCO filed a motion to reopen the record to present additional evidence. This motion alleged that the contractor, Panama Williams, Inc., had filed a petition for an arrangement under the Bankruptcy Act which may have the effect of rendering the plan of the three cities financially infeasible. While the bankruptcy filing could have some effect on the cities' plan, we believe reopening the record would further delay disposition of this issue and involve the expenditure of time and money to a degree wholly disproportionate to the materiality of the evidence possibly to be adduced. In our opinion, the question raised by CIPSCO in its motion can best be resolved by attaching a condition to the requested allocation requiring the cities to submit an agreement with a substitute contractor in essentially the same form as that executed with Panama Williams within three months together with a copy of a duly executed performance bond satisfactory to the Commission or, in the alternative, to complete construction within one year.

In view of the foregoing disposition of the applications of these three cities, their request for oral argument is denied.

The Commission orders:

(A) A certificate of public convenience and necessity is hereby granted to Tennessee Gas Transmission Company (Tennessee) for the Construction and operation of an additional 18,300 compressor horsepower on Tennessee's Delta-Portland line, as more fully described in its motion of March 27, 1961, in Docket No. G–16842; and its previous authorization in that Docket contained in the order accompanying Opinion No. 320 issued May 12, 1959 to construct and operate 157.61 miles of 36 inch pipeline loops on the Agua Kinder-Portland line is cancelled.

(B) A certificate of public convenience and necessity is hereby granted Tennessee for the construction and operation of the facilities specified in its application in Docket No. CP60–94, with the exception of 58.2 miles of lateral line proposed between Tennessee's facilities at valve 523 and the Ship Shoal reserves. Action on the requested certification of that lateral is deferred pending final decision in the show cause proceeding described hereinabove. Until further order, Tennessee shall maintain an accurate accounting of all of its expenditures relative to the Ship Shoal transactions.

(C) A certificate of public convenience and necessity is hereby granted to Tennessee to transport for and sell and deliver to, existing customers, additional volumes of natural gas totalling 161,699 Mcf per day of firm service and 10,120 Mcf per day of storage service, as particularly described in its application in Docket No. CP60–94.

(D) A certificate of public convenience and necessity is hereby granted to Tennessee to sell and deliver to Midwestern Gas Transmission Company (Midwestern), natural gas not to exceed a maximum daily volume of 6,531 Mcf for service to new customers of Midwestern.

(E) Midwestern is hereby directed to establish and maintain physical connection of its facilities with facilities to be operated by the City of Marshall, Illinois; and to deliver and sell, through such connection, to the Cities of Marshall, Casey, and Martinsville, Illinois, respectively, natural gas not to exceed

maximum daily volumes of 1952 Mcf, 2,104 Mcf and 546 Mcf, for distribution through facilities to be constructed by the cities, as proposed in their respective applications in Docket Nos. CP62–187, CP62–188, and CP62–189.

This allocation is conditioned upon the cities effectuating completion of the construction of their proposed facilities either one year from the date of this order, or, in the alternative, that the cities submit to the Commission an agreement with a substitute contractor in essentially the same form as that contained in the record within three months together with a copy of a duly executed performance bond satisfactory to the Commission.

(F) In the light of the Commission's order in these proceedings issued May 29, 1963, the application of Lincoln Natural Gas Company for an order of the Commission directing Midwestern to establish physical connection of its facilities with facilities to be constructed by Lincoln Natural and to deliver and sell a volume of natural gas, as proposed in Lincoln Natural's petition to intervene in Docket No. CP62–116, is hereby denied.

(G) A certificate of public convenience and necessity is hereby granted to Midwestern for the transportation and sale of natural gas to Northern Illinois Gas Company for resale in existing service areas, as more fully described in the application in Docket No. CP62–116.

(H) A certificate of public convenience and necessity is hereby granted to Alabama Tennessee Natural Gas Company for the construction and operation of $310,000 of facilities, and for the transportation and sale of an additional 1,230 Mcf per day of natural gas, as more fully described in the application in Docket No. CP62–133.

(I) A certificate of public convenience and necessity is hereby granted to Tennessee Natural Gas Lines, Inc. for the transportation and sale of an additional firm volume of 5,300 Mcf of natural gas per day as more fully described in the application in Docket No. CP61–27.

(J) The time within which the facilities hereby authorized shall be constructed and placed in actual operation as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act is hereby fixed at one year from the effective date of the final order herein.

(K) The motion of Tennessee for severance and disposition of limited issues filed June 26, 1963, as amended August 19, 1963, is denied as moot.

(L) Exceptions not granted herein are denied.

Commissioner Woodward *concurring in part* and *dissenting in part*.

Commissioner Black *not participating*.

WOODWARD, Commissioner, *concurring in part* and *dissenting in part:*

I respectfully dissent from the majority's decision that "the transaction between the CATC companies and Tennessee Gas Transmission Company constitutes a sale of a definite volume of gas at a specified price per Mcf—and not a mere sale of undeveloped leases—which gas is destined for resale in interstate commerce. The transaction therefore, comes within the provisions of Section 7(c) of the Natural Gas Act which requires certification of such sales by this Commission." (*Supra*, P. 765)

This Commission has no jurisdiction over the Ship Shoal lease transaction. The majority errs in its finding that, . . . "this situation is essentially analagous to the Rayne Field case[1] and easily distinguishable from that prevailing

[1] *Texas Eastern Transmission Corporation*, Docket No. G–12446, *et al.* Opinion No. 378 issued February 6, 1963, 29 FPC 249, and Opinion No. 378A issued July 12, 1963, 30 FPC 153.

in the Panhandle case."[2] The facts of this case are materially different from those in the *Rayne Field* case in that:

(1) Tennessee continues to pay for the reserves although they are not connected to its system. Ship Shoal gas is not flowing in interstate commerce; it continues to lie in its natural state in formations underlying the Gulf of Mexico.

(2) Redetermination of reserves is present.

(3) Both oil and gas interests were sold.

The Commission staff, conceding that the Commission has no jurisdiction over the Ship Shoal lease transaction, is correct in asserting, "The Natural Gas Act did not intend that the Commission's jurisdiction should extend to every sale of natural gas.[3] For the Commission to have jurisdiction over a sale of gas within the meaning of Section 1(b) of the Act, it must be a sale in interstate commerce of natural gas for resale." Clearly, the Ship Shoal transaction was not a sale of natural gas for resale but was a transfer of leases.

In the *Panhandle* case, *supra*, the Supreme Court stated:

> A proposed transfer cannot be stopped by the Commission. It should not be permitted to delay what it cannot prevent. If the Commission is of the Opinion that it should have power to control the disposition of leases by natural gas companies, it is authorized to call the attention of Congress to that fact.

Despite the Commission's repeated attempts to secure an amendment to Section 7 of the Natural Gas Act which would vest it with jurisdiction over transfer of leaseholds by natural gas companies, Congress has never conferred such jurisdiction on the Commission.[4]

Irrespective of its motivations or aspirations, this Commission is powerless to adopt a course of action that would prohibit the disposition of the Ship Shoal reserves. The fact that the gas may subsequently be transported in interstate commerce is irrelevant to the question of the character of the particular transaction in issue. Speculative possibility cannot be considered as sufficient ground for holding jurisdictional what is essentially non-jurisdictional. Judgment must be rendered on the basis of fact—not intent.

The final result of the majority's decision is that any sale of property containing gas in formation is subject to the jurisdiction of the Federal Power Commission; that pipeline companies cannot be permitted to enter into lease acquisitions such as that involved in the instant proceeding. Here is the fatal defect in the majority's opinion.

The *Rayne Field* case and other cases relied on by the majority are not factually analogous to the instant proceeding and cannot be controlling here; conversely, the authority cited herein conclusively establishes that the Ship Shoal lease-sale arrangement is not subject to the Commission's jurisdiction under the Natural Gas Act. The decision of the majority goes directly contrary to the intention of Congress in enacting the Natural Gas Act; there is no basis in fact or in law for their findings.

Exclusive of the issue involving the Ship Shoal transaction, I concur in the majority opinion.

---

[2] *F.P.C.* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498.

[3] Exceptions of the Commission staff. Mimeo p. 6.

[4] 31 FPC Annual Report 145 (1951); 32 FPC Annual Report 152 (1952); 33 FPC Annual Report 125 (1953); 34 FPC Annual Report 170 (1953); 35 FPC Annual Report 182 (1955); 36 FPC Annual Report 19 (1956); 37 FPC Annual Report 25 (1957); 38 FPC Annual Report 18 (1958); 39 FPC Annual Report 21 (1959); 40 FPC Annual Report 19 (1960); 41 FPC Annual Report 3 (1961); 42 FPC Annual Report 14 (1962).

INITIAL DECISION
ON THE FIRST ISSUES UPON APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY PURSUANT TO THE NATURAL GAS ACT

(Issued November 9, 1962)

WESTON, *Presiding Examiner:* In general, this proceeding involves a proposal for the substantial enlargement of the Tennessee Gas Transmission Company system. Tennessee Gas, with its subsidiaries and affiliates, is a two-billion-dollar pipeline complex, principally engaged in the business of bringing gas from sources in Texas and Louisiana to consumers in the northeastern and midwestern States. In general, we here review Tennessee's current plans to meet currently expanding demands for gas service to such consumers from newly expanded gas resources.

The general project for expansion is, of course, a commendable further step towards the satisfaction of the growing energy requirements of gas consumers. However, the usefulness of this Commission is not in the general evaluation of general projects, general aims, and general ends. It is our statutory function to decide whether natural gas companies such as Tennessee have worked out their generally commendable projects so that consumers are protected in every aspect of rates to be charged and services to be rendered. In this regard, the present proceeding contains several very serious and unusual problems, including the problems (a) whether or not Tennessee is over-building part of its system in advance of need (as claimed by certain Columbia System customers, intervenors herein), to the detriment of present rate-paying consumers, and (b) how to deal with a partially consummated transaction for the purchase of over-priced gas "in-place," when the gas was bought in good faith by Tennessee under the impression that the purchase was not subject to regulation in the public interest by this Commission.

These and other problems may be deferred for later decision. It is feasible and necessary to sever and immediately concern ourselves with issues involving the expanded gas requirements of existing and new Tennessee customers for the winter heating season 1962–1963, and Tennessee's gas resources to meet such requirements. The issues presented by the record in this regard are conventional rather than unusual, and expedited decision thereon will not prejudice later consideration of deferred issues. We therefore presently concern ourselves only with (a) expansion of gas deliveries as proposed in this proceeding, (b) adequacy of Tennessee's gas resources to meet such expansion, and (c) related and incidental problems often dealt with in the day-by-day work of the Commission, presented by the record in this case.

Background

In 1959, Tennessee presented a proposal to sell to its subsidiary Midwestern Gas Transmission Company, a volume of up to 261,320 Mcf per day, increasing to a third-year volume of up to 363,432 Mcf per day, for service by the subsidiary to distributors in the Chicago-Gary area. *Midwestern Gas Transmission Co., et al.*, 21 FPC 653.

The record in that case showed Tennessee's reserves at 15,783,340,000 Mcf as of January 1, 1958, and Tennessee's ability "based on maximum requirements at the 1964 level" to meet demand through the year 1970. The Staff contended for, and the Commission found, a resulting deliverability life of eleven years starting with the year 1960 (21 FPC at 656).

The Commission stated that a "showing of twelve years deliverability life should be the minimal requirement," but authorized the new service subject to the condition that Tennessee—

> file with the Commission, gas supply estimates demonstrating its ability to supply its authorized system obligations for a period of at least twelve years prior to filing any new application for a certificate of public convenience and necessity covering system capacity expansion. (21 FPC at 657.)

Tennessee's "new application * * * covering system capacity expansion" for the 1960–1961 heating season was filed on May 2, 1960, under Docket No. CP60–94 in the proceeding at bar. However, formal proceedings on this application have been held in abeyance at Tennessee's request until the hearings herein commenced March 12, 1962. Tennessee filed extensive amendments to the application on November 7, 1961, and the application now involves customer requirements for the 1962–1963 heating season. In the intervening two winters, the increased customer demands have been met by "interim service" authorized by the Commission and new capacity installed by Tennessee under "temporary authorizations," which will be summarized in the succeeding paragraphs.

1. On November 30, 1960, the Commission authorized in Docket No. CP61–74 *et al.*, interim service of additional maximum daily volumes[1] in the amount of 71,856 Mcf to meet the requirements of customers for the 1960–1961 season. Tennessee furnished this gas with its existing facilities plus $5,469,000 of new facilities, comprising 6,800 compressor horsepower in new Station 241 near Syracuse, New York, and 24.75 miles of 30-inch loop line between Stations 229 and 237 west of Syracuse. The construction of these new facilities had been temporarily authorized by Commission order of July 1, 1960, in Docket No. CP60-94, and the order provided that the cost of the facilities was not to be placed in Tennessee's plant accounts or rate base until "permitted by further action of this Commission in this proceeding."

2. On October 6, 1961, the Commission authorized in Docket No.CP61–295 *et al.*, an extension of the existing interim service, together with an additional interim quantity of 21,694 Mcf per day, through the period ending November 30, 1962, to meet the requirements of customers for the 1961–1962 winter season. Tennessee furnished this gas with its existing facilities pus $6,125,000 of new facilities, comprising 18,300 compressor horsepower at Station 527 in Louisiana, Stations 534 and 542 in Mississippi, and Station 550 in Alabama.

As in the prior year, the new construction was pursuant to temporary authorization granted by the Commission. This temporary authorization, granted August 30, 1961, was unusual in that it covered facilities proposed by Tennessee in substitution for facilities that had been previously authorized by the Commission but not constructed in the *Midwestern* decision, *supra*, 21 FPC at 655, 664. It was and is Tennessee's claim that the facilities thus substituted provide substantially the same amount of capacity as the facilities originally authorized, at a savings of over $25 million in estimated construction costs, and at annual savings in cost of service of $3,246,000.[2] The August 30, 1961, order required that Tennessee establish on hearing, *i.e.*, in the proceeding at bar, that the substitute facilities are in fact preferable, under peril that investment therein might be removed from Tennessee's plant accounts and rate base. Conclusions on this issue, and on the convenience and necessity of other facilities

[1] Technically, "volumes of natural gas in excess of those [volumes] which Tennessee is presently authorized to deliver to [the customers] for a period of one year from the date of this order."

[2] Savings as finally determined by Tennessee and testified to in the record herein, and further described *infra* herein.

temporarily authorized prior to the hearing herein, and not questioned by the Columbia System intervenors, will be reached in a subsequent section of this opinion.

3. On February 27, 1962, in Docket No. CP62–93, the Commission temporarily authorized Tennessee to supply additional maximum daily quantities of 12,621 Mcf to three customers during the period ending November 30, 1962, in order to meet 1961–1962 requirements, including a volume of 5,300 Mcf to Tennessee Natural Gas Lines, Inc. By the same order, the Commission permitted Tennessee Natural, in Docket No. CP61–197, to redeliver during the interim period the additional 5,300 Mcf per day on a firm basis to the Ford Motor Company plant in Nashville, Tennessee. No additional new facilities were involved in this additional service.

* * * * * * *

Thus, under these three Commission orders, Tennessee has since November 1960 been serving the increased requirements of existing customers on an interim basis, with temporarily authorized facilities. In its order of August 30, 1961, *supra*, the Commission noted its desire and expectation that Tennessee put forth an "overall plan" for permanent service "prior to the winter heating season 1962–1963." It seems to be a fair inference that during the period of delay prior to the presentation of such overall plan herein, Tennessee has been building its store of gas reserves, which are the essential prerequisites to increased permanent service. We proceed, therefore, to detail (a) the permanent service for which authorization is requested herein, and (b) the gas supply presented by Tennessee for meeting such permanent service.

The Tennessee System and the Proposed Service

All other dockets listed in the caption hereof are peripheral[3] to Tennessee's application in Docket No. CP60–94, which proposes an increase in design day capacity from 2,669,031 Mcf (authorized in the *Midwestern* decision, *supra*) to 2,785,000 Mcf. With this increase in design day capacity, Tennessee claims it will be able to (a) meet the additional 161,669 Mcf additional firm daily contract quantities and 10,120 Mcf of storage quantities which it proposes in Docket No. CP60–94 to serve to existing customers, and (b) supply, out of 10,939 Mcf of unallocated design day capacity, the initial requests for new service by Section 7(a) applicants and intervenors, which requests as originally presented totalled about 9,000 Mcf.[4]

In considering requests for service herein disposed of, as well as in later consideration of reserved issues, it will be convenient to think of the Tennessee pipeline sectionalized into three parts, as follows:

1. The section southwest of Station 87 (Station 87 is located near Portland, Tennessee), including (a) the Tennessee mainline running northeast from Station

[3] Lowell Gas Company, Central Illinois Electric and Gas Company, Allied, Provencal, Cities of Marshall, Casey, and Martinsville, Illinois, and Central Illinois Public Service Company, listed in the caption hereof, are Section 7(a) applicants. Tennessee Natural wants 5,300 Mcf of interruptible service changed to firm service. Midwestern wants 15,000 Mcf of additional service for its customer Northern Illinois Gas Company. Alabama-Tennessee wants authorization for additional facilities. The lead docket, G–16842, involves the substitution of facilities noted *supra*. The caption, of course, does not list intervenors who seek allocations.

[4] Because part of Tennessee's firm peak day load is met from gas in storage, Tennessee's design day pipeline capacity is less than its peak day firm load.

1 in Texas, (b) the Delta-Portland line, running between southeastern Louisiana and Portland, (c) the Kinder-Portland line, running between central Louisiana and Portland, (d) the Agua Dulce-Kinder line, connecting Tennessee's Station 1 in Texas with Station 823 near Kinder, Louisiana, and (e) the lines of Tennessee's subsidiary East Tennessee Natural Gas Co. The Columbia System intervenors raise important questions as to the need for most of the additional capacity which Tennessee proposes to install in this section, which questions are reserved for later decision.

2. The section of Tennessee's system between Station 87 and Tennessee's three gas storage fields in Pennsylvania and New York, including the facilities of Tennessee's subsidiary Midwestern Gas Transmission Co. between Portland, Tennessee, and Chicago.[5] Most of the new service requested by Section 7(a) applicants and intervenors, *i.e.*, customers not heretofore connected, is in this area.

3. The section northeast of storage, serving many distribution companies and other customers in Pennsylvania, New Jersey, New York, and New England. In respect of peak-day requirements, this section may be thought of as being served, in substantial part, from the storage fields which Tennessee fills from its Texas and Louisiana sources during off-peak periods.

For illustrative purposes, the Tennessee system thus sectionalized appears on the map incorporated in this decision.

(1) *Proposed Service and Facilities Southwest of Station 87.*—The additional firm daily quantities shown in Table 1 at the end of this section total 34,366 Mcf. This amount includes volumes to be delivered to existing customers Alabama-Tennessee Natural Gas Company, applicant in Docket No. CP62–133, and Tennessee Natural Gas Lines, Inc., applicant in Docket No. CP61–27, but does not include the volume to be delivered to a proposed new customer, The Village of Provencal, Louisiana, which has filed its Section 7(a) application under Docket No. CP62–152 herein.

Alabama-Tennessee must construct and operate facilities estimated to cost $310,000 for the purpose of delivering an additional 1,230 Mcf per day to existing customers, commencing with the 1962–1963 heating season. Tennessee agrees to supply this additional volume. The feasibility and necessity for the additional facilities is fully established by the record, and is uncontroverted.[6] The facilities will accordingly be permanently authorized in this decision.

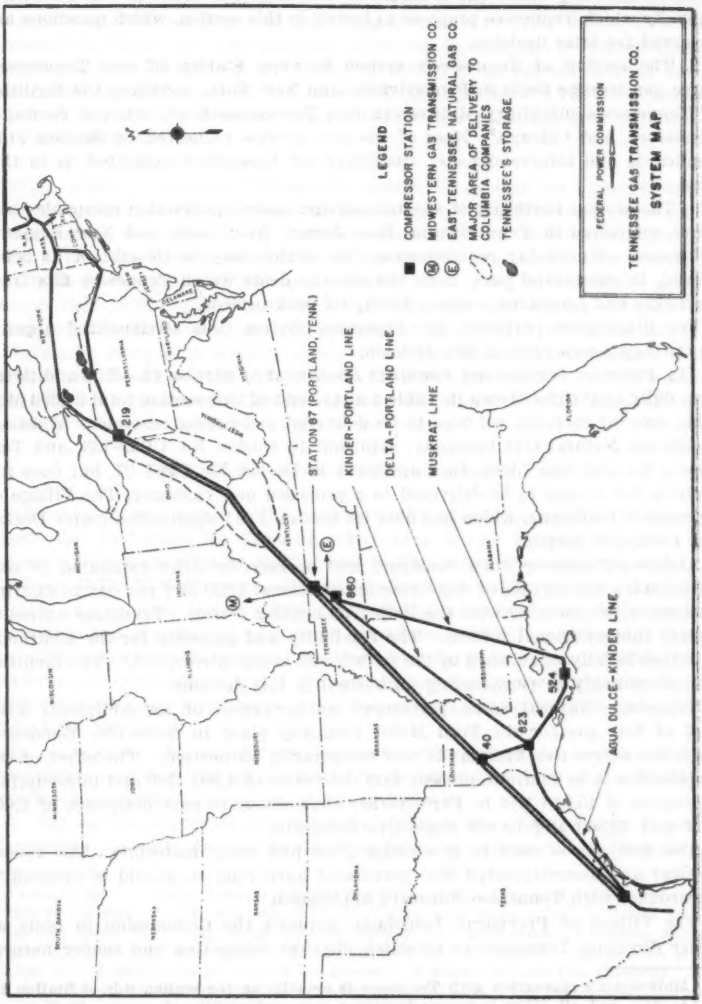
Tennessee Natural seeks permanent authorization of an additional 5,300 Mcf of firm gas for the Ford Motor Company plant in Nashville, Tennessee. As noted *supra*, this firm gas is now temporarily authorized. The effect of the application is to continue present firm deliveries of 8,300 Mcf and interruptible deliveries of 15,500 Mcf to Ford, rather than revert to past deliveries of 3,000 Mcf and 20,800 Mcf in the respective categories.

The firm gas is used in processing glass and other materials. The record is clear and uncontroverted that permanent authorization should be granted in accordance with Tennessee Natural's application.

The Village of Provencal, Louisiana, requests the Commission to issue an order directing Tennessee to establish physical connection and render natural

[5] Midwestern's connection with Tennessee is actually on the suction side of Station 87.

[6] In this and all other instances involving new and additional service, Staff recommends authorization "providing the Commission finds that Tennessee has a sufficient gas supply to warrant such an expansion." (Br. 74.) This qualification will be dealt with *infra* herein, and will not be further mentioned.


LEGEND
COMPRESSOR STATION
MIDWESTERN GAS TRANSMISSION CO.
EAST TENNESSEE NATURAL GAS CO.
MAJOR AREA OF DELIVERY TO COLUMBIA COMPANIES
TENNESSEE'S STORAGE
FEDERAL POWER COMMISSION
TENNESSEE GAS TRANSMISSION CO.
SYSTEM MAP
STATION 87 (PORTLAND, TENN.)
KINDER-PORTLAND LINE
DELTA-PORTLAND LINE
MUSKRAT LINE
AQUA DULCE-KINDER LINE
219
860
40
823
524

gas service. Provencal's estimated third-year requirements are 285 Mcf on peak day and 29,280 Mcf annually. The estimated cost of Provencal's facilities is $101,000, to be financed by issuance of $12,000 in General Purpose Bonds and $89,000 of Revenue Bonds. Debt service coverage will be 2.55. The record is clear and uncontroverted that the new service is entirely consonant with the public interest and should be authorized, insofar as this Commission is concerned.[7] Tennessee, in the case of the Provencal application and all other 7(a) applicants and intervenors seeking gas, has indicated on brief its willingness to serve, but Tennessee attempts to attach an unwarranted *proviso* that the Commission "authorizes the construction and operation of facilities requested by Tennessee in Docket No. CP60-94." The Commission, of course, retains full power to decide the reserved question, whether or not Tennessee needs the said facilities not covered specifically by this decision. The want of legal basis for Tennessee's effort to bind the Commission by conditioning its willingness to serve is plain, and will not be further adverted to in this decision. Inclusion of Provencal's peak-day requirements will increase to 34,651 Mcf the additional service to be rendered by Tennessee southwest of Station 87, as shown on Table 1.

(1-a). *Substitution of Facilities.*—As we have seen, Tennessee was, by Commission order of August 30, 1961, temporarily authorized to substitute 18,300 compressor horsepower on the Delta-Portland line for 157.61 miles of uninstalled pipeline loops on the Kinder-Portland line which had been authorized on May 12, 1959, in Opinion No. 320 (*Midwestern Gas Transmission Co.*, 21 FPC at 653).

These substitute facilities have been constructed and are now in service. The temporary authority for the substitution, here sought to be made permanent, was based on a substantial change which has occurred in the last few years in the location of Tennessee's principal source of gas supply. In the Fall of 1958, when Tennessee filed its application for expansion of the Kinder-Portland line, 74 per cent of such supply was purchased from sources in Texas, and 26 per cent similarly came from Louisiana. In 1960, Tennessee purchased 60 per cent of its total gas supply in Texas and 40 per cent in Louisiana. "During this same three year period Tennessee also purchased an additional 459,000 Mcf of natural gas per day to meet the increasing requirements of its customers so that on a volumetric basis Tennessee's purchases in Louisiana have approximately doubled." (Tr. 1158-1159.)

The main reason for the shift in purchase pattern is "the cold fact that more new gas has been found in Louisiana and less in Texas" (Tr. 1185-1186), and the fact that, to replace reserves being depleted in Texas and to improve its total gas supply position (discussed *supra*), Tennessee has had to increase its purchases in Louisiana.

Tennessee shows that the above-described substitution of facilities results in a savings in construction costs of over $21 million and an annual savings in cost

[7] For possible limitation on the extent of Federal concern over purely local aspects of this kind of application, see *Southern Natural Gas Co.*, 25 FPC 518, 522.

of service of $2,227,000. Additionally, it appears that Tennessee has concluded that it can relinquish 12,200 horsepower previously authorized by the Commission[8] at a savings in construction costs of $4,350,000 and annual savings in cost of service of $1,019,000. The total savings shown by Tennessee in construction costs and annual cost of service are, therefore, about $25,500,000 and $3,246,000, respectively. The record shows that the substitution and relinquishment of facilities will have no substantial effect on Tennessee's design day capacity.

No party other than the Staff raises any question in its brief regarding Tennessee's proposed substitution of facilities in Docket No. G–16842. While not opposing Tennessee's motion, the Staff alleges that (1) Tennessee has failed to reflect the extra expense of Louisiana gas over Texas gas as a part of the annual cost of the substitute facilities, and (2) Tennessee should be required to eliminate from its rate base a portion of the investment in the Agua Dulce-Kinder pipeline[9] which the Staff claims will no longer be fully useful as a result of the substitution of facilities (Staff Brief, pp. 70–72).

Regarding the first contention, the record indicates that, in this instance, Tennessee's purchase pattern is independent of the facilities employed to transport the gas:

> Thus, Tennessee had the alternative of either constructing additional facilities on the Muskrat Line in Louisiana and moving gas from eastern Louisiana to western Louisiana and hence up the Kinder-Portland Line, or to provide capacity on the Delta-Portland Line and move the gas in a more direct route at a substantial savings in cost. [Tr. 1158–1159.]

There is no testimony indicating that there is any problem, or alternative, as to where Tennessee is to purchase new gas; the problem is simply how the gas is to be transported. There is no suggestion that Tennessee has improvidently entered the market for Louisiana gas. Tennessee buys where it finds supplies available, in Louisiana as in Texas, at the best price it can make under Commission-established price-lines. Staff's criticism is unjustified, and the substitution of facilities will be permanently authorized.

Regarding the Staff's second contention, *i.e.*, deleting from the rate base a portion of the investment in the Agua Dulce-Kinder line, Staff counsel (Br. 71) relies solely on his interpretation of Exhibit 3 to substantiate his position. There is no affirmative testimony supporting the contention that "under the present proposal, Tennessee will in effect be relinquishing three-fourths of the capacity of that line."

Exhibit 3 is a flow diagram showing flowing volumes of 397,760 Mcf per day 119,031 Mcf per day and 100,000 Mcf per day into Station 823 from the Agua Dulce-Kinder Line. These volumes reflect utilization of the line as authorized in Docket No. G–16842 (Opinion No. 320 *supra*), as proposed in Motion to Amend in Docket No. G–16842, and as proposed in Docket No. CP60–94, respectively.

---

[8] This relinquishment of horsepower was not reflected in the Commission's order of August 30, 1961, nor does it appear to be the subject of any subsequent Section 7 application by Tennessee. However, the proposed relinquishment is sufficiently a part of this record to warrant disposition herein.

[9] The Staff also has referred to deletion from the rate base of the investment in the 12,200 horsepower now proposed to be relinquished by Tennessee. Although authorized, these facilities had never been constructed (Tennessee reply brief, p. 83).

TABLE NO. 1

TENNESSEE GAS TRANSMISSION COMPANY

ADDITIONAL SERVICE PROPOSED IN DOCKET NO. CP60–94 FOR CUSTOMERS SOUTHWEST OF STATION 87

(Mcf at 14.73 psia)

Customer and permanently authorized long-term CD or MDQ (1)		Interim service [1] to 11/30/62 (2)	Proposed 1962–1963 (3)	Total additional service proposed (4)	Proposed long-term quantities (5)
Alabama-Tennessee	79,435		1,230	1,230	80,665
Ashland, Miss.	204		46	46	250
Batesville, Miss.	1,898	133	199	332	2,230
Bolivar, Tenn.	3,570	234	250	484	4,054
Booneville and Baldwin, Miss.	2,532	258	356	614	3,146
Clarksville, Tenn.	6,750	2,271	4,829	7,100	13,850
Hohenwald, Tenn.	1,162		328	328	1,490
Holly Springs, Miss.	4,065	317	203	520	4,585
Humphries Co. U.D.	2,914	586	25	611	3,525
New Albany and Pontotoc, Miss.	5,370		400	400	5,770
Ripley, Miss.	2,553	539	39	578	3,131
Savannah, Tenn.	1,630	120	250	370	2,000
Springfield, Tenn.	3,315	300	48	348	3,663
Tennessee Natural Nashville	111,365	[2] 13,252	4,204	17,456	128,821
United Gas P/L:					
Oxford	5,945	[3] 1,055	400	1,455	7,400
Shaw, et al.	8,318	[3] 1,166	420	1,586	9,904
Walnut, Miss.	204	151	7	158	362
West Tennessee P.U.D.	5,869		750	750	6,619
Total general and contract demand service	247,099	20,382	13,984	34,366	281,465

[1] As authorized in Docket Nos. CP61–74 and CP61–295.
[2] 5,300 Mcf of this amount was authorized in Docket No. CP62–93.
[3] As authorized in Docket No. CP62–93.

Tennessee admits (Reply Br. 85) that its exhibits show a volume of only 100,000 Mcf as being transported through the Agua Dulce-Kinder Line but asserts that that figure does not reflect an additional 125,000 Mcf per day of non-jurisdictional volumes transported for others through that line, the revenues from which are credited to Tennessee's jurisdictional cost of service.

Tennessee also states that, notwithstanding the fact that the Agua Dulce-Kinder pipeline is now, and has been, utilized to the fullest extent possible, studies indicate the public interest would be better served if Tennessee were to abandon the line by sale thereof to Monterey Gas Transmission Company.[10]

The record in the case at bar does not contain facts and figures justifying Staff's proposal that a portion of Tennessee's investment in the Agua Dulce-Kinder Line should be eliminated from Tennessee's rate base by way of condition imposed on the grant of authority to substitute facilities, or otherwise. If such facts and figures exist, they should, of course, be presented in Docket No. CP62–291, or other proceedings involving Tennessee's rate base properties. Staff's proposal is rejected.

(2) *Proposed Service and Facilities From Station 87 Northeast to Storage, Including Midwestern.*—Table 2 incorporated in the text of this second section shows a total of 40,875 Mcf additional firm maximum daily quantities which Tennessee, in its amended application in Docket No. CP60–94, has proposed to supply to existing customers between Station 87 and storage, including deliveries

[10] Application for authority to abandon the Agua Dulce-Kinder Line was filed June 11, 1962, in Docket No. CP62–291.

to Tennessee's subsidiary Midwestern Gas Transmission Company. Tennessee's proposal included an increase of 15,000 Mcf for Midwestern's supply to Northern Illinois Gas Company, but such proposal did not include volumes requested by nine Section 7(a) applicants and intervenors herein seeking new service from Midwestern. These requests for new service will also be considered in the following paragraphs of this section.

(2-a) *Midwestern.*—Midwestern in Docket No. CP62-116 has filed, to implement Tennessee's allocation, the application to furnish 15,000 Mcf per day to Northern Illinois Gas Company, commencing with the 1962-1963 heating season. No additional facilities are required to render the proposed service.[11] The uncontroverted testimony presented for Northern Illinois shows that the additional volumes are required to meet the normal load growth of its existing customers. No party contests the feasibility or necessity of Midwestern's proposal. Appropriate conclusions will be drawn as to the convenience and necessity of the additional service and the other additional service dealt with in this decision after the discussion, *infra*, of Tennessee's gas supply.

(2-b) *Central Illinois Electric and Gas Company.*—This distributor, in Docket No. CP61-122, requests an order directing Midwestern to establish physical connection to provide service to the Village of Oakwood, Illinois, which has estimated third-year requirements of 365 Mcf on peak day and 34,400 Mcf on an annual basis.

Chief Examiner Marsh on October 6, 1961, issued a decision based on a prior hearing of this same docket, and recommended denial of Central Illinois' request solely because Midwestern's supply of gas from Tennessee was then shown to be fully allocated. Subsequently, when it became apparent that Midwestern would have available additional supplies of gas, Central Illinois petitioned to reopen the matter; the petition was granted by Commission order of December 15, 1961, and the proceeding was consolidated herein on January 15, 1962.

No issue as to the feasibility or necessity of the new service was raised or existed in the original presentation, or in the instant reopened proceedings. It now appears (Exh. 12, p. 2) that Tennessee, on the basis of its gas supply showing herein, considered *infra*, has and would make available to Midwestern at Station 87 the 365 Mcf peak day requirements of Central Illinois.

(2-c) *Allied Gas Company.*—In Docket No. CP62-132, Allied requests an order directing Midwestern to establish physical connection with its facilities and supply it with natural gas for distribution in Potomac, Rankin, and Cissna Park, Illinois. Allied seeks a third-year peak day allocation of 528 Mcf and third-year annual volume of 64,250 Mcf.[12] Internally generated cash and funds available from previous bond issues will be used to finance the cost of facilities, estimated at $186,856. There is no opposition to Allied's proposal, and the convenience and necessity of the service is clearly established.

(2-d) *Cities of Marshall, Casey, and Martinsville, Illinois.*—These municipalities, in Docket Nos. CP62-187, CP62-188, and CP62-189, respectively, have

---

[11] The record (Tr. 1577, 1597) shows that Midwestern presently has sufficient excess pipeline capacity to serve the Northern Illinois volumes, and also serve all Midwestern's Section 7(a) applicants and intervenors, if so directed. A part of the present excess capacity results from Midwestern's installing compression facilities in excess of authorization in Docket No. G-16841. On October 27, 1961, Midwestern filed a motion to amend its certificate issued in Docket No. G-16841 to conform the authorization therein granted to the facilities actually installed. No party opposes the motion and Staff's brief herein recommends that it be granted. However, the motion pends before the Commission, and is not a part of this proceeding.

[12] Excluding all requirements shown in Exhibit 88 for Onargo, Illinois. Allied's franchise in that community expired by its own terms on April 6, 1962.

jointly presented their separate proposals for the construction of three separate municipal gas utilities to be served from one lateral. They request an order directing Midwestern to establish physical connection with that lateral, to be constructed by the Panama-Williams Corporation, and to provide gas allocations to meet their requirements.

The proposal is to tap the Midwestern mainline at Dunlap, Illinois, at a point where the mainline crosses U.S. Route 40 approximately on the Illinois-Indiana border. The new six-inch lateral will be laid westerly along Route 40, and will extend 8½ miles to Marshall, thence about 10 miles to Martinsville, and thence about six miles to Casey.

The several proposed agreements between the parties may be summarized as follows:

Marshall will lease from Panama-Williams and operate and maintain (with an option to purchase within one year of execution of the lease agreement) the portion of the lateral to be constructed between the Midwestern tap and the City of Marshall at an estimated cost of $193,328. The lease charges payable by Marshall will be $1,425 per month for 30 years. Marshall will also transport, through the lateral it leases, the combined requirements of Martinsville and Casey at a rate of one cent per Mcf, payable by Casey.

Casey will lease from Panama-Williams, under terms similar to the Marshall lease agreement, the remainder of the lateral, estimated to cost $244,220. Monthly lease charges will be $1,800 for 30 years. Casey will charge Martinsville six cents per Mcf for transporting Martinsville's requirements through a portion of the lateral leased by Casey.

The three cities show 54 cents per Mcf as the price of gas to be purchased from Midwestern.

Marshall, which as a service area population of about 3,850 persons, will construct a distribution system to serve customers within the municipality and vicinity and along the lateral from Dunlap. The cost of the municipal system is estimated at $600,000. By ordinance, the City Council has provided for the establishment of the system and authorized the issurance of gas revenue certificates to finance the project. The ordinance was approved by the voters of the City at a special election held March 3, 1960. Marshall is experienced in utility operation as the operator of its own electric, water, and sewer facilities.

Midwest Securities Company of Chicago, municipal bond specialists, will underwrite the proposed 30 year certificates, which will bear interest at the market, estimated to be 5 per cent.[12]

Martinsville, with a service area of about 1,360 persons, will serve within the municipality and environs. The cost of its distribution facilities is estimated at $225,000.

Casey, with a service area population of about 3,625 persons, will serve within the municipal limits and vicinity, and along the lateral from the point, about 15 miles to the east, where at Casey's metering station its operation of the lateral will commence. The Casey distribution system is estimated to cost $650,000.

The plans of all three cities are carefully worked out in terms of market, comparative fuel costs, feasibility, and financing. Midwestern is ready and willing to undertake the service, which will amount in the third year to 1,952 Mcf peak day and 285,600 Mcf annual for Marshall, 2,104 Mcf peak day and 299,900 Mcf annual for Casey, and 546 Mcf peak day and 62,700 Mcf annual for Martinsville. Debt coverage for the three cities is shown at 1.92, 1.94, and 1.70, respectively, on a 20 year amortization schedule.

---

[12] Midwest Securities will also underwrite on the same terms the certificates for Martinsville and Casey. These cities also have approved ordinances similar to Marshall's.

Objections to the proposed service are raised by Staff and by Central Illinois Public Service Company (CIPS). The Staff contends, without supporting data or concrete argument, that Panama-Williams should be certificated under Section 7(c) of the Natural Gas Act to construct the lateral which will supply the three cities. Section 7(c) states that no natural-gas company, or "person which will be a natural-gas company upon completion of any proposed construction or extension," shall transport or sell natural gas subject to the jurisdiction of the Commission, or construct, acquire, or operate facilities therefor, without a certificate of public convenience and necessity.

So far as the record shows, Panama-Williams is a contractor, and not a natural-gas company. After the contractor builds the lateral line, the municipalities will have the "irrevocable right solely and exclusively to use and to operate the facilities hereinabove described"—*i.e.*, the transmission lateral. (Exhs. 89, 94.) Panama-Williams will be paid for its construction work and capital outlay by monthly charges over a 30 year period of time, or the respective cities may buy the lateral "at a price computed on the basis of actual construction and installation computed by the contractor at the unit prices designated in the engineers' estimates," not exceeding $250,000 for Casey and $200,000 for Marshall. Payment may be made in gas revenue bonds at par. It is quite impossible to see how this arrangement makes Panama-Williams a natural-gas company, *i.e.*, "a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale." Act, Sec. 2(6); see *El Paso Natural Gas Co.*, 19 FPC 371, 372–373.

CIPS, which serves electricity in portions of the southern two-thirds of Illinois and natural gas in central Illinois, has presented an elaborate argument against certain details of the general plan of the three municipalities to construct distribution utilities and contract with Panama-Williams for the construction of the service lateral, and contends that by reason of claimed technical faults in their implementation of the Illinios statutes governing procedure for creation of municipal utilities, the cities lack authority to proceed with construction.

It is, of course, quite clear under the Illinois Municipal Code, Article 11, Division 117, that the three municipalities are generally authorized to construct a gas public utility in the general manner outlined in the record in this case. However, CIPS claims in particular that (a) the approval of the voters of the three cities for the construction of the systems is not legally adequate to cover the project as it has now evolved, (b) Casey and Martinsville have not made appropriations covering cost of transporting the gas along the lateral to be constructed by Panama-Williams, and (c) further action must be taken by the three municipalities before their projects can be put into operation. In this connection, counsel for CIPS and for the three municipalities have extensively briefed the local law regarding CIPS' claim that the lease agreements between Casey and Marshall and Panama-Williams are really "sales contracts" and regarding the appropriate procedural details of the financing of municipal gas plants under the Illinois statutes. We should at this point pause to examine the need for Commission decision on these matters of Illinois municipal law.

In the record of the proceeding at bar, competent engineers have set forth preliminary plans for the transmission lateral and for the plan of distribution of the gas to be supplied. A responsible investment banking firm has established that the financing plans of the three municipalities can be effected and that the revenue bonds can be sold. There is no question from the record but that the anticipated debt coverage, and other general aspects of the project,

are within conventional limits. For the purposes of the Natural Gas Act, competent local interests have thus established to the necessary degree that their proposals are within the "public interest" safeguarded by this Commission.

It is not the function of this Commission to consider and decide the highly technical questions of Illinois municipal law advanced by CIPS in opposition to the proposals of the three municipalities for new gas service. The financial backers and the engineers and contractor for the municipalities are ready to proceed, and are apparently unimpressed by the objections of CIPS. Midwestern is ready and willing to furnish the service when the three municipalities have consummated their arrangements for construction and have, pursuant to such arrangements, installed the necessary facilities. In the event that legal objections raised by CIPS to the details of the preliminary legal arrangements made by the three municipalities have validity, as may be established in the Illinois courts, service will, of course, be interdicted and Midwestern will have available capacity for service elsewhere. Should this event occur, the prejudice to Midwestern and the national public interest protected by this Commission, as distinguished from local interests, would be minimal.

Accordingly, there is no need for this Commission to pass on the alleged technical deficiencies in the implementation of the general authority of the municipalities to construct distribution systems and contract with Panama-Williams for construction of a service lateral. If such deficiencies actually exist, they will no doubt either be corrected and supplied or declared in the appropriate forum, the Illinois courts. Midwestern will be directed to undertake the supply of gas to Marshall, Casey, and Martinsville as applied for in this proceeding.

(2–e) *Village of Vermilion, Illinois.*—In Docket No. CP62–168, CIPS requests an order directing Midwestern to establish physical connection and to sell and deliver to CIPS natural gas for new supply to the Village of Vermilion, Illinois, and environs. Estimated third year peak day and annual requirements are 175 Mcf and 17,710 Mcf, respectively, for 103 estimated average number of customers. The required facilities in Vermilion will cost $30,415, and will be financed with internally generated funds. The CIPS application is unopposed, and Midwestern is willing to furnish the gas. CIPS is generally authorized to serve Vermilion and environs. The service will be directed as requested.

(2–f) *City of Morgantown, Kentucky.*—Morgantown is an intervenor in Docket No. CP62–116, seeking new service from Midwestern, which is willing to undertake the service. Morgantown's third year peak day and annual requirements are 556 Mcf and 43,538 Mcf, respectively. The required distribution facilities are estimated to cost $215,000 and will be financed through the sale of 30 year revenue bonds bearing interest at 5½ per cent.[14] The debt coverage ration, based on third year sales and 30 year amortization schedule for the bond issue, is 1.66.

Staff points to the fact that the debt coverage ratio would be about 1.25 on a 20 year amortization schedule and a 5½ per cent interest rate. Staff recommends that Morgantown's request for gas service be granted only on condition that the interest rate on the proposed bond issue be lowered to the extent necessary to show a debt coverage ratio not less than 1.5 with a 20 year amortization schedule.

Staff's recommendation is rejected. As indicated in other connections, *supra*, 30 year bond issues for municipal distribution systems are commonplace. The interest rate will be fixed by the municipal bond market, over which neither

[14] The city's engineering witness used 5½ percent in developing debt coverage. Its financial witness testified the bonds may go at an interest rate as low as 5 percent (Tr. 2387).

Morgantown nor this Commission has any control. It may be observed that the extent to which the Commission can or should, in terms of the national public interest, concern itself with, and thus appear to assume some responsibility for, the financial arrangements of new intrastate gas distribution systems, would seem to be very limited. That matter is one primarily, and perhaps usually exclusively, of concern to the local distribution system, the local authorities, and the investors, over whom the Commission has no control. Service will be authorized in accordance with the proposal.

(2–g) *Competing Application: Grandview v. Lincoln.*—On February 6, 1962, the City of Grandview, Indiana, petitioned to intervene in these proceedings, asking for a third-year volumes of 305 Mcf peak day and 24,157 Mcf annually from Midwestern for "distribution through municipally-owned facilities which it plans to construct and operate." On February 9, 1962, Lincoln Natural Gas Company, Inc., of Rockport, Indiana, similarly petitioned to intervene, asking for a third-year [15] volumes of 106 Mcf peak day and 16,020 Mcf annually from Midwestern for "the requirements of a new industrial customer, the Glenmore Distilleries Company, which has recently commenced the construction of a new plant and warehouses in Spencer County, Indiana, * * * northeast of Rockport, Indiana, near Grandview, Indiana."

The crux of the competition is for the service to Glenmore Distilleries, which is building four new warehouses and a bottling plant just outside the city limits of Grandview. It happens that Midwestern's mainline passes directly over this new Glenmore property, thus minimizing investment in pipeline, and it appears that the Glenmore load will be relatively stable and profitable. The investment will be only $5,200, covering 1,000 feet of two-inch pipe and appurtenant facilities. (Exh. 105, Lincoln.)

Grandview is proposing to undertake the construction of a municipal gas distribution system for general service within and adjacent to the city limits and also for service to the Glenmore plant. Lincoln Natural has an existing distribution system in Rockport, Illinois, some six miles distant from the Glenmore plant, serving gas transmitted by American Louisiana Pipe Line Company. Lincoln Natural, like Grandview, would attach the Glenmore load to the Midwestern mainline. There would thus be no physical effect from the new connection on Lincoln's existing facilities; the effect would be entirely financial.

The "public interest" in the business of transporting and selling natural gas, to be fostered by this Commission under Section 7 of the Natural Gas Act, certainly includes the interest of communities seeking to have gas service installed. As will be seen, the feasibility of the Grandview project for new gas service to the whole community, including residential and business customers, depends upon the connection of the Glenmore load by Granview. Lincoln Natural's interest in the Glenmore load is entirely financial. Without disparaging the importance of advantaging the financial situation of existing distributors, where possible, by authorizing profitable industrial service,[16] it seems quite clear that, in principle, Grandview's project should be given preferential consideration if all other substantial elements are equal.

(2–g–1) *Specifics of Grandview Application.*—According to its presentation, Grandview, on the basis of its market survey, expects to serve (a) 120 residential

---

[15] Shown as fourth-year in petition and testimony; actually third-year based on contemplated completion of and full requirements for the Glenmore plant during the third year from the 1962–1963 heating season.

[16] *Inter alia,* such authorizations tend to reduce costs of gas to household customers.

and small commercial customers, (b) 11 medium commercials, and (c) four large commercials. The "large commercials" are the warehouses being built by Glenmore; Grandview has not included in its request a volume of gas for the bottling plant which will be in operation during the winter 1965–1966. The volumes in the three customers categories are, in Mcfs, respectively, (a) 16,383, (b) 3,300, and (c) 4,000 on an annual basis, and (a) 219, (b) 36, and (c) 44 on a peak day basis. After allowances for unaccounted for losses, service will be 24,157 Mcf annually and 305 Mcf peak day.

Grandview expects to serve its residential and small customers at an average rate of $1.30 per Mcf, medium commercials at $1.00 per Mcf, and large commercials at 90 cents per Mcf, for total revenues, third year, of $28,198. The cost of gas is stated at 54 cents per Mcf, the anticipated Midwestern rate, and operating and maintenance expenses are at the low figure of $2,595 per annum. Grandview thus expects to realize net revenues of $12,561 per annum from all sales, beginning in the third year.

Cost of facilities is estimated to be $110,000, to be financed by 30 year revenue bonds at an interest rate of 5½ per cent maximum, or less if market conditions warrant. Debt coverage is projected at 1.60 on this basis, and is adequate insofar as it is a matter with which this Commission is concerned.[17] Competent engineers have reported that the Grandview project is feasible, and two well-known investment banking firms have reported that the revenue bonds can be marketed as proposed.

(2–g–2) *Specifics of Lincoln Application.*—Lincoln's carefully prepared plans include proof of the exact requirements of the Glenmore plant, based on the aging calendar for the whiskey there to be stored and bottled. As of the time of hearing herein:

> One warehouse is completed and ready for use; a second warehouse will be completed in 1962; the third and fourth warehouses will be built in 1963 and 1964 respectively. The bottling plant will be constructed in time to begin operations in late 1965 or 1966.

Based on exact knowledge of boiler requirements and observed operations in comparable warehouses, the maximum day requirement (a) for each warehouse boiler will be 14 Mcf and (b) for the bottling plant boiler will be 50.6 Mcf, or total third-year peak day (end of 1965) of 106 Mcf. Annual requirements will be 1,470 Mcf for each warehouse and 10,140 Mcf for the bottling plant, or a total of 16,020 Mcf.

Construction costs and plans are itemized in detail. Total construction costs, including $1,500 in legal fees, amounts to $5,205, which would be paid out of Lincoln's retained earnings.

Lincoln would serve Glenmore under its existing 4-part industrial customer tariff, which will amount to an average price of 80 cents per Mcf for the volumes here involved. After deducting cost of gas, operating and administrative expense, depreciation and Indiana taxes, Lincoln expects to realize third-year operating revenue before federal income taxes of some $1,351 per year from the service to Glenmore.

---

[17] Staff questions the propriety of a 30 year rather than a 20 year bond issue and seems to implicitly question the interest rate. Staff in no way connects these questions with the affairs of Midwestern, or any other matters of national as distinguished from purely local concern. It is noted that Midwestern's investment in the project will only be the cost of a tap, and regulator and metering. In any event, a 30 year bond issue at 5½ percent interest is not unreasonable. *United Gas Pipe Line Co.*, 24 FPC 933 (40 year bonds at 5½ percent); *Southern Natural Gas Co.*, 25 FPC 518 (7 percent debentures).

(2–g–3) *Evaluation of Competing Applications.*—Grandview's application lacks the careful detail which might be expected from final plans of an established gas utility operator. Grandview has estimated the Glenmore load at 44 Mcf peak, 4,000 Mcf annually, whereas the load, including bottling plant, is accurately estimated to be 106 Mcf peak, 16,020 Mcf annually. The increased revenues thus indicated may compensate for indications that Grandview's operating expense estimates are somewhat low. The engineering and banking services available to Grandview are competent, and there is no reason to suspect that the proposed system is not feasible or bankable.

Service from Lincoln, the existing gas utility operator six miles distant, would be simple and direct. Lincoln's operating plan is careful and conservative. However, neither Glenmore nor Midwestern have expressed any preference for service from Lincoln rather than Grandview.

Grandview estimates, for its entire distribution service, third year gross revenues of $28,198, and net revenues of $12,561 after allowance of $13,045 for cost of gas and $2,592 for operations and maintenance. On Grandview's figures, $3,600 of revenues will be derived from the Glenmore sales at an average rate of 90 cents per Mcf;[18] elimination of these revenues would bring debt coverage under the accepted 1.5 ratio. On Lincoln's more accurate estimates, the Glenmore sales at 70 cents per Mcf will produce $11,200 of third year revenues. Lincoln's presentation enhances the likelihood that, with the Glenmore sales, Grandview can operate within a conservative debt coverage, even if Grandview's operating and construction costs turn out to be somewhat higher than now estimated.

It is to be remembered that these proceedings involve preliminary plans subject to a degree of improvement in the process of finalization under the guidance of engineering and financial experts working with Grandview. On balance, Grandview should be authorized to proceed with its municipal plant.

(2–g–4) *Grandview's Franchise Authority.*—Lincoln contends that it has the exclusive right to serve all of the rural area outside of the town of Grandview, and that the Grandview municipal system, if built, can serve only customers within the town limits. The contention is based on an order of the Indiana Public Service Commission approved December 23, 1960 (Exhibit 104). This order gives Lincoln the right to distribute gas "to all customers residing in the area and territory described and set forth in said 'Exhibits A and B' attached to said Petition,[19] in Spencer County, Indiana, except the portions of said territory lying within the corporate limits of the town of Grandview . . ." (continuing with exact description by section, township and range).

The Indiana Commission order has not been acted upon by Lincoln in respect of the laying down of distribution lines to serve customers adjacent to the town of Grandview. Indeed, the record is silent as to any concrete action taken by Lincoln to implement its formal authorization. The franchise is not in terms an exclusive right to operate at the Grandview borders, and, under the circumstances of this case, should not be considered as an exclusive franchise. The contrary conclusion would mean that domestic and other customers just outside Grandview, and not within Lincoln's economic service area, would forever be unable to attach any gas service at all, because they could not be served by

[18] The record indicates a debt coverage for Grandview of 1.55 if the average rate to Glenmore were reduced, as Grandview has suggested on the record, to 83 cents per Mcf.

[19] *I.e.*, attachments to Lincoln's application for authority to serve. The exhibits are not part of the present record, but it will be assumed that the Glenmore plant lies within the territory there described.

Grandview's projected municipal plant. The effect would be that a franchise, presumably contemplating actual service, would be the instrument by which service is prohibited.

TABLE NO. 2

TENNESSEE GAS TRANSMISSION COMPANY

ADDITIONAL SERVICE PROPOSED IN DOCKET NO. CP60–94 FOR CUSTOMERS FROM STATION 87 NORTHEAST TO STORAGE, INCLUDING MIDWESTERN GAS TRANSMISSION COMPANY

(Mcf at 14.73 psia)

Customer and permanently authorized long-term CD or MDQ		Interim service [1] to 11/30/62	Proposed 1962–1963	Total additional service proposed	Proposed long-term quantities
(1)		(2)	(3)	(4)	(5)
Delta Natural Gas Co.:					
Berea	2,800	200		200	3,000
Nicholasville	3,300	800	50	850	4,150
Salt Lick	260	40	10	50	310
Grayson, Ky.	773	137	90	227	1,000
Olive Hill, Ky.	441	160	64	224	665
Portland, Tenn.	1,160	200	80	280	1,440
Western Kentucky Gas Co.:					
Campbellsville, et al.	18,182	2,465	719	3,184	21,366
Danville	8,064	212	248	460	8,524
Inland Gas Corp.	40,800	[2] 5,100		5,100	45,900
Iroquois Gas Corp.	93,840	10,200		10,200	104,040
Midwestern Gas Trans. Co.	363,432		15,000	15,000	378,432
Pennsylvania Gas Co.	37,740	5,100		5,100	42,840
Total general and contract demand service	570,792	24,614	16,261	40,875	611,667

[1] As authorized in Docket Nos. CP61-74 and CP61-295.
[2] As authorized in Docket No. CP62-93.

Upon completion of formal proceedings by Grandview under Section 54–602 of Chapter 6, Burns Indiana Statutes—Annotated (1951), which gives Grandview the right to operate its municipal gas system within a radius of six miles from the city limits, and commencement of gas plant operations, Lincoln's inchoate franchise should, of course, be the subject of a petition to the Indiana Commission, looking towards a realistic definition of Lincoln's present and contemplated actual service area.

* * * * * * *

The peak day requirements of the Section 7(a) applicants and intervenors whose requests for service from Midwestern are granted in this section of this decision, total 6,531 Mcf. Tennessee will therefore be required to increase Midwestern's contract demand by 21,531 Mcf, in lieu of the 15,000 Mcf increase originally proposed in Docket No. CP60–94. Tennessee's proposed increase in maximum daily delivery obligation from this section of its transmission system, as shown in Table 2, is 40,875 Mcf. The inclusion of the Section 7(a) applicant and intervenor requests granted herein will increase that obligation to 47,406 Mcf.

(3) *Proposed Service and Facilities Northeast of Storage.*—As shown on Table 3, Tennessee proposes to serve to existing customers, and asks authorization for, 86,428 Mcf of additional firm maximum daily quantities, as well as 10,120 Mcf of additional daily storage quantities. There is no issue or contention regarding the need for this additional service.

(3–a) *Lowell Gas Company.*—In Docket No. CP61–9, Lowell requests an order directing Tennessee to establish physical connection and deliver a peak-day volume of 1,756 Mcf for distribution in Wilmington, Massachusetts. Estimated third-year annual requirement is 204,611 Mcf. Lowell's construction cost for

the necessary facilities is esimated at $841,994 during the first three years to be financed temporarily by funds available under a construction credit allowance from four banks for which $1,400,000 is presently available. The request is unopposed. The record clearly establishes the need for the new service to Wilmington, and appropriate conclusions will be made. Table 3 quantities will thus increase to 88,183 Mcf.

(3-b) *Facilities Northeast of Storage.*—As noted (see "Background," *supra*), Tennessee has been temporarily authorized to construct and operate 6,800 compressor horsepower and 24.75 miles of loop line near Syracuse, New York. There is no question, and no reason to question, the need for these facilities, which will be permanently authorized herein.

TABLE NO. 3

TENNESSEE GAS TRANSMISSION COMPANY

ADDITIONAL SERVICE PROPOSED IN DOCKET NO. CP60-94 FOR CUSTOMERS NORTHEAST OF STORAGE

(Mcf at 14.73 psia)

Customer and permanently authorized long-term CD or MDQ (1)		Interim service [1] to 11/30/62 (2)	Proposed 1962-1963 (3)	Total additional service proposed (4)	Proposed long-term quantities (5)
Berkshire Gas Co.:					
Greenfield	1,479	771	320	1,091	2,570
North Adams	3,150	1,650	700	2,350	5,500
Pittsfield	4,235	2,784	281	3,065	7,300
Bridgeport Gas Co	22,338	4,182	1,980	6,162	28,500
Concord Natural Gas Corp	2,369	836	216	1,052	3,421
Connecticut Gas Co.:					
Derby	6,936	4,119	1,028	5,147	12,083
Norwalk	1,895	655	120	775	2,670
Wallingford	3,035	508	293	801	3,836
Winstead	608	659	44	703	1,311
Fitchburg Gas & Elec. Co	3,672	1,337	444	1,781	5,453
Gas Service, Inc	3,950	1,016	(72)	944	4,894
Granite State Gas Trans., Inc	5,100		840	840	5,940
Greenwich Gas Co	6,765	2,840	675	3,515	10,280
Hartford Electric Light Co.:					
Stamford	9,078	1,337	570	1,907	10,985
Torrington	2,550	625	165	790	3,340
Haverhill Gas Co	7,548	3,301	646	3,947	11,495
Holyoke, Mass	5,780	1,115	531	1,646	7,426
Lowell Gas Co	12,954	3,570	1,020	4,590	17,544
Manchester Gas Co.:					
Manchester	4,778	722	400	1,122	5,900
New Britain Gas Light Co	4,590	3,704	666	4,370	8,960
Subtotal	112,810	35,731	10,867	46,598	159,408
New York State E. & G. Co	13,208	2,289	1,356	3,645	16,853
Penn. Gas & Water Co	13,200	2,533	2,498	5,031	18,231
Springfield Gas Light Co	20,808	10,902	1,850	12,752	33,560
Valley Gas Co	16,830		1,632	1,632	18,462
Westfield, Mass	4,080	510	400	910	4,990
Worcester Gas Light Co	24,500	2,550	1,950	4,500	29,000
Central Hudson G. & E. Co	8,030	1,660		1,660	9,690
Orange & Rockland Utilities	18,000	5,000	4,700	9,700	27,700
Total general and contract demand service	231,466	61,175	25,253	86,428	317,894
Grand total—Firm (Tables 1, 2, and 3)	1,049,357	106,171	55,498	161,669	1,211,026
Storage service:					
Central Hudson G. & E. Co		4,080	2,040	6,120	6,120
Orange and Rockland Utl		4,000		4,000	4,000
Total storage		8,080	2,040	10,120	10,120

[1] As authorized in Docket Nos. CP61-74 and CP61-295.

Additionally, Tennessee, on April 9, 1962, applied *inter alia* for temporary authority to construct and operate 5,000 compressor horsepower at Pennsylvania Station 321 and 2.37 miles of lateral line near Northhampton, Massachusetts, at a total cost of about $1,845,000.[20] Temporary authority was granted by Commission letter order of May 23, 1962. There is no opposition and no issue as to Tennessee's need for these additional facilities northeast of storage, which will also be permanently authorized herein.

Gas Supply and Deliverability

Tennessee's evidence shows recoverable gas reserves as of January 1, 1962, of 18,828,898 MMcf, or some three trillion cubic feet more than January 1, 1958, reserves. This showing of recoverable reserves results from recent addition of gross reserves of 4.1 trillion cubic feet in Louisiana and 719 billion cubic feet in Texas. The testimony of Tennessee's Director of Reserves shows a reserve life index of 19.7 years from January 1, 1962. No testimony was presented to dispute the gas supply showing made by Tennessee.

Under the "most rigid test of deliverability" (Tr. 340), the backpressure method,[21] the testimony of Tennessee's senior Petroleum Engineer shows that its reserves have a deliverability life of 12 years from January 1, 1963. At the request of Commission Staff, Tennessee also prepared a deliverability study based on the "Davis Curve."[22] This study shows a deliverability life of 15 years.

The testimony clearly shows that water-drive is to be expected in some of Tennessee's Gulf Coast reservoirs, based on general experience in the area, and that as encountered water-drive will improve the reservoir deliverability shown by the back-pressure method. Consequently, it may be said that Tennessee has shown "at least" 12 years of deliverability life for the reserves on which it relies in this proceeding.

The Staff has presented no substantial questions or contentions regarding the methods used by Tennessee in computing deliverability.[23] However, Staff's brief, although not entirely clear, seems to contend for the exclusion of certain reservoirs and classes of reserves counted by Tennessee in making its reserve study. This exclusion, Staff contends, would reduce Tennessee's deliverability from 12 years to 9.4 years[24] and presumably result in a failure by Tennessee to show the deliverability coverage required by the Commission (21 FPC at 657), discussed *supra*.

Staff's Proposed Exclusions.—From the reserves presented by Tennessee, Staff thus would delete—

---

[20] Costs of this and other single facilities and groups of facilities mentioned *infra* are derived by adding to the direct costs shown by Tennessee on Exhibit No. 19 a pro-ration of Tennessee's estimated overhead costs.

[21] *I.e.*, the ability of the wells to produce against a fixed wellhead or line pressure, substantially based on observation, and without allowance for water-drive.

[22] This is a performance curve based on actual production of 308 depleted reservoirs located in the Gulf Coastal Plain area of Mississippi, Louisiana, and Texas. Staff has attacked the use of the Davis Curve, but has presented no understandable basis for the attack.

[23] Staff, which required Tennessee to make the "Davis Curve" presentation, questioned the presentation on brief. However, Staff has not submitted an alternative expert interpretation of Tennessee's conclusions therefrom. The Tennessee presentation is accepted.

[24] Staff also criticizes other features of Tennessee's reserves showing but has not contended for a further reduction in deliverability based on these criticisms.

	Mcf
1. Reserves purchased in-place:	
(a) MCN	496, 398, 000
(b) Bastian Bay	938, 160, 000
(c) Ship Shoal	661, 323, 000
Sub-total	2, 095, 881, 000
2. Non flow-tested reserves	605, 220, 000
3. Compressor fuel contracts	427, 434, 000
4. Certificated but no deliveries	324, 488, 000
5. Tenneco West Cameron acreage	342, 489, 000
Total exclusions	3, 795, 512, 000

Staff's proposal is thus for the exclusion of over 20 per cent of the reserves on which Tennessee relies to support future service.

1. *In-place Purchases.*—(a) The offshore Louisiana reserves involved in what has become known as the "MCN purchase" have been rededicated to Tennessee by contracts dated January 31, 1962. These contracts provide for conventional per-Mcf sale of the gas by the MCN producers to Tennessee. Proceedings looking towards certification of this supply at the present writing pend before the undersigned Examiner in Docket No. G–14562 *et al.* The only issue presented in such proceedings is the price issue, as to which a settlement is being arranged.

Because of the location of the MCN gas in federal territory offshore Louisiana, it is physically impossible, as a practical matter, to use or sell the gas except by way of interstate movement thereof; this means that the gas must be used or sold pursuant to the authority and direction of the Commission. There is no question but that the Commission will allow Tennessee to connect the gas at the proper price. It is therefore, for practical purposes, part of Tennessee's committed reserves.

(b) The Bastian Bay gas, purchased in-place, is currently being taken into the Tennessee system. The Bastian Bay field lies offshore Louisiana, and was purchased by Tennessee from Pan American Petroleum Company. Under the purported authority of a "budget type" certificate issued in Docket No. CP61–106, Tennessee has connected the field by means of 2.63 miles of 12-inch gathering line from the Tennessee general system in southern Louisiana.

On March 12, 1962, the Commission, in Docket No. CI62–1034, consolidated with Docket No. CP61–106 above-mentioned, ordered Pan American to show cause why it should not be found to be engaged in the sale of gas from Bastian Bay without having secured Commission authorization. This proceeding, which has been heard but not decided, looks towards the rationalization of the jurisdictional situation rather than the cessation of the supply. Whatever the outcome of the proceeding in Docket No. CI62–1034, it will not be the removal of the Bastian Bay reserves from Tennessee's connected gas resources.

(c) In considering the Ship Shoal reserves, we are dealing with a consummated transaction, the substantial jurisdictional, accounting, financial, operating, and pricing aspects of which will be dealt with in a future "Decision on Remaining Issues" herein. As of the time of the hearing, the Tennessee System had paid out some $18 million for the Ship Shoal reserves, pursuant to its contracts of May 10, 1961, with the CATC companies. On August 10, 1962, further payments of $4,583,332.80 became due, and presumably were paid. The total consideration to be paid is $97,333,333.

The Ship Shoal reserves have not been connected. If Tennessee and its customers are to realize benefits from the 97 million dollar purchase price thus partly paid and partly committed, 58.2 miles of 20-inch gathering line must be

authorized by the Commission and laid from Tennessee's mainline valve 523 to the Ship Shoal area, at a cost of $8,503,962. (Exh. 19.) Total cost including overheads will be $10,100,000.

The situation thus presented is exactly that envisaged in the initial decision issued January 8, 1962, in *Tennessee Gas Transmission Co.*, Docket No. G–14562 *et al.* In stating the several deficiencies of the so-called "Rayne Field approach" to the problem of in-place sales, the following appears:

> * * * Furthermore, under Rayne Field, the Commission would have no jurisdiction to pass on pipeline acquisitions of gas in-place, except where the pipeline, as a part of the acquisition transaction, contemplates immediate connection of the gas and makes application to the Commission for authority to make such connection. Pipelines could still buy gas (gas leases) at an unregulated price and in a separate subsequent transaction, apply for authority to make the connection. In such case, the Commission might well be under considerable constraint to approve the connection. Cf., in an analogous situation, Statement of General Policy No. 62–1, issued October 19, 1961, adding Section 2.57 to the Commission's Rules of Practice and Procedure (18 CFR 2.57).

On re-appraisal of the language in the light of the actual case at bar in which, unlike *Rayne Field* and *MCN*, the gas purchase antedated the request for authority to connect, the language is found to be overcautious and tentative. In an actual situation, the degree of "constraint" to approve the connection is found to be substantial; perhaps compelling. Whatever the solution to the important reserved questions as to the appropriate terms and conditions under which deliveries of the gas will be effected, it will not be a totally unrealistic solution resulting in 661 billion cubic feet of unusable (because unconnected) gas supply at Ship Shoal or the diversion of this potential supply from the Tennessee system. This means that we are constrained to approve the connection. This means that all Ship Shoal gas reserves are properly included in Tennessee's showing of supply and deliverability.

There is no issue or question as to the soundness of the engineering, costing, and other details of the proposed line for the connection of Ship Shoal with Tennessee's system. Without going into reserved substantial questions, "connection of the gas should be routine and as-of-course, depending only on matters of engineering and costing of the physical facilities not in issue here and rarely, if ever, in issue in other Commission proceedings." Initial Decision of January 8, 1962, in Docket No. G–14562 *et al.*, [unreported]. Therefore, the connection to Ship Shoal should also be authorized in this decision without prejudice to deferred issues.

2. *Non Flow-tested Reserves.*—The Commission has no general requirement to the effect that flow-testing is a prerequisite to all reserve determinations. There is presently apparent no reason for such a general requirement, and no reason for such a particular requirement based on the record in this case. Non flow-tested reserves presented by Tennessee amount to only slightly over three percent of total recoverable reserves shown. There is no reason shown in the record to doubt that as Tennessee's flow-testing program is carried out, these non flow-tested reserves will prove up in accordance with Tennessee's estimates. The uncontroverted evidence requires inclusion in Tennessee's gas supply showing.

3. *Compressor Fuel Contracts.*—Tennessee has a contract with Magnolia Petroleum Company and another contract with Socony Mobil Oil Company providing for the supply of gas by the said producers "for use only in Buyer's compression

facilities." (Exh. 1, Vol. III, Tables 49 and 50.) Gas is and has been flowing into the Tennessee system pursuant to such contracts, although Tennessee, and the producers, presumably under the mistaken impression that the supply is non-jurisdictional,[25] have not applied for or received certificates authorizing the sales and deliveries.

The contractual price for the so-called compressor fuel contracts, 22⅛ cents per Mcf escalating to 23⅛ cents in November 1962, is considerably higher than the General Policy Statement ceiling for the area of the sale. The matter should clearly be the subject of Commission action enforcing the filing and other requirements of the Natural Gas Act—a proceeding which will have no relevance to the issues in the case at bar. For present purposes, it is sufficient to note that the gas is connected, cannot be disconnected and reassigned without breach of contract and abandonment proceedings before the Commission, and is thus a part of Tennessee's committed supply.

4. *Reserves Certificated But No Deliveries.*—On March 13, 1962, the CATC companies commenced deliveries to Tennessee from the reserves in the Cameron Area, Block 64 field, thus mooting Staff's objection.

5. *Tenneco West Cameron Acreage.*—On August 28, 1962, in *Tenneco Corp. et al.*, Docket No. CI61–1272 *et al.*, the Commission in effect approved a settlement of a questioned transaction in which Tennessee had transferred to its affiliate Tenneco Corp. certain of Tennessee's gas reserves. Under the settlement, the West Cameron acreage reserves were retransferred to Tennessee. The order of August 28, 1962, granted Tennessee the authority to construct and operate a $1,320,000 field line to connect the Block 180 (West Cameron) offshore acreage with the Tennessee system. This disposes of all questions regarding the propriety of including these reserves in the Tennessee supply.

* * * * * * *

It is concluded that Tennessee has shown recoverable gas reserves of 18,828,898 MMcf, as of January 1, 1962. Based thereon, Tennessee has also shown its ability to supply its presently authorized system obligations and the additional obligations proposed by Tennessee in its amended and supplemented application in Docket No. CP60–94 for a period of at least 12 years.

However, Tennessee did not consider the requirements of Section 7(a) applicants and intervenors, herein requesting service, in its showing of deliverability coverage. The question is: To what extent would the inclusion of such additional requirements affect the 12-year deliverability? We note that the third-year average day requirements of the Section 7(a) applicants and intervenors, whose requests for service are granted herein, total about 2,900 Mcf. This amount is about one-tenth of one per cent of Tennessee's proposed average day system obligations to be met from reserves during each of the years 1963 through 1974, as shown in Exhibit 24. Exhibit 9 shows that Tennessee has scheduled *substantial* purchases of gas in the years subsequent to 1974.

It would appear that Tennessee, by a very slight rescheduling of purchases, can meet the relatively minute requirements of the Section 7(a) applicants and intervenors without sacrificing its over-all 12-year deliverability coverage. However, we need not speculate about this. It is clear and certain that the public interest will not be served by denial of these Section 7(a) and intervenor requests solely on the ground that a granting thereof would result in an unmeasurably small impairment of a 12-year deliverability showing which is based substantially on estimated data. Tennessee's supply picture is subject to rela-

[25] The gas flows into Tennessee's integrated interstate system, and is assigned to compressor stations only by conceptual artifice. See *Montana-Dakota Utilities Co.*, Docket No. CP61–234 *et al.*, Examiner's Decision of September 5, 1962.

tively gross variations from one period of years to another there is no indication that Tennessee will not continue to obtain gas resources to meet its obligations for the reasonably foreseeable future.[36]

Reserved Issue as to Tennessee's Capacity

In the foregoing substantial quantities of gas, in excess of volumes heretofore permanently authorized for service by Tennessee, have been allocated to various existing and new customers of Tennessee and its subsidiary Midwestern. The question arises as to how this additional service can be presently and permanently authorized herein without deciding at the same time, expressly or by implication, the reserved issue as to Tennessee's need for new capacity southwest of storage.

The issue can be and is reserved for future decision because Tennessee, pursuant to temporary authorization issued in 1962, has installed or is presently installing, at its own risk, sufficient new facilities to provide the capacity which Tennessee now claims to be necessary to cover the additional service during the immediate 1962–1963 winter season. Whether or not all such temporarily authorized facilities are or will be actually needed to render the services remains to be decided. Stated differently, it remains to be determined whether, as claimed by the Columbia System intervenors, Tennessee could just as well have served the quantities of gas herein authorized without installing the contested facilities temporarily authorized in 1962.

Summary of Current Status of New Tennessee Facilities.—It will be helpful at this point to trace and exactly define the origin and extent of Tennessee's actual construction undertaken to date, indicating that at present, and for the time being, the dollar amount involved in the reserved issue is sharply reduced.

1. As noted *supra*, the need for Tennessee's construction of facilities northeast of storage is not contested. The specific items are:

Facilities	H.P. or miles	Cost [37]
Station 241	6,800	$5,469,000
Loop between Stations 229, 231	24.62	
Station 321	5,000	1,845,000
Northhampton lateral	2.37	

[37] Costs in this and all subsequent tables reflect allocation to individual facilities of gross overheads and contingencies presented by Tennessee.

The first two items were temporarily authorized in Docket No. CP60–94 on July 1, 1960. The second two items were temporarily authorized in the same docket on May 23, 1962. All will be permanently authorized herein.

2. The Columbia System intervenors do not contest the need for two facilities southwest of Station 87. The specific items are:

Facilities	H.P. or miles	Cost
Station 526A–102	5,000	$1,680,000
Ship shoal lateral	58.2	10,100,000

[36] Further in this regard, we may note Chairman Swidler's speech before the American Gas Association on October 9, 1962, wherein the Chairman indicated that the Commission is presently reexamining its policy with regard to the 12-year deliverability requirement as applied to expansions of well-established pipelines.

As indicated above, construction of the Ship Shoal lateral is to be permanently authorized herein, because the lateral is essential to connect and start utilization of the now idle and expensive reserves, and since there is no question as to the need for, engineering of, or cost of, the physical facilities which will make the physical connection with Ship Shoal. The Ship Shoal reserves lie beneath Federal waters offshore Louisiana. Therefore, the gas cannot be sold or otherwise disposed of without interstate movement. Therefore, connection of the gas, if it is to be usefully and profitably disposed of, is entirely within the jurisdiction of the Federal Power Commission; the producers, *e.g.*, have no intrastate sales alternatives. The only necessary implication from the connection is that Tennessee, rather than another pipeline, will take delivery of the gas. The financial and other bases for the deliveries set forth in the Tennessee-CATC contracts remains to be redetermined.

"The existence of large blocks of idle and expensive energy is not healthy or productive from the standpoint either of the given producers or of the national economy. The Commission should give the producers every opportunity to connect their new discoveries, to start cash realizations therefrom, and to move on to further exploration." Initial Decision of January 8, 1962, in Docket No. G–14562, *supra*. Following this principle, physical connection of Ship Shoal can be and should be made as soon as Tennessee needs the gas, without prejudice to, or implication concerning, the reserved financial, accounting, economic and legal issues inhering in the fact that Tennessee bought and the producers sold the gas without Commission authorization, at an excessive price, and that the purchase transaction between Tennessee and the CATC producers must therefore be revised to reflect a purchase on terms and conditions consonant with the public interest.

Construction of Station 526A–102 will also be permanently authorized herein. There is no question but that this compression is needed to move Tennessee's gas supplies originating in the Delta area of Louisiana to the Delta-Portland line.

3. The Columbia System intervenors contest Tennessee's need for the following specific facilities southwest of Station 87, all on the Delta-Portland line, which have actually been installed pursuant to temporary authorization issued July 6, 1962:

Facilities	*Horsepower*
Station 527, Louisiana	4,000
" 530, Mississippi	6,000
" 534, "	9,000
" 538, "	8,000
" 542, "	11,000
" 546, "	5,000
" 550, Alabama	11,000
" 555, Tennessee	7,500
" 860, "	5,400

The direct costs of this compression as presented by Tennessee are $14,357,000; the allocation of gross overheads and contingencies to these specific stations results in a total amount in question of about $17 million.

As will be seen, these installations cover only a portion of the total facilities proposed by Tennessee in this proceeding. The origin of these and three other [28] installations effected during 1962 has been in the following procedural steps and Commission orders:

[28] Station 321, the Northampton lateral, and Station 526A–102, none of which are contested.

On April 9, 1962, Tennessee filed its application for temporary authorization for the new facilities, claiming that they were necessary to meet 1962–1963 winter requirements and would provide 135,969 Mcf of additional design day capacity southwest of Station 87. This application was opposed, insofar as the Delta-Portland line compression was concerned, by the Columbia System intervenors, and on May 2, 1962, the Commission's Secretary notified all parties to the proceeding that an informal conference would be held concerning the matter on May 10, 1962.

On May 14, 1962, the Columbia System intervenors withdrew opposition to the issuance of the requested temporary authorization "without prejudice to their [Columbia's] position with regard to permanent certification of the facilities." On that same day, the Commission issued a notice of Tennessee's April 9, 1962, application and set the matter for hearing to be held on May 21, 1962. Subsequently, this hearing was cancelled by notice issued May 17, 1962.

On May 23, 1962, the Commission issued a letter order in Docket No. CP60–94 denying waiver of intermediate decision procedure and granting Tennessee temporary authority to construct and operate only such facilities on the Delta-Portland Line as required to increase design day capacity by 70,000 Mcf in lieu of the 135,969 Mcf requested in the April 9, 1962, application. The letter order also gave temporary authorization for the facilities northeast of storage and the compression at Station 526A–102.

On June 7, 1962, Tennessee filed a petition for rehearing of the Commission's letter order. The Commission, by order issued July 6, 1962, granted Tennessee's petition and issued temporary authorization for the construction and operation of all facilities as applied for in Tennessee's April 9, 1962, application. Tennessee notified the Commission that construction commenced on July 16, 1962.

On August 31, 1962, Tennessee filed an application, as supplemented on October 1, 1962, requesting temporary authorization to render during the 1962–1963 winter season the additional service at issue in this proceeding, *i.e.*, the additional 161,669 Mcf firm daily contract quantities and 10,120 Mcf of storage quantities discussed *supra*. This latest application was granted by Commission order of October 26, 1962.

4. A substantial amount of contested facilities originally proposed by Tennessee have not been covered by applications for temporary authority. Tennessee admits (Br. 15) that these facilities are not needed to meet requirements of the 1962–1963 winter peak season, but says that they will be needed "at a later date to meet the customers' loads as they increase." These facilities, which lie near Columbia's principal service area between Station 87 and storage, are as follows:

Facilities	*Horsepower or miles*
Station 871, Kentucky	4,000
Loop between Stations 203 and 206	41.52
" " " 213 and 216	34.06
" " " 303 and 308	51.68

The total cost of these facilities is about $20,500,000.

Recapitulating, the Columbia System intervenors contest about $17 million of facilities actually constructed. Tennessee has not asked for immediate construction of about $20.5 million of contested facilities. There is no issue not herein disposed of regarding some $19.1 million of facilities, part of which have been constructed under temporary authorization and part of which Tennessee will, no doubt, construct in due course.

ORDER

Wherefore, *it is ordered*, Subject to review by the Commission, as provided in its Rules of Practice and Procedure, that:

(A) A certificate of public convenience and necessity is hereby granted to Tennessee Gas Transmission Company (hereafter called "Tennessee") for the construction and operation of substitute facilities temporarily authorized by Commission order issued August 30, 1961, pursuant to Tennessee's motion to amend the Commission's order issued May 12, 1959 in Docket No. G–16842; which facilities are described in said motion to amend, the Commission order, and the foregoing text of this Decision.

(B) Tennessee's authorization, deriving from the same Commission order issued May 12, 1959, to construct a total of 12,200 horsepower of compression facilities at Stations 1, 812 and 524, which facilities are described in the record in this proceeding and the foregoing text of this Decision, is hereby rescinded.

(C) A certificate of public convenience and necessity is hereby granted to Tennessee for the construction and operation of compression facilities at Station 241 and loop lines between Stations 229 and 231 all located northeast of storage in New York, as temporarily authorized by Commission order of July 1, 1960, in Docket No. CP60–94; similarly, for the construction and operation of compression facilities at Station 321 in Pennsylvania, compression facilities at Station 526A–102 in Louisiana, and a pipeline designated as the Northampton lateral in Massachusetts, all as temporarily authorized by Commission order of May 23, 1962, in Docket No. CP60–94, and as described in the application herein, the said Commission order, and the text of this Decision.

(D) A certificate of public convenience and necessity is hereby granted to Tennessee for the construction and operation of 58.2 miles of lateral line connecting the reserves offshore Louisiana known and herein described as the Ship Shoal reserves with Tennessee's facilities at valve 523; such lateral line being particularly described in the application herein.

(E) A certificate of public convenience and necessity is hereby granted to Tennessee to transport for, and sell and deliver to, existing customers, additional volumes of natural gas totalling 161,669 Mcf per day of firm service and 10,120 Mcf per day of storage service, as particularly described in Tables 1, 2 and 3 of this Decision and accompanying text.

(F) Tennessee is hereby directed to establish and maintain physical connection of its facilities with the facilities to be constructed by the Village of Provencal, Louisiana, as proposed in the application of such Village in Docket No. CP62–152; and to deliver and sell through such connection natural gas not exceeding a maximum daily volume of 285 Mcf.

(G) Tennessee is hereby directed to establish and maintain physical connection of its facilities with the facilities to be constructed by Lowell Gas Company in the Town of Wilmington, Massachusetts, as proposed in Lowell's application in Docket No. CP61–9; and to deliver and sell through such connection natural gas not exceed a maximum daily volume of 1756 Mcf.

(H) A certificate of public convenience and necessity is hereby granted to Tennessee to sell and deliver to Midwestern Gas Transmission Company (hereafter called "Midwestern"), natural gas not to exceed a maximum daily volume of 6531 Mcf for service to Midwestern's new customers identified in succeeding paragraphs (I) through (N) hereof.

(I) Midwestern is hereby directed to establish and maintain physical connection of its facilities with the facilities of Central Illinois Electric and Gas Company to be constructed in the Village of Oakwood, Illinois, as proposed in Central Illinois Electric and Gas Company's application in Docket No. CP61–122;

and to deliver and sell through such connection natural gas not to exceed a maximum daily volume of 365 Mcf.

(J) Midwestern is hereby directed to establish and maintain physical connection of its facilities with the facilities of Allied Gas Company to be constructed in the Villages of Potomac, Rankin, and Cissna Park, Illinois, as proposed in Allied's application in Docket No. CP62–132; and to deliver and sell through such connection natural gas not to exceed a maximum daily volume of 528 Mcf.

(K) Midwestern is hereby directed to establish and maintain physical connection of its facilities with facilities to be operated by the City of Marshall, Illinois; and to deliver and sell, through such connection, to the Cities of Marshall, Casey, and Martinsville, Illinois, respectively, natural gas not to exceed maximum daily volumes of 1952 Mcf, 2104 Mcf and 546 Mcf, for distribution through facilities to be constructed by the cities, as proposed in their respective applications in Docket Nos. CP62–187, CP62–188, and CP62–189.

(L) Midwestern is hereby directed to establish and maintain physical connection of its facilities with facilities to be constructed by Central Illinois Public Service Company, for service to Vermilion, Illinois, as proposed in Central Illinois Public Service Company's application in Docket No. CP62–168; and to deliver and sell through such connection natural gas not to exceed a maximum daily volume of 175 Mcf.

(M) Midwestern is hereby directed to establish and maintain physical connection of its facilities with the facilities to be constructed by the City of Morgantown, Kentucky, as proposed in Morgantown's petition to intervene in Docket No. CP62–116, and to deliver and sell through such connection natural gas not to exceed a maximum daily volume of 556 Mcf.

(N) Midwestern is hereby directed to establish and maintain physical connection of its facilities with the facilities to be constructed by the City of Grandview, Indiana, as proposed in Grandview's petition to intervene in Docket No. CP62–116; and to deliver and sell through such connection natural gas not to exceed a maximum daily volume of 305 Mcf.

(O) The application of Lincoln Natural Gas Company for an order of the Commission directing Midwestern to establish physical connection of its facilities with facilities to be constructed by Lincoln Natural and to deliver and sell a volume of natural gas, as proposed in Lincoln Natural's petition to intervene in Docket No. CP62–116, is hereby denied.

(P) A certificate of public convenience and necessity is hereby granted to Midwestern for the transportation and sale of natural gas to Northern Illinois Gas Company for resale in existing service areas, as hereinbefore described and as more fully described in the application in Docket No. CP62–116.

(Q) A certificate of public convenience and necessity is hereby granted to Alabama Tennessee Natural Gas Company for the construction and operation of $310,000 of facilities, and for the transportation and sale of an additional 1,230 Mcf per day of natural gas, both as hereinbefore described and as more fully described in the application in Docket No. CP62–133.

(R) A certificate of public convenience and necessity is hereby granted to Tennessee Natural Gas Lines, Inc. for the transportation and sale of an additional firm volume of 5300 Mcf of natural gas per day as herein described and as more fully described in the application in Docket No. CP61–27.

(S) The certificates of public convenience and necessity hereinbefore issued to Tennessee, Midwestern, Alabama-Tennessee Natural Gas Company and Tennessee Natural Gas Lines, Inc. shall be accepted in writing and under oath by a responsible official of each, and the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of the

Commission's Regulations under the Natural Gas Act where applicable, shall attach to the issuance of the certificates hereinbefore granted and to the exercise of the rights granted thereunder.

(T) The time within which the facilities hereby authorized shall be constructed and placed in actual operation as provided by paragraph (d) of Section 157.20 of the Commission's Regulations under the Natural Gas Act is hereby fixed at one year from the effective date of the final order herein.

ROBERT M. WESTON,
Presiding Examiner.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY PURSUANT TO THE NATURAL GAS ACT COVERING REMAINING ISSUES

(Issued March 4, 1963)

WESTON, *Presiding Examiner:* The "Decision on the First Issues" of November 9, 1962, left two problems unresolved. First and most important, the Commission should redetermine in this proceeding the basis upon which certain producers may sell, and Tennessee may buy, gas from the so-called Ship Shoal reserves offshore Louisiana. The second issue is whether or not Tennessee in Docket No. CP60-94 proposes to overbuild facilities in advance of need to the detriment of present rate-paying consumers.

As will be seen, the Ship Shoal gas is a vital resource on which Tennessee relies to back up the adequacy of its reserves and deliverability covering the increased service proposed in this proceeding. This gas, ready for action since 1960, can be and should be connected without further delay, at a proper price per Mcf to be established by redetermination of the contracts between Tennessee and the producers. However, there is a procedural block to such redetermination: the Commission cannot act on the contract rights of the producers without giving them notice and opportunity to be heard—but the producers are not parties to, and cannot be heard in, this proceeding. If the *impasse* controls, Tennessee cannot connect the excessively priced Ship Shoal reserves; for want of gas supply, all increased service proposed herein must be denied; and the findings and conclusions made in the "Decision on the First Issues" must be reversed. However, the procedural *impasse* can be corrected, to the end that the Ship Shoal gas can be connected on proper terms. After carefully weighing adverse considerations as to the restricted nature of the Examiner's responsibilities, it has been decided to deal with and resolve the substantial question—the terms under which Ship Shoal gas will start to flow—on the assumption that procedural *impasse* will be corrected.

I. *The Issue as to the Ship Shoal In-Place Sale*

Prior to May 10, 1961, the four CATC[1] companies owned developed oil and gas leaseholds in the area commonly called Ship Shoal Blocks 198 and 199, offshore Louisiana. The area is in Federal territory, and is well beyond the Louisiana territorial domain. See Exhibits A–1 to Sections 2, 3, and 4 of Exhibit 4 in this proceeding; *United States* v. *Louisiana*, 363 U.S. 1. The CATC producers owned the leaseholds by virtue of Lease Serial Nos. 0593 and 0594

[1] Continental Oil Company, The Atlantic Refining Company, Tidewater Oil Company, and Cities Service Production Company.

issued by the United States, the government retaining a one-sixth royalty interest; see Section 6(b) of the Outer Continental Shelf Lands Act of August 7, 1953, 43 U.S.C. Sec. 1331 *et seq.*, and see the Submerged Lands Act, 43 U.S.C. Sec. 1301 *et seq.*

The CATC producers before May 10, 1961 had erected three drilling platforms at Ship Shoal and had drilled about 12 wells, with multiple completions, therefrom. Costs to the producers do not appear, but depreciable property of the producers at Ship Shoal seems to have been $2,280,000. Exhibit 28, Section 4, p. 3. Substantial quantities of gas and oil were found. The gas was shut in, and has remained unconnected to date. Some of the oil was produced, and was barged to shore from storage tanks on the platforms.

Early in 1960, the CATC producers advised Tennessee that they wanted to sell the Ship Shoal leaseholds—not the gas and the oil as produced, but the leaseholds themselves. Negotiations commenced and continued on the basis of arm's length bargaining, on the hypothesis that the sale inplace of the gas, as well as the oil, was not subject to price control by the Federal Power Commission. On December 19, 1960, the parties reached an agreement in principle as to the terms of sale, which, with minor changes, was more fully set forth in the separate "Act of Sale and Mortgage and Pledge" entered into concurrently between each of the CATC companies and Tennessee's subsidiaries, as next considered.

Details of Instant Transaction.—The basic documents are dated May 10, 1961. Each of the CATC vendors sold its undivided one-quarter net interest in the Ship Shoal leaseholds under a separate set of identical documents. The purchase covered both the gas and the oil in the leaseholds, to a described depth. The gas was sold to Tennessee's 100 percent owned subsidiary Tennessee Gas Supply Company (Gas Supply) and the *oil* was sold to Tenneco Oil Company, a 100 percent owned subsidiary of Tenneco Corporation, which in turn is substantially owned and wholly controlled by Tennessee, and which is Tennessee's principal holding company for non-pipeline activities.[2] Gas Supply acts as a conduit with regard to the gas; it assigned all gas and appurtenant properties to Tennessee by instrument dated June 27, 1961, and Tennessee in return furnishes Gas Supply with all the funds with which the purchase of gas was made. Gas Supply was used as a corporate intermediary because the CATC producers wanted the protection of a purchase-money mortgage covering the leasehold properties, which Gas Supply was able to and did enter into. Tennessee's indentures cover after-acquired property, and therefore Tennessee could not participate as principal in a purchase-money mortgage.

Tenneco Oil was used as Tennessee's nominee for the oil involved in the transaction because Tennessee has sharply distinguished, in its corporate system, its pipeline subsidiaries (whose prices are controlled by the Commission on the basis of rate-base and cost-of-service) from its subsidiaries engaged in other activities. Tennessee has through two sets of subsidiaries segregated its regulated ("jurisdictional") properties (in which consumers have a cost interest and are otherwise concerned from its unregulated business activities. Tennessee's pipeline subsidiaries file a consolidated Federal income tax return; its other subsidiaries, through Tenneco Corporation, file a separate consolidated return. In principle, Tennessee's pipeline customers get no direct benefit or detriment from the activities of Tenneco and subsidiaries. Insofar as oil is involved in

[2] *E.g.*, oil and gas exploration and production, refining, marketing, and chemicals.

the Ship Shoal contracts, it is, of course, unrelated to Tennessee's pipeline activities or matters of concern to the Commission under the Natural Gas Act; however, as we shall see, oil is only incidentally involved, as a "wash" transaction, in such contracts.

The "Act of Sale and Mortgage and Pledge" between each of the CATC companies and the Tennessee subsidiaries purports to state with great exactitude the amounts of gas and oil purchased in-place. Article IV in part, as paraphrased, is to the effect that—

> The total quantity of recoverable gas reserves which are attributable to the CATC companies net leasehold interests was agreed upon * * * to be 533,333,333 Mcf at 15.025 psia. The total quantity of recoverable oil reserves attributable to the CATC companies net interest was agreed upon by the parties to be 12,244,898 barrels. [Tr. 61–62.]

For these amounts of gas and oil, Tennessee through its subsidiaries has agreed to pay a total consideration of $97,333,333, consisting of down-payment made May 10, 1961, and a complex of promissory notes payable over a period of years beginning January 2, 1962. Unlike the *MCN* case, see Initial Decision issued January 8, 1962, in *Tennessee Gas Transmission Co. et al.*, Docket No. G–14562 *et. al.*, the instant transaction is not wholly executory. On the contrary, Tennessee has to date contracted to pay, and presumably has paid out, $25,437,499.44 to the CATC companies on account of the $97,333,333 gross purchase price, and this before delivery of a single Mcf of gas.[3] More payments on account are due quarterly beginning May 10, 1963, and each quarter thereafter, in the amount of $1,239,583.32.

Before going to the details of the payments on account made and to be made, the general basis for arriving at the purchase price should be stated. From Tennessee's point of view, the 533,333,333 Mcf was priced at 16 cents per Mcf *in the ground*. "We took a price that we thought the producers would get for the gas, and then we worked backward; we worked up the total reserves, estimated the operating and development costs, used the present worth of the down-payment and arrived at the 16-cent price in that fashion." (Tr. 179.) Tennessee assumed the CATC producers would receive an average of 23 cents or 24 cents per Mcf if sold and delivered to Tennessee under a conventional gas sales contract. (Tr. 188–189.) The 12,244,898 barrels of oil were priced at 98 cents per barrel *in the ground*. Simple multiplication produces an allocation to the gas account of $85,333,333, or 87.6712 percent of the gross purchase price, and an allocation of $12,000,000, or 12.3288 per cent to oil. The down payments and promissory notes covering the purchase price were accordingly divided between gas and oil; the notes were divided into "Series G Notes" (gas) and "Series O Notes" (oil). Gas Supply is the obligor on both series of notes; it is the sole obligor on the gas notes, and "is the maker of and is and shall remain primarily liable for payment of" the oil notes. (Act of Sale, Art. IV, Sec. 4.1.) Tenneco Oil is an additional obligor on the series "O" notes.

The details as to the payments heretofore made by Gas Supply on account of the Ship Shoal gas, including down-payment made May 10, 1961, and payments of Series "G" Notes (gas) as they became due, are as follows:

---

[3] As brought out in the *MCN* Initial Decision, this and other in-place purchases of gas have been effected as though they were private transactions not subject to control in the public interest, and this under color of right deriving from *F.P.C.* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498 (1949). The vitality and coverage of this case as authority for avoidance of price control, where gas is wholesaled in interstate commerce, as here, has been at least doubtful, and is understood to have been deprecated by prudent oil company counsel, since *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672 (1954).

Date	Continental	Atlantic	Tidewater	Cities Service
May 10, 1961	$875,000.00	$875,000.00	$87,500.00	$87,500.00
Jan. 2, 1962	2,125,000.00	2,125,000.00	2,912,500.00	2,912,500.00
Aug. 10, 1962	1,145,833.20	1,145,833.20	1,145,823.20	1,145,833.20
Nov. 10, 1962	286,458.33	286,458.33	286,458.33	286,458.33
Feb. 10, 1963	286,458.33	286,458.33	286,458.33	286,458.33
Total	4,718,749.86	4,718,749.86	4,718,749.86	4,718,749.86

The payments on November 10, 1962, and February 10, 1963, represent the first and second quarterly installments on each of the separate notes No. G–2 issued to the producers—each of such notes being in the principal amount of $1,145,833.32. Further installments in the same amount fall due on the tenth of May and August, 1963. Notes No. G–3 through G–16, in identical amounts, become due consecutively in quarterly installments beginning November 10, 1963, and continuing through August 1977.

The details as to the payments heretofore made by Tenneco Oil on account of the Ship Shoal oil, including down-payment and Series "O" Notes (oil), are as follows:

Date	Continental	Atlantic	Tidewater	Cities Service
May 10, 1961	$125,000.00	$125,000.00	$12,500.00	$12,500.00
Jan. 2, 1962	1,375,000.00	1,375,000.00	1,487,500.00	1,487,500.00
Aug. 10, 1962	93,750.00	93,750.00	93,750.00	93,750.00
Nov. 10, 1962	23,437.50	23,437.50	23,437.50	23,437.50
Feb. 10, 1963	23,437.50	23,437.50	23,437.50	23,437.50
Total	1,640,625.00	1,640,625.00	1,640,625.00	1,640,625.00

As in the case of the G Notes, the Series O Notes are due in quarterly installments. The amounts paid November 10, 1962, and February 10, 1963, represent the first installments on Notes No. O–2, each in the principal amount of $93,750. Notes No. O–3 through O–15, in identical amounts, become due in quarterly installments beginning November 10, 1963, and continuing through August 1976.

It is strange, but true, that the $95,338,333 of separate notes representing the balance due on the purchase price, commencing with notes due January 2, 1962, and ending with payments August 10, 1977 (as to gas) and August 10, 1976 (as to oil) bear no interest unless and until the notes covering such payments mature.

Provision for Renegotiation.—Upon notice given within 90 days after the sixth year of the contract, *i.e.*, after May 10, 1967, the recoverable reserves of gas and oil may be redetermined, and the consideration payable under the sales agreements would in that event be adjusted upward or downward according to any new reserve estimates.[4] Additional consideration, or deficiency in consideration, is to be figured on the original basis of 16 cents per Mcf for gas and 98 cents per barrel for oil. If reserves as redetermined exceed the originally agreed amounts, Gas Supply must make out and pay additional notes for the excess.

Evaluation of Renegotiation Provision.—In the *MCN* proceeding, *supra*, a very large gas distribution customer of Tennessee made an independent investigation of the reserves there in question and came up with its own reserve estimates,

[4] Although no doubt inserted as a matter of excessive caution, it is noteworthy in this regard that a minimum consideration of $6,250,000 covering all the properties conveyed is provided in connection with redetermination of reserves. Article IV, Sec. 4.2(h). This might be taken to indicate substantial doubts in the minds of the producers as to the amounts of gas and oil actually involved.

which were substantially less than Tennessee's estimates. The distributor in question presented expert testimony in support of its conclusion that on a conservative basis, reserves would not be realized in the quantities anticipated by Tennessee and the producers. It was necessarily found in the Initial Decision that Tennessee had not met its burden of proof as to the quantities of gas actually present under the MCN leaseholds.

In the case at bar, we have not had the benefit of an independent appraisal and estimation of the Ship Shoal reserves. We have no evidence except the evidence of Tennessee, which, of course, is interested in supporting its own conclusions on the subject. In the present case, unlike *MCN*, the contract provides for a redetermination of reserves in the sixth year. However, we are not dealing with a six year contract, or even a ten or fifteen year contract. We are dealing with gas reserves to be taken down over a 26-year period of time. The danger of over-estimation of reserves in the sixth year of the contract term after production has commenced is, of course, substantially less than the danger of over-estimation at the inception of the contract before any deliveries have been made. The danger, however, still exists and the margin of error is still present with a possible adverse effect upon consumers amounting to many millions of dollars. This problem adheres in all in-place sales transactions and can be eliminated only by continuous contract redeterminations based on actual realizations during the entire term of the contract.[5]

The redetermination provision gives Tennessee a measure of protection against over-estimation of Ship Shoal reserves which may be reflected in the May 10, 1961 contract estimates. Such measure of protection is no substitute for the *insurance* against over-estimation provided to consumers by conventional contracts for the retail of gas per-Mcf from producers to pipelines. Conventional contracts tie payments to actual receipts of gas. The per-Mcf price in such contracts is the price set by the Commission according to the facts and circumstances of the time of delivery, and reflects the proper statutory price level contemplated by the Natural Gas Act. Neither the Commission, nor Tennessee, nor the CATC companies, nor all in conjunction, can properly determine now, or in the 90-day period after May 10, 1967, for consumers in the period 1975–1987 (expiration years of 26-year take-down) either (a) the available Ship Shoal reserves or (b) the proper price then payable therefor.[6]

Early Take-Down.—If production of gas exceeds one-eighteenth of estimated reserves in any year, Gas Supply must prepay its notes proportionately, in inverse order. This means that payments on account of the gross purchase price will always substantially exceed the dollar value, at 16 cents per Mcf, of the gas taken down from the reserves.

Purchase of Oil by CATC.—The May 10, 1961 contracts include, as a "principal condition" and "moving consideration" to Gas Supply and Tenneco Oil a "Crude Oil Purchase Contract" with each of the CATC companies, under which the CATC companies agree to buy all the oil produced from the Ship Shoal properties. Delivery of the oil is to be made at Lake Charles, Louisiana, at the average of posted prices (at time of delivery) being paid by Esso Standard, Texaco, and Shell for similar oil in nearby localities.

---

[5] This, of course, would amount to the same thing as selling the gas on the conventional per-Mcf basis.

[6] Of course, it may be that reserves are currently *under-estimated* to the advantage of Tennessee and the consumers. This consideration is irrelevant. The Commission exists for the purpose of protecting consumers against risks, and requires consumers to pay cost-of-service whatever such cost may be for a given time being. Risks are properly undertaken by companies which do not operate on the basis of rate-base and rate of return—such companies as Tenneco and subsidiaries.

From the standpoint of Tennessee, the oil from Ship Shoal may thus be produced, and redelivered to CATC at the going prices for the given time being. Tennessee assumes certain production and market-price risks. CATC, however, assumes the functions and risks of refining and marketing the Ship Shoal crude oil. Aside from the element of risk, the repurchase agreement is in substance a "wash sale," under which CATC will presumably, over the term of the contract, take back title and possession of all the Ship Shoal oil sold to Tennessee by the May 10, 1961 contracts.

Ship Shoal Costs and Operations.—Estimated total[7] Ship Shoal production costs, including both operating expenses and investment costs, are to be allocated 87.6712 percent to gas, payable by Tennessee, and 12.3288 percent to oil, payable by Tenneco. Tenneco will be the operator of the leases. (Tr. 509, 617.) These percentages are identical to those developed, *supra*, in regard to the relative amount of cash consideration payable to the CATC companies for the gas and oil reserves. There can be no question but that Tennessee's allocation of these costs is based solely on the relative in-place value assigned to each of the two commodities by the contracting parties.

At May 10, 1961, there was $2,280,000 of depreciable property on the Ship Shoal leaseholds, taken over by the Tennessee subsidiaries. Tennessee, in accordance with its basic CATC agreements, presumably has drilled four additional wells in 1962, and has also erected a new drilling platform. It was estimated that development costs totalling $8,260,000 payable by Tennessee (apparently including certain cost items to be expensed) would be incurred in 1962 in connection with Tenneco's plan for development of the leaseholds. (Tr. 513.) Tennessee shows 1962 additions of $5,605,000 of depreciable property allocable to gas. Additional gas development costs of $2,845,000 are estimated for later years. (Exh. 28, Sec. 4.)

Since the Ship Shoal property has been acquired, no gas has been produced. Oil in an unknown amount has been barged to shore. Louisiana Conservation Commission allowables for oil production from Ship Shoal are 2,314 barrels per day. (Tr. 502).

On the basis that operations in taking down gas begin with the year 1963, Tennessee estimates first-year gas operating and maintenance expense of $853,400 (no well-workover expense) and similar expense of over $1.3 million per year for the next 16 years. Over the 26-year life of the property, total gas operating and maintenance expense is estimated at $31,008,900 for deliveries of gas totalling 653,402,000 Mcf at 14.73 psia. (Exh. 28, Secs. 1 and 2.)

Evaluation of Cost Allocations.—The New York Public Service Commission strongly contests the allocation of 87.6712 percent of all Ship Shoal costs to gas, and the relatively minor remaining costs to oil. PSC computes on brief a rate of return applicable to oil resulting to Tenneco—a nonjurisdictional company—of approximately 38 percent. PSC accepts on brief Tennessee's explanation that the allocation is based on the "reservoir space method," and contests the validity of this allocation procedure.

The record does not contain sufficient evidence to support the allocation of costs between gas and oil as made by Tennessee, nor any substitute allocation. The difficulties of allocation of costs have been fully analyzed in *Phillips*, 24 FPC 537, and subsequent Commission decisions. Since other factors, *infra*,

[7] These total costs include, in addition to direct Ship Shoal costs, an allocated portion of (1) Tenneco's system overhead production; (2) Tennessee's administrative and general expense, and exploration costs; and (3) common operating expenses to be incurred in the joint operation of the Ship Shoal leases and Tenneco's nearby Eugene Island Block 215 leases, in which Tennessee has no working interest.

control the disposition of the proceeding at bar, no further discussion of the subject is here necessary.

Total Cost of Gas.—On a 26-year production schedule, Tennessee estimates that the Ship Shoal gas produced will cost an average of 27.97 cents per Mcf at 14.73 psia, which translates to a price of 28.3 cents per Mcf at 15.025 psia (the pressure base used in the agreements between Tennessee and CATC). This average is derived in Exhibit 28, Section 4, from Tennessee's estimates of operation and maintenance cost, discussed above, royalty expense of over $1.2 million during the first 14 years of operation (decreasing in subsequent years),[8] and other estimates. A credit for condensate is included in the figures on the basis of $3.00 per barrel and amounting to $13.2 million over the 26-year production period. The basis for this estimate is the $3.00 per barrel current price being received for Ship Shoal oil. (Tr. 590.) Return and income taxes are figured annually on the basis of the 11 percent composite rate claimed by Tennessee in rate proceedings which were before the Commission at the time of the hearing. Depreciation expense was estimated on the basis of what Tennessee now projects as the depreciable property associated with the Ship Shoal leases during the 26 year take-down period.

The following tabulation summarizes Tennessee's estimated cost-of-service for production of gas from Ship Shoal during the 28-year life of the property (Exh. 28, Sec. 4).

Operation and maintenance expense	$31,008,000
Royalty expense	22,847,000
Depreciation	10,227,000
Depletion and amortization	86,726,000
Return and income taxes	45,210,000
Net condensate revenue (cr.)	(13,236,000)
Net condensate revenue (cr.)	(13,236,000)
Net cost of service	$182,782,900
Mcf to be delivered to pipeline (14.73 psia)	653,402,000
Cost per Mcf	***27.97¢

***It is noted *supra* at p. 800 that Tennessee assumed that the CATC companies would receive an average of 23 cents or 24 cents per Mcf if the gas were sold to Tennessee under a conventional gas sales contract.

It must be observed at this point, and found as a controlling consideration of ultimate fact, that all of these estimates are sheer speculation. There is no way of predicting, even within a range, what oil and condensates will bring on the market in 1988, or even in 1975. There is no way of predicting royalty expense, which is based on the going prices for gas in the neighborhood of Ship Shoal, and which will fluctuate as prices change through the years. There is no way of predicting within a reasonable range the amount of depreciable property which will be needed at Ship Shoal 20 years from now, or even five years from now. Depletion and amortization expense will be subject to wide change as the facts develop through the years, as to future intangible drilling expenditures and net gas deliveries. Return and income taxes will, of course, not be stabilized at 11 percent or at any other precise percent.

From the mass of conjecture and speculation as to actual future cost of this gas to Tennessee, one figure emerges clearly and certainly from the record—

[8] Figured on the royalties paid to the United States from neighboring leaseholds, which at the time of the hearing amounted to 21.4 cents per Mcf at 15.025 psia purchase price, one-sixth proportion.

Tennessee estimates that the gas will cost an average of 28.3 cents per Mcf delivered, at 15.025 psia; which is to be compared with an initial price ceiling currently effective of 19.5 cents per Mcf at 15.025 psia. See price ceiling set by Fourth Amendment to Statement of General Policy No. 61–1.

Costs will be reduced if the gas is taken down over a period of time shorter than 26 years, because return and income taxes for the later years will be eliminated. The possibility that Tennessee may take down the gas in a period of time shorter than 26 years was mentioned by several Tennessee witnesses. As we have seen in the "Decision on the First Issues" in this proceeding, Tennessee is by no means "long" on gas supply, and a 16-year delivery schedule might well have been supportable, in view of the sheerly speculative nature of the gas production estimates. Under such a schedule, of course, gas deliveries could have readily been equated to annual payments from Tennessee to the CATC companies (except for the prepayment feature) and the in-place sale transaction would have had the substantial appearance of being the substitute for the retail of the gas on an annual per-Mcf basis.

1(a) *Discussion of and Conclusions Regarding the Ship Shoal Transaction*

The foregoing facts show that this is another in the series of recent cases in which gas producers have sold and pipeline companies have bought gas "in-place" rather than "per-Mcf" in an effort to avoid price control under the Natural Gas Act.

The facts follow the familiar pattern. Essentially, the pattern is the wholesale of a large volume of natural gas in bulk, *in the form of* a "sale of leasehold interests," at an excessive price ultimately payable by gas consumers, who also bear the risk of loss in respect of overestimation of the gas reserves being transferred. Payment is made over a term of years while the gas is being taken down by the pipeline company, but payments to any given date are always much in excess of the per-Mcf value of price of the gas; *i.e.*, the gas is substantially prepaid. The whole transaction, except for the lifting of price control and risk from the producers, merely replaces the conventional gas purchase arrangements (under which gas is sold at retail, per-Mcf, over a 20-year or life-of-the field term) with a new set of formal relationships.

As in matters of tax avoidance and other avoidance of statutory obligations, the substance of the transaction must control and prevail over the legal forms; the sale of the gas is subject to price control despite the fact that the sale is given the superficial appearance of a transfer of interests in real property. The transaction must have Commission approval before it is carried out.

Other cases in the same pattern are mentioned in *Tennessee Gas Transmission Co.*, Docket No. G–14562, *et al.*, Initial Decision issued January 8, 1962.[9] That docket involved the sale of the so-called "MCN" reserves (Vermilion Block 46 and East Cameron Block 64, offshore Louisiana) by producers Continental Oil, Socony Mobil Oil, and Newmont Oil to Tennessee for $68,339,272. The sale of the leaseholds, *i.e.*, the sale of the gas in place, replaced a prior sale of the gas per-Mcf, over a 20-year term, between the same parties. The facts in that case

[9] The other cases are: G–12446, commonly called the "Rayne Field" sale, which is the subject of the Commission's very recent decision in *Texas Eastern Transmission Corp.*, Opinion No. 378 of February 6, 1963, 29 FPC 249; CP62–88, commonly called the "King Ranch" or "Monterey" sale, decided by Examiner Kane in *Monterey Gas Transmission Co.*, decision of January 28, 1963 [Decision printed *infra*, p. 836, was rendered moot with respect to the King Ranch sale by reason of withdrawal of Monterey's application permitted by order issued May 15, 1963]: CP 61–106, commonly called the "Bastian Bay" sale, Opinion No. 413, 30 FPC 1477; and the case at bar. Decision in G–14562 issued January 8, 1962, unreported.

made it perfectly clear that the new arrangement was entered into in order to avoid the price control envisaged in the *Catco* decision (*Atlantic Refining Co.* v. *Public Service Comm'n.*, 360 U.S. 378, affirming 257 F. 2d 717 (CA3)). In Docket No. G–14562, following disapproval of the proposed leasehold sales in the Initial Decision of January 8, 1962, the MCN producers and Tennessee cancelled the in-place sale arrangement and reinstated the per-Mcf sale of the MCN gas. This mooted the Initial Decision of January 8, 1962; see *Tennessee Gas Transmission Co., et al.*, 27 FPC 610. The matter of the proper per-Mcf price for the gas under the new contracts remained in issue, but has been settled, and the Commission has recently certificated the sale at a price of 19.0 cents per Mcf at 15.025 psia, plus 1.625 cents per Mcf Louisiana tax reimbursement to be escrowed until the applicability of the tax is adjudicated. *Tennessee Gas Transmission Co.*, Docket No. G–14562, *et al.*, Order Granting Motion, etc., issued January 2, 1963.

The *MCN* decision of January 8, 1962, dealt extensively with matters of principle and policy, and was in effect a challenge to those interests favoring in-place sales to muster principle and policy in opposition. The challenge was "ducked" by the MCN producers in the manner above indicated, and has not been met or faced in the case at bar, or in the other cases within the pattern. The matters of principle and policy adduced in *MCN* still apply, and may be partially restated as follows:

1. Considerations founded on improvement of pipeline company bargaining position *vis-a-vis* producers in the open marketplace have no relevancy to a gas supply economy controlled by the Commission under the Natural Gas Act. This conclusion is a plain and necessary concomitant of the *Phillips* decision of June 7, 1954, 347 U.S. 672. In carefully non-encroaching language, Judge Fahy implicitly suggested that the Commission draw such conclusion in the *City of Detroit* case, 230 F. 2d 810, decided December 15, 1955. Judge Fahy, after ordering new proceedings on remand, said (230 F. 2d at 819)—

> In such proceedings, the Commission should also consider the impact, of Phillips Petroleum Co. v. State of Wisconsin, 347 U.S. 672, 74 S. Ct. 794, 98 L. Ed. 1035, upon its stated reasons for desiring to encourage pipeline companies to produce their own gas. In Phillips, decided subsequently to the Commission's order in the instant case, the Supreme Court held that the Federal Power Commission has jurisdiction "over the rates of all wholesales of natural gas in interstate commerce whether by a pipeline company or not and whether occurring before, during, or after transmission by an interstate pipeline company." 347 U.S. at page 682, 74 S. Ct. at page 799. The effect of the decision will probably be to subject to federal regulation the prices paid by pipeline companies for most of the gas they purchase. Consequently, the question of indirectly influencing these prices by the means here chosen by the Commission, such as augmenting the bargaining power of the pipeline company, may be considerably affected.

Despite the inapplicability of open-marketplace considerations in weighing the desirability of purchasing gas in-place, such considerations alone are presented by Tennessee to support the Ship Shoal purchase. (Tr. 1143–1155.)

2. As a general rule, large volumes of gas bought in-place at unregulated prices for requirements of the distant future have no proper place at specific dollar values in the rate base of pipeline companies because (a) such values have no relationship to proper pricing of the gas when produced in the future, and (b) since there is a sound alternative, the consumers should not be required

to pay return and taxes on such values while the gas lies idle in the ground awaiting future use.

3. The alternative mentioned in 2(b) is to maintain the existing general structure of the gas supply economy, in which the functions of the production industry are separate and distinct from those of the pipeline transmission industry. Producers generally find and sell gas at retail (per-Mcf) under long-term contracts geared to the life of the field, then move on to new exploration and development. The investment characteristics of this operation are quite different from those of the pipeline industry in respect of adaptability of rate-base rate-of-return conceptions. Producers claim that they take unusual risks and find and sell a commodity (gas) and that the pricing of that commodity should reflect allowances for risks, incentive, and management not considered in pipeline rate making. If risk and allowance of extra profits on account of risks are attributes of the producer industry, then that industry, in the context of the regulatory process, should be kept distinct from, and not (by way of in-place sales) be partially merged into, the pipeline transmission industry.

Finally, in this connection, there would seem to be a value in the preservation of industrial specialization in the technology of development of and production of gas resources, which is a technology wholly distinct and different from that of gas transmission. Tennessee has made the distinction in its own corporate structure, but would inconsistently eliminate the distinction, on the vital matter of ultimate financial responsibility, in respect of reserves bought in-place.

4. In-place sales throw inappropriate risks upon pipeline companies and ultimately upon the consumers, who must pay cost-of-service with respect to pipeline companies. These risks include the possibility of significant differential between reserve estimates at the time of the sale and actual realizations at the end of the take-down period many years from the date of the sale. The risks include future variations in the per-Mcf price for gas delivered to pipeline companies as established by the Commission from time to time at fair and reasonable levels. Restating part of paragraph 3 above, we may here note that the risks also include the direct assumption by the pipeline transmission company of direct financial responsibility for gas production, a function more appropriately left with the oil and gas production industry, which latter industry is compensated for such risks by Commission allowance of "revenue requirements," whatever they may turn out to be, rather than cost-of-service.

5. The allowance of in-place sales will inevitably tend to destroy and will ultimately destroy price control, which is based necessarily on the retail of gas per Mcf at a price fixed according to the facts and circumstances for a given time being, and which price control is subject to fluctuation reflecting changes in the facts and circumstances for any given future period of time. The whole conception of pipeline regulation involves flexibility in rates and charges. The whole conception of the in-place sales transactions is the freezing of prices at a gross amount arrived at by negotiation reflecting current conditions.

6. The attempt to determine future costs in relation to the production by the pipeline company of gas bought wholesale in-place involves all concerned in matters of future investment, future tax rates, future labor costs, and other contingencies 15 years or more from now, which are all matters of sheer speculation and conjecture. It is utterly impossible for the Commission to now project a fair and reasonable price per Mcf to be assigned to gas which will be supplied to consumers at times in relatively distant future years.

7. The disallowance of in-place sales in principle will not prevent producers from disposing of their properties whenever that may become desirable. In the context of the present case, there is no reason why the CATC producers cannot sell their properties to Tenneco Corporation, or to a Tenneco subsidiary, at whatever price the parties may agree upon. The assets of Tenneco Corporation and its subsidiaries are not rate-base assets. If Tenneco takes over the Ship Shoal properties it will be at the risk of, and to the possible profit of Tennessee Gas Transmission Company's *stockholders* rather than Tennessee's *consumers*. Such a sale would have no impact upon consumers. In the ordinary case, since the sale would not be premised on resale by Tenneco in interstate commerce, the sale would be non-jurisdictional, so far as the Commission is concerned, under the Natural Gas Act. Tenneco, selling the gas to Tennessee in future years, would be allowed a fair and reasonable price for the gas produced from the Ship Shoal leaseholds as such gas is priced "as a commodity" by the Commission and with an eye to the "revenue requirements" of the production industry for the future time being.

8. Acceptance of these general principles would in no way stultify Tennessee Gas Transmission Company, or any other pipeline, in the proper transaction of its ordinary business in relation to dealing in, or providing funds for gas exploration, production, or gas leaseholds. Pipelines would in this connection only adhere to one requirement, and that is that the purchase of gas in-place at unregulated prices may not be reflected in, or affect, the pipeline rate base or cost-of-service.

Jurisdiction of the Commission.—When the transaction, as here, essentially involves the wholesale of gas rather than the acquisition of real estate, the jurisdiction of the Commission over the transaction is very plain and not subject to substantial doubt, despite *F.P.C.* v. *Panhandle Eastern Pipe Line Co.*, 377 U.S. 498 (1949). On this matter, and all other subjects there dealt with, the Examiner is, of course, bound by the expressions of the Commission in the *Rayne Field* case, Opinion No. 378, *supra*. Reference is also made to the authorities and reasoning of Examiner Kane in the *Monterey* case, *supra*, and the discussion of the present vitality of the 1949 *Panhandle* case contained in the *MCN* decision, *supra*, mimeo. pp. 17–22 and 39–45.

Since the sales transaction is jurisdictional, the contracts and other documents of May 10, 1961, should have been filed by the CATC companies with the Commission, and certificate should have been applied for.

Partial Performance of Contracts.—Unlike the situation in *MCN*, and the usual situation with respect to other current in-place transactions, the proceeding at bar involves a purchase contract which has been partially executed. As we have seen, Decision on the First Issues, *supra*, pp. 790–791, no lateral line has been built to the Ship Shoal Field and no gas has flowed therefrom. However Tennessee has presumably made payments to CATC on account of the purchase price totalling $25,437,499.44 as of the present date. Of this amount, $18,874,999.44 has been paid on account of the gross purchase price allocated by Tennessee to gas and $6,562,500 has been similarly allocated to oil.

As we have seen, the agreement between Tennessee and each of the four producers provides for two series of annual notes. Each of the outstanding Series "G" Notes executed by Tennessee Gas Supply Company is in the principal amount of $1,145,833.32; one note for each of the years 1962 through 1976 in favor of each of the four producer-vendors remains to be paid. These notes, however, are payable in four annual quarterly installments. On November 10, 1962, and February 10, 1963, Tennessee presumably paid the first and second installments on Note No. G–2 (the 1962 note) executed in favor of each of the

four producer-vendors and thus paid an aggregate amount of $1,145,833.32. On May 10, 1963, and each quarter thereafter, further installments aggregating the same amount will be due. Similarly with respect to the Series "O" (oil) Notes, further quarterly installments of $93,750 will be due and payable beginning May 10, 1963.

It has been noted that Tenneco Oil assumed operation of the CATC Ship Shoal leases on June 27, 1961, on behalf of itself in respect of the oil properties and on behalf of Tennessee Gas Transmission Company in respect of the gas properties. Tenneco Oil operates the property on a cost basis, with cost allocations of 87.6712 percent to gas borne by Tennessee, and 12.3288 percent to oil borne by Tenneco.

As we have seen, considerable capital investment in the Ship Shoal properties has been made by the Tennessee companies. The extent to which capital investment is completed or underway is not known.

It appears that the properties have been producing oil from the well completions that have been effected in the oil zones of the Ship Shoal reserves. The testimony indicates that production is at the level of 2,314 barrels per day. (Tr. 502.) This oil has presumably been barged to shore and sold under the repurchase agreements by Tennessee to the CATC producers at prevailing onshore prices. The oil transaction is *prima facie* nonjurisdictional. However, the oil transaction is in reality a "wash sale," wholly incidental to and dependent upon the sale of the gas.[10]

Unscrambling Process.—On the showing made in the foregoing, it appears that the primary responsibility for the current untenable situation lies with the CATC companies, who insisted on an in-place sale and then failed to file applications for approval or disclaimer with the Commission. It would be wholly unsound to require Tennessee to bear the enormous losses which would accrue from non-action with respect to the May 10, 1961 arrangements, and equally unsound to permit Tennessee to continue payments on account of notes issued as an incident to such arrangements.

On the record made to date, it appears *prima facie* that the basis for a sound redetermination of the CATC situation *vis-a-vis* Tennessee would be to place both parties, as nearly as possible, by way of financial settlements, *in status quo ante* the May 10, 1961 agreements.

It is readily apparent that this will require a number of readjustments. These are the readjustments which are necessary if the CATC producers are to achieve a position under which they will be permitted to sell and deliver the Ship Shoal gas. The situation should be rationalized on an equitable basis so that expenditures on the Ship Shoal properties and amounts of oil taken from the properties will be settled on a dollar basis between the parties, as a part of the more important return to Tennessee of amounts of money paid by Tennessee on account of the May 10, 1961, contracts.

Although the matter is one of considerable detail, the functions of expense and offset are those of simple addition and subtraction, under a plan designed to place the parties in the same situation they would have been in had the contracts of May 10, 1961, remained entirely executory and had such contracts been presented herein by CATC for Commission approval, as they should have been, before performance thereunder commenced. By further submission to the Commission

[10] It is significant in this regard that there is no severability provision in the May 10, 1961 contracts, which are otherwise drawn with the most elaborate precautionary provisions. It is inconceivable that the CATC producer oil companies and Tennessee would have contemplated Tennessee's production and resale to CATC of the oil from the CATC leaseholds, if, as happens to be the event, the substantial transaction covering the gas cannot be performed.

after the citing-in of CATC hereinafter recommended, the parties may present for consideration their plans to this end.[11]

Power-Position of Commission and Contracting Parties.—What if the parties fail to agree to equitably readjust their present position? The Commission, of course, has no power to order the CATC companies or Tennessee to enter into new contracts regarding the Ship Shoal reserves replacing the contracts of May 10, 1961, even though the Commission does have jurisdiction to determine that the May 10, 1961, contracts do not comport with the public interest protected by the Commission. Aside from the enforcement and penalty provisions of the Act, can the Commission effectively induce compliance herewith?

We have seen that the Ship Shoal reserves lie in Federal territory; whatever sale is made of the hydrocarbons from this area is necessarily a sale in interstate commerce, *i.e.*, a sale contemplating transmission of the gas hydrocarbons from offshore Federal lands to the continental United States and one or more of the separate States therein. Any such sale will necessarily require Commission approval under the Natural Gas Act.

The Commission has already established the initial price standards under which gas from the Federal areas offshore Louisiana will be authorized for sale within the continental United States. The Commission has established an initial price of 19.5 cents per Mcf at 15.025 psia covering such sales. This is the standard applicable to the Ship Shoal gas, just as it is applicable to other gas from the same area. The standard binds the CATC companies in any proposed sale of the Ship Shoal gas, which is necessarily a sale in interstate commerce. The standard does not speak on the question to whom the Ship Shoal gas must be sold, but a determination on that point, to the effect that the gas should be sold to Tennessee, is warranted. The premises are:

1. Price control imposed by the Commission has replaced the open market in dealings between gas producers and interstate pipelines.

2. Where demand exceeds supply, the Commission, in certificating sales at less than market values, is necessarily in the position of allocating the gas as between competing pipeline buyers.

3. Tennessee needs the Ship Shoal gas in order to make out 12-year deliverability; Tennessee's markets are expanding rapidly and will continue to expand, *e.g.*, to Portland, Maine, whose application for new service was for the time being abandoned in this proceeding.

4. Tennessee's system in the area of gas supply extends conveniently near the Ship Shoal properties.

5. There is no indication that it would be desirable to allocate the Ship Shoal reserves at the Commission controlled price to a pipeline system other than Tennessee; there is no competing application.

The CATC companies and Tennessee should know from the text hereof that the Commission proposes to certificate the sale of the Ship Shoal gas reserves only on the basis of fair and reasonable terms consonant with the public convenience

[11] Such plans would seem to involve the following steps: (1) cancellation of the May 10, 1961, transactions, (2) financial settlement of partial performance undertaken (without authority) since May 10, 1961, (3) entry into, and presentation to the Commission of, new contracts between CATC and Tennessee essentially providing for the retail of the Ship Shoal gas per-Mcf at a proper price under the Commission's "Statement of General Policy," (4) Commission approval of such contracts and Tennessee's lateral line to Ship Shoal, and (5) commencement of deliveries. All these steps can be quickly and efficiently accomplished, to the end that gas and lawful payments therefor will start to flow immediately, if the CATC producers and Tennessee voluntarily renegotiate the May 10, 1961 transactions.

and necessity. Those terms and conditions are properly to be arrived at by contract between the producers and Tennessee as they have been arrived at in other conventional per-Mcf contracts (covering a long term of years or the exhaustion of the field) in the case of other reserves—including CATC reserves—offshore Louisiana. The practical fact of the matter is that the May 10, 1961, transactions must be recast in a form compatible with the public interest if (a) the CATC producers are to usefully and profitably dispose of the Ship Shoal gas and move on to new exploration, development and production, and (b) Tennessee is to get the gas it needs. The only alternative—shocking to reasonable minds, and no doubt *ultra vires*—would be for CATC to shut in and abandon these valuable and needed resources.

Preservation of Status Quo Pending Decision.—As we have seen, an additional $1,239,583.32 will be due from Tennessee to the four CATC companies on May 10, 1963, and quarterly thereafter, under the 1961 contracts. Continuation of payments under these contracts which must be redetermined in accordance with the foregoing would be futile and wasteful, especially when they are not being offset by actual deliveries of gas. If payments are not voluntarily suspended pending final determination by the Commission, what may the Commission do on behalf of the consumers to prevent further inroads on the jurisdictional assets of Tennessee?

On notice and opportunity to be heard, the Commission can, of course, issue appropriate orders under Section 16 of the Act to carry out the filing and certification provisions of Sections 4(c) and 7(c) of the Act. After the issuance of an order based on similar notice, the aid of the U.S. District Courts may be invoked under Section 22 of the Act.[12]

Based on the Commission's duty to prevent further inroads upon Tennessee's rate-base assets pending determination of the substantial issues presented by the Ship Shoal transaction, and to preserve the jurisdiction of the U.S. Courts of Appeal to review such determination (Act, Section 19), application may also be made under 28 U.S.C. 1651 for a writ of injunction restraining further payments by Tennessee *pendente lite*. *Board of Governors, etc.* v. *Transamerica Corp.*, 184 F. 2d 311, 315, 316 (CA9), cert. den. 340 U.S. 883, reh. den. 340 U.S. 907; *West India Fruit & Steamship Co.* v. *Seatrain Lines*, 170 F. 2d 775, 779 (CA2); *In re Transamerica Corp.*, 184 F. 2d 319, 325 (CA9), cert. den. 340 U.S. 883, reh. den. 340 U.S. 907; *Barber Asphalt Paving Co.* v. *Morris*, 132 F. 2d 945, 955 (CA8); *Capital Service* v. *N.L.R.B.*, 204 F. 2d 848 (CA9), affirmed, 347 U.S. 501; *Public Utilities Commission* v. *Capital Transit Co.*, 214 F. 2d 242 (CADC); see *Roche* v. *Evaporated Milk Ass'n*, 319 U.S. 21.

1(b). *The Procedural Impasse Preventing Resolution of the Ship Shoal Issue*

In the foregoing, evidence has been analyzed and facts have been presented looking towards a solution of the substantial issues presented by the Ship Shoal contracts. It seems perfectly clear that the contracts cannot be approved, and must be renegotiated to reflect a price and manner of sale consonant with the public interest. On the other hand, the contracts cannot be disapproved in this proceeding; no final action can be taken thereon for a technical reason: want of indispensible parties herein.

Facts as to the Parties not Present.—The CATC companies have never been given notice of this proceeding or opportunity to be heard. The CATC companies have not filed their contracts of May 10, 1961, with the Commission under Section 4(c) of the Natural Gas Act or otherwise; they have not asked the

[12] This seems to have been the procedure followed in the 1949 *Panhandle* case, *F.P.C.* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498; see lower Court decision therein, 172 F. 2d 57 (CA 3).

Commission for certificates of public convenience and necessity or disclaimer of jurisdiction; indeed, the CATC producers have made no filings at all. The CATC companies are not in this proceeding, or in any other proceeding involving the sale of the Ship Shoal gas.

The only matter presented in this proceeding in that regard is Tennessee's application to build a $10 million lateral wherewith to pick up the Ship Shoal gas. The May 10, 1961, contracts and the substantive facts regarding the Ship Shoal deal are in the record in the present proceeding, but these documents and facts appear only in connection with Tennessee's application to build the lateral. It is of significance in connection with the necessity of further building of a factual record herein that all material facts are based on uncontrovertible documentary evidence. Conclusions of fact and public policy—whether or not accepted by CATC and Tennessee as correct—are equally founded on the documents. Thus we have in the record all material facts necessary to a decision on the Ship Shoal issue, but we do not have CATC's inferences, interpretations and arguments concerning such facts.

The want of indispensible parties to a final determination hereof has been obvious from the outset. The hearings herein commenced March 12, 1962, two months after the *MCN* Initial Decision, which made it clear that an issue arises in this pattern of cases whether or not the sale of gas in-place here proposed by CATC and Tennessee is jurisdictional. The issue exists without regard to its outcome; the CATC companies must have notice and an opportunity to be heard before the issue can be decided.

On March 21, 1962, during the progress of the hearing, it was indicated by the Examiner to Tennessee's policy witness that his attorneys—

> might very well get together and decide what kind of questions they want me to pose to the Commission in the light of my "MCN" decision, and the fact that there is no authority for the connection of these essential reserves at all, and that the producers herein who might be granted authorization *nunc pro tunc* are not here, nor is any showing made how the deal might be recast, or otherwise, by an Examiner. I am not involved in this matter at all. [Tr. 1137.]

On January 18, 1963, there was issued an order herein for "Limited Reopening of Proceedings on Reserved Issues," drawing attention to the "want of indispensible parties to a final Initial Decision in this proceeding on the matter of the redetermination of the financial basis on which the Ship Shoal reserves will be taken down by Tennessee," and giving an opportunity for the citing-in of CATC by order to show cause. The limited reopening was scheduled for and held on February 4, 1963, without order to appear or appearance of the CATC companies.

Existence of Procedural Requirements.—Section 7(c) of the Natural Gas Act and Section 5 of the Administrative Procedure Act specify notice and opportunity to be heard in proceedings such as those at bar. See also, Davis, Administrative Law Treatise (West Pub. Co., 1958) Chapter 7 *passim*, section 7.02: "* * * a party who has a sufficient interest or right at stake in a determination of Governmental action should be entitled to an opportunity to know and to meet, with the weapons of rebuttal evidence, cross-examination, and argument, unfavorable evidence of adjudicative facts, except in the rare circumstances when some other interest, such as national security, justifies an overriding of the interest in fair hearing."

The existence of the procedural requirement has been recognized by the Commission in a case on all fours with the case at bar. In that case, the

Commission made the producer-seller a party to proceedings on the jurisdictional and certification issues. *Tennessee Gas Transmission Co.*, 27 FPC 502, "Order to Show Cause" issued March 12, 1962.

1(c). *Action on Assumption That Procedural Impasse is Deliberate*

If the Commission does not wish to cite-in the CATC companies, then, for want of an adequate hearing, no order can be entered looking towards conditional certification based on redetermination of the Ship Shoal transactions. For want of the required certification of the Ship Shoal gas deliveries, Tennessee's lateral and proposal to attach the Ship Shoal gas must be denied. For want of these reserves, Tennessee's deliverability is insufficient, and all new service proposed herein must be denied.

Deliverability Requirement.—In *Midwestern Gas Transmission Co.*, 21 FPC 653, the Commission considered at length the terms of Tennessee's most recent expansion program prior to the program here considered. The Commission, with evident doubts—and specific reference to the "apparent slimness" of Tennessee's gas supplies—permitted the expansion on the "peculiar facts"—

> * * * particularly since we also have the means of protecting the consuming public dependent in whole or in part upon Tennessee. This protection can be afforded by assuring the consuming public that Tennessee will not be permitted to assume additional market obligations unless it demonstrates that it has improved its gas supply.
>
> Accordingly, we shall require Tennessee to file with the Commission, gas supply estimates demonstrating its ability to supply its authorized system obligations and proposed additional obligations for a period of at least twelve years prior to filing any new application for a certificate of public convenience and necessity covering system capacity expansion. To assure that the additions to the gas supply warrant consideration, Tennessee shall also demonstrate that the terms and conditions of its new gas purchase contracts are not unreasonable. [21 FPC at 657.]

Accordingly, no new service can be permitted in the current application, absent a showing of the "minimal requirement" (21 FPC at 657) of a twelve year deliverability life. In view of the Commission's language in the cited case, the showing must be clear and certain.

Effect of Ship Shoal Exclusion.—Tennessee has, and we have so found at page 792 of the "Decision on the First Issues," remaining recoverable dry gas reserves of 18,828,898,000 Mcf at 14.73 psia as of January 1, 1962. The resultant reserve life index is 19.7 years from that date. Based thereon, it has been found that Tennessee's reserves have a deliverability life of at least twelve years from January 1, 1963.

These findings were predicated on the supposition that Ship Shoal reserves of 661,323,000 Mcf were properly includible in Tennessee's total system reserve showing. Excluding these reserves, Tennessee's remaining recoverable gas reserves, as of January 1, 1962, amount to 18,167,575,000 Mcf. The reserve life index based thereon, reffecting pre-existing and new markets now proposed to be served, is 19.0 years.

The findings of deliverability coverage of at least twelve years from January 1, 1963, based on total reserves which included Ship Shoal gas, resulted from: (1) a 12-year showing based on the uncontroverted "back-pressure" method of determination; (2) failure to reflect in such method an allowance for water drive which reasonably can be expected to occur in Gulf Coast reservoirs and which, if present, would tend to improve deliverability; and (3) a 15-year showing based on Tennessee's interpretation of the so-called "Davis Curve"

method of determination—the interpretation being strongly contested by the Staff.

We do not find in the record exactly how much this deliverability is reduced by the elimination of the Ship Shoal reserves. The Tennessee witness testified he had not made a deliverability study based on the "back-pressure" method reflecting exclusion of any claimed reserves; that such study would have to be on a "field-by-field" basis; and that "* * * in order to make a determination as to what the deliverability coverage would be, [we] would have to go back, exclude the * * * reserves, and schedule gas on the basis of the reserves we had left." (Tr. 360–362.)

It would appear that exclusion of Ship Shoal reserves will result in a reduction of Tennessee's 12-year deliverability coverage. Staff shows in its brief (pp. 43–51) pro-rata reductions in deliverability, based on the simple arithmetical relationship resulting from exclusion of various reserves. Applying this method to the Ship Shoal exclusion would result in 11.5 years of deliverability. On the other hand, an analysis of Exhibit 9 (Tennessee's deliverability study based on the "back-pressure" method) indicates that exclusion of Ship Shoal reserves and a rescheduling of deliveries from the remaining reserves would result in a revised deliverability coverage of from 9 to 10 years.

Obviously, in light of the expert testimony, neither of these methods of redetermination of deliverability can reasonably be expected to produce a result upon which a specific, conclusive finding can be made. Tennessee's witness has indicated that a completely new study done on a field-by-field basis, taking into consideration contractual and physical conditions existing in each field, would be required in order to determine a new deliverability coverage reflecting exclusion of any substantial reserves. Nevertheless, such estimates as have been made by the Staff and by the analysis of Exhibit 9 are indicative of the range within which a properly redetermined deliverability would lie. Such deliverability is clearly insufficient to meet the Commission's expressions in Opinion 320, *supra*.

Consequences of Ship Shoal Exclusion.—Ordering clauses (D), (E), (F), (G), (H), (I), (J), (K), (L), (M), (N), (P), (Q), and (R) of the Decision on the First Issues, issued November 9, 1962, must be annulled, and give no force or effect as the proper Initial Decision herein. All matters relating to new and additional service discussed in the Decision on the First Issues become irrelevant. For want of adequate gas supply, all new service must be denied. For want of a duly certificated gas supply at Commission-accepted price levels at Ship Shoal, the proposal to build a Ship Shoal lateral must be denied.

II. *The Issue as to Excess Capacity*

The "Decision on the First Issues" shows that we are no longer ruling on abstract proposals for construction of new facilities as originally presented in the CP60–94 application. Part of the facilities have been constructed and are in operation pursuant to temporary authorization issued by the Commission. A larger part of such facilities have not been constructed, but Tennessee says on brief that such part will be needed "at a later date," without specifying or justifying a construction schedule. As of today, the practical issue is Tennessee's winter 1963–1964 requirements, rather than 1962 design day requirements. The Columbia System intervenors alone contest, and would have the Commission exclude from Tennessee's rate base for such future period the facilities constructed and in operation. All of these facilities lie south of Tennessee's Station 87, in the portion of the Tennessee system which incurs the heaviest and most constant use.

The Capacity Already Installed.—The public files of the Commission show that, on notice to all parties, a conference was held on May 10, 1962, between certain of the parties to these proceedings and the Commission Staff, concerning Tennessee's application filed April 9, 1962, for temporary authority to construct certain of the facilities, the need for which is now in question.

At the conference of May 10, 1962, as supplemented by further filings, Tennessee estimated its market requirements for the 12 months period ending March 1, 1963, at 973,236,000 Mcf—slightly higher, but in the range of Tennessee's Exhibit 71 herein, showing market requirements of 970,203,000 Mcf. The Columbia System intervenors have taken note of and have challenged Tennessee's presentation, *inter alia*, by stating that "Tennessee laid before the conference a completely new set of figures," and "may plan to hinge its case on the new theory" of capacity needs. *Supplement to Brief on Behalf of The Manufacturers Light & Heat Company, et al.* (Columbia System), filed May 28, 1962, p. 2; discussing pp. 4–8, the "Fallacy of New Theory Advanced by Tennessee."

After the conference of May 10, 1962, the following Commission actions were taken: (a) Tennessee's application for temporary authority for construction of certain facilities was set for public hearing; (b) the public hearing was cancelled; (c) authorization was granted in part; and (d) on rehearing the temporary authorization for the facilities requested was granted *in toto*. As noted, the contested facilities applied for, temporarily authorized, and installed, all lie south of Tennessee's Station 87. No facilities in Columbia's principal service area are involved in the current, as distinguished from the proposed, situation. As to all such matter, see *Decision on the First Issues*, pp. 794–795, and map, p. 776.

The installation of about $17 million of facilities under temporary certificates is, of course, an unusual procedure. See Part II, Section 2.57 of the Commission's Rules of Practice and Procedure. The Commission therefore took the unusual precautionary step of ordering a formal hearing with regard to the need for such facilities. In that hearing, the Columbia System would have had full opportunity, in an expedited proceeding limited to the single question of need, to pin-point objections. Nonetheless, for reasons which have not been currently explained, Columbia, on May 14, 1962, filed its "Notice of Withdrawal of Opposition Of The Ohio Fuel Gas Company, The Manufacturers Light and Heat Company, and United Fuel Gas Company To Application For Temporary Certificate of Public Convenience And Necessity."

On May 17, 1962, after Columbia withdrew its opposition, the Commission issued its "Notice Of Cancellation Of Hearing," which cancelled the scheduled hearings on the matter of Tennessee's need for the new temporarily authorized facilities. There can be no doubt that Columbia induced this cancellation of hearing, and that Columbia thereby surrendered its opportunity to demonstrate that the contested portion of the new facilities south of Station 87—as distinguished from total contested facilities—were unnecessary and excessive, in terms of Tennessee's capacity needs. The Coal Intervenors, whose position simply echoes Columbia's, stood silent and their objections are thus subject to the same disposition.[13]

---

[13] A second opportunity was given to all interested parties to present evidence relating to the new circumstances occasioned by Tennessee's building of only the lesser portion of the contested facilities. The Examiner's order of January 18, 1963 (*supra*) reopened the hearing on the excess capacity issue, as to facilities temporarily authorized and installed. Neither Columbia nor any other parties offered new evidence or argument in the reopened hearing.

Is the Over-Expansion Issue of Practical Consequence?—Let us assume, for the sake of argument, that some portion of the new capacity which has been installed by Tennessee south of Station 87 is not required by 1962 design day loads, or 1962–1963 winter peak loads. As we have seen, all costs in regard to such contested facilities actually installed pursuant to temporary authorization issued July 6, 1962, amount to about $17 million. "Decision on the First Issues," p. 794. For comparison, it is noted that the Tennessee Gas Transmission Company rate base, excluding all wellhead plant, amounted to $833,001,883 for the 12-months ended July 31, 1959, according to the Initial Decision of Presiding Examiner in *Tennessee Gas Transmission Co.*, Docket No. G–19983, issued May 28, 1962, Appendix 2. For the 12-months ended March 31, 1960, transmission rate base on the Examiner's basis of computation amounted to $876,558,324.[14] Second Stipulation and Agreement accompanying rate settlement proposal, Exhibit C–2, Schedule 5, in the Consolidated Proceedings in Docket No. G–11980, *et al.* Installed items contested herein constitute only 1.94 percent of such rate base. Tennessee's 1962 and 1963 transmission rate base, excluding contested items, would show further growth and further relative unimportance of the amount involved in contested construction actually installed.

On December 21, 1962, the Commission issued its "Order Approving Rate Settlement, Prescribing Refunds, Terminating Proceedings In Part And Providing For Further Hearings," in the matter of *Tennessee Gas Transmission Company*, Docket No. G–11980, *et al.* The final docket considered in such order and in the settlement involved rates made effective April 5, 1960, and covering the period from that date to the indefinite future. The order shows that the agreed-upon and approved cost-of-service to be used for the design of rates for the period commencing October 1, 1962, is $272,500,000. Part of the settlement is the following stipulation:

Tennessee will make no rate increase filings prior to January 1, 1964.

Assuming the 30 days' notice and five months suspension provided for in Section 4 of the Act, this stipulation, of course, means that no Tennessee increased rates can become effective until July 1, 1964.

It is perfectly clear that Tennessee is not in a static or declining position with regard to pipeline operations and sales. On the contrary, all aspects of Tennessee's operations show steady growth in all recent years. See Tennessee's *Annual Report For 1961*, p. 31. Planning for the movement of gas to meet 1963–1964 winter peaks is in progress as of the time of the present writing. There will be a substantial increase in capacity needs to meet increased demands for the immediate future. See uncontroverted statement of Tennessee counsel at the reopened hearing of February 4, 1963, detailing matters of common and expert knowledge.[15]

For present purposes, we may assume *arguendo* that *all* the contested capacity installed during 1962 pursuant to temporary certificates has not been necessary to carry loads anticipated or realized during 1962 and 1963. Nonetheless, it is evident that such excess capacity (a) is not in an amount of practical current

[14] Whether or not this figure is exactly correct has not been (and will not be) determined specifically by the Commission. This figure is, however, clearly appropriate for use, as here, to determine the order of magnitude.

[15] Note also, that the question of mootness (in the light of Tennessee's rate settlements) was specifically set down for evidence and argument at the reopened hearing by the Examiner's order of January 18, 1963. No witness or argument on the point was advanced by Columbia, the Coal Intervenors, or any other party to the record.

adverse consequence to Tennessee's ratepayers, and (b) will become of even less significance in terms of Tennessee's total rate base as Tennessee's total capacity grows to meet new loads.

Otherwise stated, the question of whether or not Tennessee currently needs the relatively small amount of contested installed capacity is a moot question until at least July 1, 1964, and the only real issue is whether or not Tennessee will need such capacity to meet the "future" service required by public convenience and necessity. For the indefinite immediate future, Tennessee will absorb the cost of over-expansion, if any, in its presently agreed-upon and approved rates.

The Capacity Not Installed.—The capacity here in question, detailed in the Decision on the First Issues, consists of about $20.5 million of facilities between Tennessee's Station 87 and storage. On brief, Tennessee admits that these facilities are not necessary to meet 1962–1963 peaks, but says that they will be needed "at a later date to meet the customers' loads as they increase."

Authorization of facilities for construction in the indefinite future, as late as 1970 under the evidence herein, subject to Tennessee's unilateral determination of proper timing, would not seem to be appropriate Commission action. Therefore, the Examiner's order for limited reopening of proceedings, issued January 18, 1963, provided *inter alia* that "Tennessee should specifically program installation of the remainder of requested facilities," and by necessary inference submit such program at the hearing set down for February 4, 1963.

At that hearing, Tennessee presented no evidence in this connection, but, by counsel, gave the following statement, in pertinent part:

> We have now received, however, since the passage of time [referring to time since filing of applications herein], requests from our customers for additional service commencing with the '63–'64 heating season. The additional peak day requirements of our customers commencing with the 1963–64 heating season will be in excess of 100 million cubic feet per day.
>
> Now, in view of these substantial increased requirements and considerations as to the future long-range growth of the Tennessee system, our engineers have undertaken studies to determine what would be the most economical design of facilities north of Station 87 for the future.
>
> These studies have not as yet been completed. Since these studies must take into consideration requirements in addition to those that are here involved in these instant proceedings, we may find that economies could be realized by altering the design of the facilities here proposed north of Station 87.
>
> If this should be the case, our new application which we hope to file within 30 to 45 days would reflect these alterations.
>
> In view of these circumstances, Mr. Examiner, we can't state at this time a specific program of installation of the remaining facilities between Station 87 and storage. When we file our new application within the next 30 to 45 days, we will advise Your Honor and the parties as to the status of these facilities and the applicable construction schedules.

It must be recognized that Tennessee may need to construct some of these facilities during the Summer of 1963, and that if the time schedule attained in the proceeding at bar is not improved, the undesirable use of temporary certification procedure may again have to be used. It would be preferable, if possible, to authorize in this decision such of the uninstalled capacity as is justified by the record evidence.

The record, however, does not warrant any such authorization. The record deals with 1962 design day and 1962–1963 peaks. Tennessee admits, *supra*,

that changes in facilities proposed on the 1962 basis may be required in the light of current anticipations and estimates. Existing facilities (supplemented by 1962 installations under temporary certificates, *supra*) have been adequate for needs actually encountered to date. Supplement to application for authority to operate facilities and render service (Dockets G–16842 and CP60–94) filed October 1, 1962. Contested facilities between Station 87 and storage, specified in the Decision on the First Issues, must therefore be disallowed for want of evidence of need and time of need.[16]

Certification in the Light of Procedural Impasse.—Logically, if the Ship Shoal reserves are lost to this proceeding and all expansion of service proposed herein must be denied for want of gas supply, see Section 1(c) *supra*, then all expansion of facilities based on such new service should also be denied. However, the facilities south of Station 87 were justified, not on the basis of new service but on the basis of design day capacity adequate to send gas to storage to make up deficiencies in storage caused by 1961–1962 emergencies. (Tr. 985–6; 1012; 1124; 1215–16.) By the best estimates as of the time of trial, Tennessee would have been completely out of top storage gas by January 31, 1963, had the proposed facilities south of Station 87 not been installed.[17] Thus, certification of the facilities already installed is not dependent upon the Commission's course of action with regard to the procedural *impasse*.

Contested Matters Not Disposed Of.—(1) East Tennessee Gas Transmission Company, a 93 percent subsidiary of Tennessee Gas Transmission Company, has an authorized delivery from the latter of 206,496 Mcf per day, and an estimated 1963 peak day requirement of only 155,551 Mcf. Columbia argues, and is echoed by Staff, that East Tennessee's contract obligation should accordingly be reduced by the 50,945 Mcf differential.

The differential exists because, in 1957, the Atomic Energy Commission, which had been purchasing 60,000 Mcf per day of firm gas at 100 percent load factor, plus large volumes of interruptible gas, converted its installations to coal. Thereafter, the AEC contract quantity has been the present volume of 6,000 Mcf per day.

In a proper proceeding, presumably in Tennessee's next certificate case, the contract quantities to be supplied by Tennessee to East Tennessee should be adjusted to reflect East Tennessee's actual current and near-future requirements. This cannot be effected in the proceeding at bar, because East Tennessee is not a party hereto. East Tennessee has had no notice or opportunity to be heard on the issue of the proposed reduction in its contract quantities. Nor is the matter one of mere formality or disregard of the corporate entity. East Tennessee is an operating utility, with minority security holders and customers. East Tennessee and its customers have a substantial interest in being heard on their own behalf before action adverse to their gas supply may be taken.[18]

(2) Tennessee's existing design day delivery capacity, prior to addition of temporarily authorized facilities installed in 1962, was 2,669,031 Mcf, according to the projection in *Midwestern Gas Transmission Co.*, Docket No. G–16842, *supra*. Columbia argues that (a) Tennessee's pipeline efficiency factors are to low, (b) Tennessee's winter peaks greater than existing capacity have been

[16] It is not to be anticipated that Tennessee's next expansion certificate application will present problems of absent necessary parties, which are the problems which produced much of the delay in the issuance hereof.

[17] To meet 22,704,000 Mcf of requirements from storage, Tennessee would have had only 17,500,000 Mcf of usable top storage. See Tr. 1215–16; see table, Tennessee's Reply Br., p. 25.

[18] Docket No. CP61–199 is a service application by East Tennessee for 1963, 1964, and 1965 requirements, which would seem an appropriate vehicle for restating East Tennessee's contract quantities.

and can be met through line pack[19] and storage withdrawals, and (c) Tennessee has understated the volumes of top storage gas available to Tennessee at the commencement of the 1962–1963 heating season and subsequent heating seasons.

Findings and conclusions with respect to these and related contentions made by Columbia are unnecessary because the theoretical situation basing such contentions no longer exists. As of the date of the reopened hearing, February 4, 1963, Columbia had been made aware of the current realities as to Tennessee's capacity, by the careful breakdowns contained in the "Decision on the First Issues" of November 9, 1962. Columbia might have, but did not, based new contentions on the actualities of 1962 design day and 1962–1963 winter day situations. We are, as of the present writing, concerned with projections for a new season, in which Tennessee will have the benefit of actual experience with only the smaller part of its contested facilities proposed herein. Columbia's objections to any new construction hereafter proposed in connection therewith, including construction proposed herein but not undertaken, will properly be heard in connection with any future Tennessee certificate cases.

Capacity Authorized.—In the light of: (a) the Commission's temporary authorization of increased service for the 1962–1963 winter peak season, (b) Tennessee's normal and increased capacity needs, (c) Tennessee's depleted storage as of the time of hearing, (d) the requirements to inject large amounts of new gas into storage during the 1962 injection season, under the best estimates adduced into evidence, which could not be accomplished without the contested capacity south of Station 87, (e) the future public convenience and necessity as Tennessee, from one source or another, gets supply to meet uncontrovertible increased demand requiring new capacity, and (f) the foregoing evaluations of the significance of the contested installed capacity: it is found that there should be permanently authorized for construction and operation all facilities temporarily authorized by Commission order of July 6, 1962.

ORDER

Wherefore, *It is ordered*, Subject to review by the Commission as provided in its Rules of Practice and Procedure, that:

(A) A certificate of public convenience and necessity is hereby granted to Tennessee Gas Transmission Company (Tennessee) for the construction and operation of the facilities temporarily authorized by Commission order issued July 6, 1962, pursuant to Tennessee's filings of April 9, 1962, and June 7, 1962; said facilities being described in detail in said order and filings, in the Decision on the First Issues issued November 9, 1962, and in the foregoing text.

(B) Tennessee's application for a certificate of public convenience and necessity for the construction and operation of the following facilities is hereby denied:

Facilities[20]	*Horsepower or Miles*
Station 871, near Campbellsville, Kentucky	4,000
36" Loop between Stations 200 and 204	14.37
36" Loop between Stations 204 and 209	27.15
36" Loop between Stations 209 and 214	10.03
36" Loop between Stations 214 and 219	24.03
30" Loop between Stations 219 and 307	40.35
30" Loop between Stations 307 and 313	11.33

[19] It is intended here to suggest the Columbia argument based on a dispatcher's report for February 3, 1961 (Columbia Br. 29–30) showing *estimated* through-put higher than Tennessee flow diagrams.

[20] Restatement of summary listing on page 795, "Decision on the First Issues."

(C) Upon approval of the following procedure by the Commission, communicated to the Secretary:

(1) A copy of this Decision shall be served upon each of the CATC companies (hereinbefore specifically identified) in the manner prescribed in Section 1.17 of the Commission's Rules of Practice and Procedure;

(2) The text hereof shall be taken and considered to constitute an order to show cause to the CATC companies, pursuant to Section 1.6 of the Commission's Rules of Practice and Procedure;

(3) In lieu of answer to show cause specified in Section 1.9(c) of the said Rules, the CATC companies shall, within 20 days of the service of the copy hereof hereinbefore prescribed, file exceptions hereto, and otherwise follow the answering procedure set out in Section 1.31 of such Rules, to the end that the CATC companies shall be fully and expeditiously heard on the matters herein disposed of;

(4) Such exceptions shall deal with all matters of law, public policy under the Natural Gas Act, and argument as may be relevant to this proceeding and determination, including (a) CATC's apparent violation of the terms of the Natural Gas Act in failing and refusing to make the filings with the Commission of the contracts of May 10, 1961, required by Sections 4(c) and 7(c) of the Natural Gas Act, and (b) considerations bearing on the public convenience and necessity of the sale by CATC, pursuant to such contracts of May 10, 1961, of gas in interstate commerce for resale by Tennessee for ultimate consumption for domestic, commercial, industrial, and other use;

(5) The Secretary shall open a new docket with respect to each of the CATC companies so joined herein by order to show cause; and

(6) Such new dockets shall be consolidated herewith and further considered by the Commission in conjunction with Tennessee Gas Transmission Company, Docket Nos. G–16842 and CP60–94.

(D) In the event that the foregoing procedure for joining the CATC companies herein, or its equivalent,[2] is effected by the Commission—

(1) The contracts and arrangements for the sale of Ship Shoal gas of May 10, 1961, between CATC and Tennessee are disapproved *in toto;*

(2) Further performance of such contracts shall cease in all respects, except in respect of production, transportation and sale of oil during the interim period to the renegotiation of such contracts;

(3) The CATC companies and Tennessee shall take appropriate steps in accordance with the text hereof to reverse all financial and other results of partial performance under the unauthorized contracts of May 10, 1961, and to restore the situation that would have existed had such partial performance not been undertaken; and

(4) The CATC companies and Tennessee may, after compliance with subparagraphs (2) and (3) above, present for the consideration of the Commission pursuant to Section 7(c) of the Natural Gas Act a new contract covering the sale of the Ship Shoal gas per-Mcf rather than in bulk, and at a price which is not excessive under the Commission's Statement of General Policy No. 61–1.

(E) In the event that the foregoing procedure for joining the CATC companies herein, or its equivalent, is not effected by the Commission, all new service and increased service proposed herein is denied, as well as the proposed

[2] *E.g.*, voluntary entry of CATC into this proceeding by petition to the Commission, accepted by the Commission.

58.2 miles of lateral line connecting the Ship Shoal reserves with Tennessee's pipeline system. In such event, ordering clauses (D), (E), (F), (G), (H), (I), (J), (K), (L), (M), (N), (P), (Q), and (R) of the Decision on the First Issues, issued November 9, 1962, are annulled, and the particular applications therein dealt with are, for want of gas supply, all denied.

ROBERT M. WESTON,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward, and David S. Black.

FLORIDA GAS TRANSMISSION COMPANY, ET AL., DOCKET NO. G-18338, ET AL.

FINDINGS AND ORDER AMENDING ORDERS ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 20, 1963)

On March 8, 1963, as supplemented on April 22, 1963, Florida Gas Transmission Company (Movant) filed in Docket No. G-18338, *et al.*, a motion to amend the orders heretofore issued in said dockets by substituting South Florida Natural Gas Company (South Florida) for the City of New Smyrna Beach, Florida (New Smyrna), as the resale customer and distributor of natural gas to be sold and delivered by Movant for resale for ultimate public consumption in New Smyrna and environs.

The Commission's order issued August 9, 1961, as modified on November 2, 1961, in the subject dockets authorized Movant to provide natural gas service to New Smyrna for resale and distribution through a municipal system to be owned and operated by the city. New Smyrna has elected not to proceed with a municipally-owned distribution system but has granted a franchise to South Florida for this service. The estimated third year annual and peak day natural gas requirements for New Smyrna in M^2Btu are as follows:

Annual:	
Firm	106,664
Preferred interruptible	630,000
Total	736,664
Peak day:	
Firm	1,069
Preferred interruptible	2,237
Total	3,306

These quantities represent an increase of 31,500 M^2Btu in third year annual firm requirements and 598,500 M^2Btu in third year annual preferred interruptible requirements over the quantities heretofore authorized. Third year total peak day requirements have been increased by 2,125 M^2Btu, but firm peak day requirements have been decreased by 112 M^2Btu. The largest part of the increased requirements is represented by the quantities required for service to a newly constructed steam power electric generating plant owned by New Smyrna.

Movant proposes to install a line tap at a point on its existing 6-inch Daytona Beach lateral approximately one mile west of the city limits of

Daytona Beach, Volusia County, Florida, and to construct and operate approximately 14.2 miles of 4½-inch pipeline extending from said point in a southerly and easterly direction to a city gate delivery point at New Smyrna, together with a meter and regulator station and appurtenant facilities for the sale and delivery of natural gas to South Florida. Movant was heretofore authorized to construct and operate a 2⅞-inch line over the same route to serve New Smyrna. By order issued March 13, 1963, the Commission extended for six months the time within which the subject lateral, among others, might be constructed. It appears to be appropriate to extend the time for the construction of the lateral to serve New Smyrna for another six months.

Movant has entered into service agreements dated September 13, 1962, with South Florida for preferred interruptible and general service, providing for the sale of gas under Rate Schedules G and I of Movant's FPC Gas Tariff, Original Volume No. 1.

Due notice of the filing of the subject motion was issued August 14, 1963, and published in the Federal Register on August 21, 1963 (28 F.R. 9221). No protest, request for hearing, or petition to intervene has been received.

The Commission finds:

(1) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the orders heretofore issued in Docket No. G–18338, *et al.*, should be amended to substitute South Florida Natural Gas Company for the City of New Smyrna Beach, Florida, as the resale customer and distributor of natural gas to be sold and delivered by Florida Gas Transmission Company for resale for ultimate public consumption in the City of New Smyrna Beach and environs.

(2) The lateral to serve the City of New Smyrna Beach should be constructed, modified as proposed in the motion herein, within six months from the date on which this order issues.

The Commission orders:

(A) The orders heretofore issued in Docket No. G–18338, *et al.*, be and the same are hereby amended to substitute South Florida Natural Gas Company for the City of New Smyrna Beach, Florida, as the resale customer and distributor of natural gas to be sold and delivered by Florida Gas Transmission Company for resale for ultimate public consumption in the City of New Smyrna Beach and environs.

(B) The lateral to serve the City of New Smyrna Beach shall be constructed, modified as proposed in the motion herein, within six months from the date on which this order issues.

(C) In all other respects, the orders heretofore issued in Docket No. G–18338, *et al.*, shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward, and David S. Black.

RATON NATURAL GAS COMPANY, DOCKET NO. CP62–131

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 20, 1963)

On July 31, 1963, Raton Natural Gas Company (Applicant) filed a motion to amend the Commission's order issuing a certificate of public convenience and necessity to Applicant on July 19, 1963, in Docket No. CP62–131, 30 FPC 356, by

authorizing the construction and operation of 20.5 miles of 8-inch pipeline in lieu of 20.5 miles of 6-inch pipeline specified in said order of July 19, 1963.

Applicant wishes to construct the line for use during the 1963–1964 winter heating season, and 6-inch pipe will not be available before that time; 8-inch pipe is presently available.

The additional incremental cost of the 8-inch pipe will be $55,000, to be financed from cash on hand.

Due notice of this motion to amend was given by publication in the Federal Register on August 21, 1963 (29 F.R. 9223). No protests to the granting of the motion have been received.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued July 19, 1963, in Docket No. CP62–131 be amended as hereinafter ordered.

The Commission orders:

(A) The said order issued on July 19, 1963, be and the same is hereby amended by authorizing the construction and operation of 20.5 miles of 8-inch pipeline in lieu of the presently authorized 20.5 miles of 6-inch pipeline.

(B) In all other respects, the said order issued July 19, 1963, in Docket No. CP62–131 shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward, and David S. Black.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP63–187

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 20, 1963)

On December 28, 1962, as supplemented on January 18, 1963 and amended on May 10, 1963, Transcontinental Gas Pipe Line Corporation (Applicant) filed in Docket No. CP63–187 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and the sale of natural gas in interstate commerce for resale as hereinafter described, all as more fully set forth in the application.

Applicant seeks authorization to construct and operate a sales meter station and appurtenant facilities near Applicant's Compressor Station No. 35 in Harris County, Texas for the purpose of rendering services to Houston Pipe Line Company (Houston) of Houston, Texas. The estimated cost of the proposed facilities is $47,000.

Service by Applicant to Houston will be rendered in accordance with a three year contract between the parties whereunder Applicant will make available to Houston a total volume of 1,000,000 Mcf of gas during each Winter Period (November 1–April 1), with a daily maximum obligation of 75,000 Mcf. After a total volume of 1,000,000 Mcf has been purchased by Houston during the Winter Period, Houston may request, but Applicant need not deliver, additional daily volumes not in excess of 75,000 Mcf during the remainder of the year until the next Winter Period. The contract specifically provides that if at any time there shall be a curtailment or interruption of gas supply into Applicant's main trans-

mission lines which will cause Applicant, in its opinion, to be deficient in fulfilling the then existing requirements of its other customers, Applicant may curtail or interrupt deliveries to Houston for the period such condition exists.

The contract price for the gas is 20¢ per Mcf at 14.7 psia, with a minimum bill amounting to $50,000 annually.

The gas to be delivered by Applicant will be used to supplement existing sources of gas of Houston required to meet the needs of its customers. Furthermore, it will alleviate an oversupply situation in Applicant's system.

Pursuant to due notice, a hearing was held on September 12, 1963 respecting the matters involved in and the issues presented by the application herein. No protest or petition to intervene has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Transcontinental Gas Pipe Line Corporation, a Delaware Corporation with its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce for resale, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Transcontinental Gas Pipe Line Corporation, to construct and operate facilities and to sell natural gas in interstate commerce for resale as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission Regulations, within six months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward, and David S. Black.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP63-348

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 20, 1963)

On June 20, 1963 Transcontinental Gas Pipe Line Corporation (Applicant) filed in Docket No. CP63-348 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale of additional volumes of natural gas for ultimate public consumption to the following named existing customers:

	Rate schedule	Mcf per day at 14.7 psia
Manufacturers Light & Heat Co., The (Muncy)	CD-3	4,000
Avis Gas Co.	OG-3	119
Blacksburg, S.C. City of	OG-2	300
United Cities Gas Co., North Carolina Division	G-2	100
Winder, Georgia, City of	OG-1	300
Total proposed additional pipeline service		4,819

No additional facilities are required in order to render the service proposed in the application. The service to be rendered here is from unallocated capacity resulting from facilities to be authorized in Docket No. CP63-222.

Pursuant to due notice, a public hearing was held in Washington, D.C., on September 10, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Trancontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston Texas is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 18, 1948, in Docket No. G-1143 (7 FPC 139).

(2) The sale and delivery of additional volumes of natural gas as hereinbefore described, as more fully described in the application, will be made in interstate commerce subject to the jurisdiction of the Commission, and said sale and delivery are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The sale and delivery of natural gas proposed by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's com-

pliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c) (3), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c) (1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant to sell and deliver natural gas in additional volumes to the customers named, as more fully described in the application.

(B) Issuance of a certificate in this docket is conditioned upon issuance of a certificate in Docket No. CP63–222.

(C) The certificate issued and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c) (3), and (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward, and David S. Black.

CITY OF UNIONTOWN, KANSAS, DOCKET NO. CP63–343

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued September 20, 1963)

On June 13, 1963, the City of Uniontown, Kansas, (Applicant) filed in Docket No. CP63–343 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Cities Service Gas Company (Cities Service) to establish physical connection of its transmission facilities with the proposed facilities of and to sell natural gas to Applicant for resale and distribution in Uniontown, all as more fully set forth in the application.

Applicant proposes to construct and operate approximately six miles of lateral pipeline extending from a point of connection on Cities Service's transmission line, Bourbon County, Kansas, to the proposed distribution facilities for Uniontown.

The application shows Applicant's estimated third year peak day and annual natural gas requirements to be 215 Mcf and 18,960 Mcf, respectively.

The total estimated cost of transmission and distribution facilities for the project is $65,000, which cost will be financed by the issuance of revenue bonds.

On June 28, 1963, Cities Service filed an answer to the subject application stating that it had no objection to the granting of said application.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on August 8, 1963 (28 F.R. 8175). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

(1) Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G–298 (4 FPC 471).

(2) Applicant, the City of Uniontown, Kansas, is a municipal corporation incorporated under the laws of the State of Kansas and is legally empowered to construct and operate natural gas facilities and to sell and distribute natural gas in Uniontown.

(3) It is necessary and desirable in the public interest that Cities Service be directed to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant and to sell and deliver up to 215 Mcf of natural gas per day to Applicant, as set forth in the application and as hereinafter ordered and conditioned.

(4) This order should be conditioned upon Applicant being prepared to receive gas from Cities Service, as proposed, within one year from the date on which this order issues and upon the execution of the service agreement between Applicant and Cities Service in accordance with the Commission's Regulations under the Natural Gas Act.

(5) The requirement that Cities Service serve Applicant, as proposed, will not place any undue burden upon Cities Service nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Cities Service Gas Company be and it is hereby directed to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant and to sell and deliver up to 215 Mcf of natural gas per day to Applicant, all as hereinbefore described and as set forth in the application.

(B) Cities Service shall report to the Commission in writing the date of commencement of service to Applicant.

(C) This order is conditioned upon Applicant being prepared to receive natural gas from Cities Service, as proposed, within one year from the date on which this order issues and upon the execution of a service agreement between Applicant and Cities Service in accordance with the Commission's Regulations under the Natural Gas Act.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward, and David S. Black.

COLORADO-WYOMING GAS COMPANY, DOCKET NO. CP63-347

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued September 23, 1963)

On June 17, 1963, Colorado-Wyoming Gas Company (Applicant) filed an application in Docket No. CP63-347 pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to acquire from McWood Corporation (McWood) 8.35 miles of 4-inch pipeline located in the Southwest Roggen Field, Weld County, Colorado, and to operate the same. This pipeline is presently owned and operated by McWood to deliver residue gas from its gasoline plant to Applicant at a point near Keenesburg, Colorado. Applicant further requests authority to install metering facilities to receive gas from McWood at a point near the said McWood gasoline plant. Applicant also requests authority to provide a new delivery point for the sale of 9,500 Mcf of gas to Greeley Gas Company, an existing resale customer. The total estimated cost of the facilities to be acquired and constructed is $91,645, to be financed from current working funds.

Applicant also requests permission to abandon, pursuant to Section 7(b), a small metering station serving Kansas Brick and Tile Company, near Loveland, Larimer County, Colorado, all as more fully set forth in the application.

The acquisition of the line from McWood and operation thereof will enable Applicant to supply gas to Greeley Gas Company for resale to a new school and several residential and industrial customers.

The abandonment of the metering station has been requested due to the termination of the service agreement by the parties.

Applicant's contract demand for peak day gas for the 1963–1964 heating season will not be affected by the small additional volume of gas to be made available to Greeley Gas Company through the proposed facilities.

Pursuant to due notice, a public hearing was held in Washington, D.C., on September 5, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Colorado-Wyoming Gas Company, a Delaware Corporation having its principal place of business in Denver, Colorado, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be or are being used in the transportation and/or sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the abandonment, construction, acquisition and operation thereof by Applicant are subject to the requirements of Subsections (b), (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction, acquisition and operation of the proposed facilities are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) The abandonment of the aforementioned facility is required by the public convenience and necessity, and permission and approval therefor should be granted as hereinafter ordered.

(6) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), (d)(2), (d)(3), and (e) of Section 157.20 of such Regulations.

(7) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Colorado-Wyoming Gas Company, to acquire, construct and operate the facilities as hereinbefore described, all as more fully

described in the application in this proceeding, upon the terms and conditions of this order.

(B) Permission and approval be and the same is hereby granted to abandon the facility as hereinbefore described, all as more fully described in the application in this proceeding.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), (d)(2), (d)(3), and (e) of Section 157.20 of such Regulations.

(D) The facilities hereby authorized shall be installed, purchased, and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission Regulations, within ninety days from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward, and David S. Black.

TRUNKLINE GAS COMPANY AND TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. CP62-41

FINDINGS AND ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 24, 1963)

On June 28, 1963, Trunkline Gas Company (Trunkline) filed a motion to amend the order granting a certificate of public convenience and necessity issued by the Commission on January 25, 1962, in Docket Nos. CP62-41 and CP62-120, by amending the Commission's orders (A) and (B) so as to renew the authorization and to permit the continuation of the sales of natural gas and operation of the facilities therein provided until July 1, 1964.

The Commission's said order (A) of January 25, 1962, authorized Trunkline to construct and operate approximately 491 feet of 4-inch O.D. pipeline and a metering station to interconnect its facilities with the pipeline facilities of Texas Eastern Transmission Corporation (Texas Eastern) and to sell and deliver a maximum of 30,000 Mcf of natural gas per day at 14.65 psia to Texas Eastern on an interruptible basis until July 1, 1962.

The Commission's said order (B) of January 25, 1962, authorized Texas Eastern to construct and operate a main line tap and related facilities on its 30-inch McAllen-Vidor pipeline in Hidalgo County, Texas, in order to receive said short-term supply of gas from Trunkline until July 1, 1962.

On June 19, 1962, Trunkline filed a motion to amend said order so as to permit the continuation of the sale of natural gas and operation of the facilities authorized by said order until July 1, 1963. Notice of said motion to amend was issued on August 3, 1962. On August 20, 1962, the Public Service Commission of the State of New York filed notice of intervention.

By the instant motion, filed June 28, 1963, Trunkline proposes to increase the maximum daily quantity of gas to be sold from 30,000 Mcf to 36,750 Mcf, as provided in the amendment to the contract, dated June 4, 1963, between Texas Eastern and Trunkline.

Trunkline shows that it has need to continue the sale to Texas Eastern in order to further alleviate the take or pay situation with respect to its gas purchase contracts, as described in the Commission's order of January 25, 1962.

Trunkline shows that it has been advised by Texas Eastern that Texas

Eastern has need for the gas proposed to be delivered by Trunkline, which will be used to supplement its total system requirements.

Pursuant to due notice, a public hearing was held in Washington, D.C. on September 5, 1963, respecting the matters involved in and the issues presented by the motions herein. No protest to the granting of said motions or petitions to intervene other than the notice of intervention filed by the Public Service Commission of the State of New York has been received. Said New York Public Service Commission appeared at said hearing and following statements of counsel for Trunkline and Texas Eastern, counsel for the New York Public Service Commission stated that it does not oppose the amendment of the certificate as proposed by Trunkline and has no objection to the waiving of the filing of briefs and the omission of the intermediate decision procedure. Staff counsel moved orally that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Movant, Trunkline Gas Company, a Delaware Corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 29, 1949, in Docket No. G–882 (8 FPC 250).

(2) Texas Eastern Transmission Corporation, a Delaware Corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 30, 1949, in Docket No. G–1089 (8 FPC 228).

(3)) The proposed amendment to the Commission's order granting a certificate of public convenience and necessity issued January 25, 1962, in Docket Nos. CP62–41 and CP62–120, as described in said motion to amend, is required by the public convenience and necessity and said certificate should be amended as hereinafter ordered.

(4) A request having been made by staff counsel for omission of the intermediate decision procedure and all requirements of the provisions of Section 1.30(c)(1) [18 CFR 1.30(c)(1)] of the Commission's Rules of Practice and Procedure having been satisfied, sufficient cause exists for the Commission forthwith to render its final decision in the instant proceeding.

The Commission orders:

In order to renew the authorization and to permit the continuation of the sales of natural gas and operation of the facilities therein provided; ordering paragraphs (A) and (B) of the Commission's order in Docket Nos. CP62–41 and CP62–120 issued January 25, 1962, be and the same are hereby amended to read as follows:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Trunkline Gas Company, to construct and operate the proposed facilities and to sell and deliver a maximum of 36,750 Mcf of natural gas per day at 14.65 psia to Texas Eastern Transmission Corporation until July 1, 1964, as hereinbefore described, all as more fully described in the application, as supplemented, in Docket No. CP62–41, upon the terms and conditions of this order.

(B) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Texas Eastern Transmission Corporation, to construct and operate the proposed facilities in order to receive natural gas from Trunkline until July 1, 1964, as hereinbefore described, all as more fully described in the application, as supplemented, in Docket No. CP62–120, upon the terms and conditions of this order.

COLUMBIA GULF TRANSMISSION COMPANY, DOCKET NO. CP62-89; UNITED FUEL GAS COMPANY, DOCKET NO. CP62-90; THE OHIO FUEL GAS COMPANY, DOCKET NO. CP62-91

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND AFFIRMING EXAMINER'S DECISION TO EXTENT APPLICABLE

(Issued September 25, 1963)*

Syllabus

1. Pipeline's certificate conditioned to provide that facilities may not be used to transport any additional gas purchased purportedly for compressor fuel or other company use until producer obtains certificate therefor under *Lo Vaca* holding. P. 833.
2. Commission *issues* certificates of public convenience and necessity under Section 7, of the Natural Gas Act. P. 835.

J. Evans Attwell and *David T. Searls* for Monterey Gas Transmission Company.**

Brooks E. Smith, Daniel L. Bell, Jr., Alfred A. Green and William C. Hart for Columbia Gulf Transmission Company, United Fuel Gas Company and The Ohio Fuel Gas Company.

R. K. Talbot, C. E. Goodwin, J. M. Hill, William C. Battle and *John S. Battle, Jr.*, for United Fuel Gas Company.

E. O. Bottler for Columbia Gulf Transmission Company.

W. F. Laird for The Ohio Fuel Gas Company.

Carl Illig, William H. Holloway, Albert C. McClain and *Jesse Foster* for Humble Oil & Refining Company.

Julian DeBruyn Kops and *William E. Herron* for The Dayton Power and Light Company.

Reuben Goldberg, George Spiegel and *Charles E. Thomas* for Pennsylvania Gas and Water Company.

Robert J. White, James W. Farrell, Jr. and *Paul J. Doppes* for City of Cincinnati, Ohio.

C. Howard Johnson, Jr., Russell Leach, Edward D. Means, Jr. and *George C. Smith* for City of Columbus, Ohio.

J. David Mann, Jr., J. Frederick Moring and *John E. Holtzinger, Jr.* for United Gas Improvement Company.

James A. Biddison, Jr. for Baltimore Gas and Electric Company.

Walter E. Beckjord and *Richard H. Rhein* for The Cincinnati Gas and Electric Company.

William L. Howland for Portsmouth Gas Company.

James O. Watts, Jr. for Commonwealth Natural Gas Corporation.

Jerome J. McGrath, John A. McGrath and *James A. Gammon* for Fuels Research Council, Inc., National Coal Association, United Mine Workers of America and the Anthracite Institute.

John S. Schmid and *John W. Glendening, Jr.* for The Berkshire Gas Company, The Bridgeport Gas Company, Concord Natural Gas Corporation, Manchester Gas Company, Fitchburg Gas and Electric Light Company, Springfield Gas Light

*Initial decision appears on p. 836. The original lead docket, *Monterey Gas Transmission Co.*, docket No. CP62-88, was severed from these proceedings on May 15, 1963, 29 FPC 929, along with docket No. CP62-291.

**Monterey withdrew as applicant herein—29 FPC 929.

Company, The Greenwich Gas Company, The Hartford Electric Light Company, City of Holyoke, Massachusetts Gas and Electric Department, Lowell Gas Company, Mystic Valley Gas Company, Valley Gas Company, and City of Westfield Gas and Electric Light Department.

Daniel F. Wheeler for The Bridgeport Gas Company.

Charles H. Toll, Jr. for Concord Natural Gas Corporation and Manchester Gas Company.

William R. Cook and *Halycon G. Skinner* for Fitchburg Gas and Electric Light Company and Springfield Gas Light Company.

Frank J. Coyle for The Greenwich Gas Company.

H. Bissell Carey, Jr. for The Hartford Electric Light Company.

George N. Beauregard for City of Holyoke, Massachusetts Gas and Electric Department.

Edmund L. Twomey for Lowell Gas Company.

D. G. Allen for Mystic Valley Gas Company.

Ernest N. Agresti for Valley Gas Company.

Edward M. Lee for City of Westfield Gas and Electric Light Department.

Stanley M. Morley, B. J. Williamson, Robert Shaw and *John D. Lane* for Tennessee Gas Transmission Company.*

Frederick D. Cornelius, Herbert E. Squires and *Alan R. Squires* for Pennsylvania Public Utilities Commission.

Kent H. Brown, Charles J. Cox, and *Mrs. Barbara M. Suchow* for the Public Service Commission of the State of New York.

Robert L. Stewart for the Public Service Commission of West Virginia.

Charles E. McGee, James D. McKinney, Jr. and *R. E. Christiansen* for United Natural Gas Company.

Richard C. Steffey for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward, and David S. Black.

On July 1, 1963, Columbia Gulf Transmission Company (Columbia Gulf) filed an amendment to its application in Docket No. CP62–89 requesting that a permanent certificate of public convenience and necessity be issued authorizing the facilities which Columbia Gulf has heretofore constructed, or commenced constructing, pursuant to two temporary certificates granted in that docket by letter orders dated August 14, 1962, and April 5, 1963. The letter order dated August 14, 1962, granted Columbia Gulf temporary authorization (1) to construct and operate nine main-line loops consisting of 132.7 miles of 30-inch pipeline, (2) to install and operate a new Compressor Station 10A, near Bunkie, Louisiana, utilizing a centrifugal compressor driven by a 10,500-horsepower jet gas turbine, and (3) to use on a full-time basis the 4,000-horsepower centrifugal compressor unit located at Columbia Gulf's Compressor Station No. 4 and the 10,500-horsepower centrifugal compressor unit located at Columbia Gulf's Compressor Station No. 2, both units having previously been authorized on a stand-by basis only in Docket Nos. G–18121 and G–19376, respectively. These facilities were needed to meet the Columbia System's gas requirements for the 1962–63 heating season and were estimated to cost $20,192,000, exclusive of the two compressor units previously authorized only on a stand-by basis. The letter order dated April 5, 1963, granted Columbia Gulf temporary authority to construct 10 main-line loops consisting of 144.2 miles of 30-inch pipeline at an estimated cost of $19,281,800. Columbia Gulf alleges that the facilities authorized in the

*Tennessee withdrew as applicant herein—29 FPC 929.

latter temporary certificate are needed to meet the Columbia System's requirements for the 1963–64 heating season.

The letter order of August 14, 1962, contained a condition providing that Columbia Gulf should not use any part of the facilities authorized in Docket No. CP62–89 "* * * to transport any additional gas purchased by Columbia Gulf purportedly for compressor fuel or other company use" until the producer involved had obtained a certificate authorizing such sales under the Commission's holding in *Lo Vaca Gas Gathering Company, et al.*, Opinion No. 348, 26 FPC 606. Since it does not appear that the circumstances described in the temporary authorization have changed up to the present time, it is appropriate that this condition contained in the temporary certificate of August 14, 1962, be made a part of the permanent certificate hereinafter issued in Docket No. CP62–89.

The letter order of April 5, 1963, contained the condition that "* * * United Fuel Gas Company shall, within a reasonable time, contract for adequate gas reserves to bring its total gas supply to such level as the Commission may subsequently determine to be required." The amendment filed July 1, 1963, by Columbia Gulf in Docket No. CP62–89 states that United Fuel has now entered into conventional gas sales contracts with Humble Oil & Refining Company and Isaac Arnold, *et al.*, involving the purchase by United Fuel of approximately 6.2 trillion cubic feet of gas. Columbia Gulf alleges that execution of these contracts has satisfied the gas-supply condition imposed in the letter order of April 5, 1963. This condition as to United Fuel's gas-supply obligations in Docket No. CP62–89 will remain contingent upon the outcome of subsequent proceedings involving the producers' applications and their acceptance of any certificates which may be issued to them in such proceedings.

Columbia Gulf's original application in Docket No. CP62–89 had also requested authorization to construct and operate additional looping and compressor facilities in order that Columbia Gulf could meet the estimated increased requirements of the Columbia System for the 1964–65 and 1965–66 heating seasons. However, Columbia Gulf's amendment filed July 1, 1963, in Docket No. CP62–89 asks that its request for authorization to construct the facilities described in its application in Docket No. CP62–89 to meet estimated increased gas requirements for the 1964–65 and 1965–66 heating seasons be deleted therefrom. The facilities which Columbia Gulf had originally requested authorization to construct during 1964 consisted of 52.1 miles of 30-inch main-line loops and 79,900 horsepower of additional compressor facilities, at an estimated cost of $20,191,600. The 1965 facilities for which a certificate was sought consisted of 89.6 miles of 30-inch main-line loops and crossings of the Cumberland and Kentucky Rivers, at an estimated cost of $12,559,000.

The facilities which Columbia Gulf was authorized to construct, pursuant to temporary authority granted in Docket No. CP62–89, enabled United Fuel to receive additional quantities of gas at the latter's Ceredo compressor station in Wayne County, West Virginia. Consequently, United Fuel's application filed October 9, 1961, in Docket No. CP62–90, as supplemented June 5, 1962, requested a certificate authorizing it (1) to turbocharge all of the six existing compressor units at the Ceredo station so as to increase the existing horsepower of each unit from 2,000 horsepower to 2,800 horsepower, or a total increase of 4,800 horsepower and (2) to construct and operate 2.3 miles of 26-inch pipeline northward from the Ceredo station to the Ohio River where gas is delivered to The Ohio Fuel Gas Company (Ohio Fuel) at United Fuel's Burlington delivery point. The total estimated cost of those facilities is $1,679,900. In order for Ohio Fuel to take delivery of additional quantities of gas from United Fuel, Ohio Fuel's application filed October 9, 1961, in Docket No. CP62–91 requested a certificate

authorizing it to construct 15.3 miles of 20-inch pipeline in Lawrence County, Ohio, extending its Line R–601 to United Fuel's Burlington delivery point, at a total estimated cost of $1,300,000.

By letter orders dated August 14, 1962, and October 26, 1962, respectively, the Commission, in Docket No. CP62–90, granted to United Fuel temporary authority to construct and operate the requested 2.3 miles of 26-inch pipeline and to turbocharge the six existing compressor units at its Ceredo compressor station. On August 14, 1962, Ohio Fuel was granted temporary authority to construct and operate the 15.3 miles of 20-inch transmission line for which it sought a certificate in Docket No. CP62–91.

In his decision issued January 28, 1963, in the consolidated proceeding *Monterey Gas Transmission Company, et al.*, Docket No. CP62–88, *et al.*, the presiding examiner, subject to review by the Commission, authorized Columbia Gulf, United Fuel, and Ohio Fuel to construct and operate all of the facilities for which those companies had been granted temporary certificates on August 14, 1962, and October 26, 1962. The major portion of the examiner's decision in Docket No. CP62–88, *et al.*, is devoted to a consideration of the application of Monterey Gas Transmission Company (Monterey) in Docket No. CP62–88. By order issued May 15, 1963, the Commission allowed the withdrawal of Monterey's application in Docket No. CP62–88 as well as the withdrawal of the "companion application" of Tennessee Gas Transmission Company (Tennessee) in Docket No. CP62–291. In response to the joint request of Columbia Gulf, United Fuel, and Ohio Fuel, the order issued May 15, 1963, held in abeyance further action upon the applications of the three companies of the Columbia System until these companies had had time to submit additional filings related to their contemplated purchase of gas from Humble Oil & Refining Company. It appears that these "additional filings" have been made in Columbia Gulf's Docket No. CP64–1, Ohio Fuel's Docket No. CP64–14, and United Fuel's Docket No. CP64–16. Consequently, the aforementioned examiner's decision in Docket No. CP62–88, *et al.*, should be affirmed to the extent that it was not rendered moot by Monterey's and Tennessee's withdrawal of their applications in Dockets Nos. CP62–88 and CP62–291, respectively.

The Commission finds:

(1) Applicant, Columbia Gulf Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued November 5, 1958, in Docket No. G–15524, 20 FPC 681.

(2) Applicant, United Fuel Gas Company, a West Virginia corporation having its principal place of business in Charleston, West Virginia, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of March 1, 1944, in Docket No. G–341, 4 FPC 534.

(3) Applicant, The Ohio Fuel Gas Company, an Ohio corporation having its principal place of business in Columbus, Ohio, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 2, 1942, in Docket No. G–408, 3 FPC 301.

(4) The facilities heretofore authorized by temporary certificates granted in Docket Nos. CP62–89, CP62–90, and CP62–91, as more fully described in the applications in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, as integral parts of the Applicants' pipeline system and the construction and operation thereof by Applicants are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(6) The construction and operation by Applicants of the facilities authorized herein are required by the public convenience and necessity, and permanent certificates therefor should be issued as hereinafter ordered and conditioned.

(7) Public convenience and necessity require that as to Docket Nos. CP62–90 and CP62–91 the certificates issued hereinafter and the rights granted thereunder be conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

(8) Public convenience and necessity require that as to Docket No. CP62–89 the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b) (c) (3), (c) (4), and (e) of Section 157.20 of such Regulations.

(9) The examiner's decision issued January 28, 1963, in Docket Nos. CP62–88, *et al.*, recommended that permanent certificates be issued in Docket Nos. CP62–89, CP62–90, and CP62–91 authorizing the construction and operation of the facilities required by Columbia Gulf, United Fuel, and Ohio Fuel, respectively, for the 1962–63 heating season; therefore, the examiner's decision in Docket No. CP62–88, et al., should be affirmed insofar as such decision was not rendered moot by the withdrawal of Monterey's and Tennessee's applications in Docket Nos. CP62–88 and CP62–291, respectively.

(10) All exceptions filed to the examiner's decision issued January 28, 1963, in Docket No. CP62–88, *et al.*, should be denied to the extent that such exceptions were not rendered moot by the withdrawal of Monterey's and Tennessee's applications in Docket Nos. CP62–88 and CP62–291, respectively.

The Commission orders:

(A) Certificates of public convenience and necessity be and the same are hereby issued authorizing Applicants to construct and operate the facilities heretofore constructed, or to be constructed, pursuant to the temporary certificates granted in Docket No. CP62–89 on August 14, 1962, and April 5, 1963; in Docket No. CP62–90 on August 14, 1962, and October 26, 1962; and in Docket No. CP62–91 on August 14, 1962, all as more fully described in the applications herein, upon the terms and conditions of this order.

(B) The application in Docket No. CP62–89 is hereby amended by the deletion therefrom of Columbia Gulf's request for authorization to construct facilities required for the 1964–65 and 1965–66 heating seasons in accordance with the request contained in Columbia Gulf's amendment, filed July 1, 1963, to its application in Docket No. CP62–89.

(C) The certificates issued in Docket Nos. CP62–90 and CP62–91 in paragraph (A) above and the rights granted thereunder are conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

(D) The certificate issued in Docket No. CP62–89 in paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c) (3), (c) (4), and (e) of Section 157.20 of such Regulations.

(E) The construction authorized in Docket No. CP62–89 by paragraph (A) above shall be completed and the facilities placed in actual operation, as required by Section 157.20(b) of the Commission's Regulations under the Natural Gas Act, within six months from the date on which this order is issued.

(F) The grant of the certificates in paragraph (A) hereof shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or of Part 154 of the Commission's Regulations under the Natural Gas Act, requiring the filing of rate schedules for the service authorized, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted against the Applicants in Docket Nos. CP62–89, CP62–90, and CP62–91.

(G) The examiner's decision issued January 28, 1963, in Docket No. CP62–88, *et al.*, is hereby affirmed to the extent that such decision was not rendered moot by the withdrawal of Monterey's and Tennessee's applications in Docket Nos. CP62–88 and CP62–291, respectively.

(H) All exceptions filed to the examiner's decision issued January 28, 1963, in Docket Nos. CP62–88, *et al.*, are hereby denied to the extent that such exceptions were not rendered moot by the withdrawal of Monterey's and Tennessee's applications in Docket Nos. CP62–88 and CP62–291, respectively.

(I) The certificate issued in Docket No. CP62–89 by paragraph (A) above is subject to the condition that no part of the facilities herein authorized shall be used to transport any additional gas purchased by Columbia Gulf purportedly for compressor fuel or other company use.

INITIAL DECISION

UPON APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR PERMISSION TO ABANDON FACILITIES AND SERVICE

(Issued January 28, 1963)

KANE, *Presiding Examiner:* This consolidated Section 7 certificate proceeding involves applications seeking authorization and approval from the Federal Power Commission (Commission) of integrated transactions whereby Monterey Gas Transmission Company (Monterey) sought to acquire, construct, and operate a pipeline system extending from the King Ranch area in South Texas to the existing pipeline of Columbia Gulf Transmission Company (Columbia Gulf) near Bunkie, Louisiana. Columbia Gulf would accept the deliveries of the gas from the King Ranch area for the account of United Fuel Gas Company (United Fuel) and would transport and deliver such gas to United Fuel at a point near the Kentucky-West Virginia border. United Fuel would then distribute the gas as needed by its customers and the constituent parts of the Columbia Gas System, Inc., including the Ohio Fuel Gas Company (Ohio Fuel).

Monterey proposes to obtain the gas through the purchase of certain leaseholds containing gas reservoirs, from Humble Oil and Refining Company (Humble) for $536,276,520[1] which leasehold interests will provide an estimated 3.778 trillion cubic feet of gas contained in 89 reservoirs in four gas fields, Santa Fe East, North Alazan, Viboras, and Laguna Larga, all located in the King Ranch area

[1] This payment covers only Humble's 84.97172 percent interest in the leases and the remaining 15.02828 percent, constituting the royalty interest, is to be paid for at the rate of 18.1 cents per Mcf, applicable only to the gas actually produced and measured at the entrance to Monterey's main transmission line.

in South Texas.[2] Monterey also proposes to pay Humble $5,070,000 for existing gathering lines extending approximately 92 miles from such leaseholds and connecting with the inlet side of Humble's King Ranch Gas Processing Plant, and approximately $7,000,000 (the adjusted purchase price) for Humble's leasehold facilities.[3] The wet gas would be transported to Humble's King Ranch plant where Humble would process up to 23,000 Mcf per hour or 552,000 Mcf per day (at 14.65 psia). The dry pipeline quality gas would then be delivered by Humble at the tailgate of its plant into Monterey's proposed 438.3 mile 30-inch transmission line. This line would comprise 366.7 miles of 30-inch line extending from Agua Dulce, Texas, to Kinder, Louisiana ("the A–K line") to be purchased and acquired from Tennessee Gas Transmission Company (Tennessee) and 71.6 miles of a new 30-inch transmission line to be constructed for the connections of the southern and northern ends of the "A–K" line to Humble's plant and to Columbia Gulf's transmission system near Bunkie, Louisiana, respectively. Monterey's gas would be delivered on a cost-of-service basis to Columbia Gulf's compressor station 10–A for the account of United Fuel,[4] another wholly-owned subsidiary of the Columbia System; Columbia Gulf would deliver the gas for the account of United Fuel at three delivery points in Kentucky at Stanton, Means, and Leach. The gas purchased from and delivered by Monterey would thereafter become a new source of supply for the Columbia System to use in its service area located primarily to the north and east of the delivery points mentioned above.

Columbia Gulf, United Fuel, and Ohio Fuel also request authorization to construct and operate additional pipeline and compressor facilities deemed necessary to receive and utilize additional volumes of gas allegedly required to meet increased demands. Columbia Gulf in its application as supplemented, Docket No. CP62–89, seeks authorization to construct and operate additional facilities over a four-year construction period 1962–1965. Such facilities, aggregating 418.6 miles of 30-inch pipeline loop and 90,400 horsepower at a total cost of $72,225,300, are designed to increase Columbia's existing estimated capacity of 688,500 Mcfd to 1,078,500 Mcfd by November 1, 1965, in order to meet the additional requirements of United Fuel.

On August 14, 1962, Columbia Gulf was granted a temporary certificate[5] authorizing it, subject to certain conditions, to (a) Construct and operate nine main loop sections of 30-inch pipeline totaling 132.7 miles; (b) Utilize on a full time basis compressor horsepower currently authorized to be used only for standby purposes; (c) Install and operate a 10,500 horsepower compressor station near Ville Platte, Louisiana.

---

[2] The agreement between Monterey and Humble provides for a second purchase from Humble to be concluded on or by January 3, 1967, consisting of additional leasehold interests acceptable to Monterey in the vicinity of Monterey's pipeline system covering additional wet gas reserves of 2.902 trillion cubic feet. However, the instant certificate application is independent of this so-called second purchase.

[3] Humble has not filed any certificate application as seller but was permitted to intervene in the proceedings by the Commission's order of April 17, 1962.

[4] United Fuel's gas purchase contract with Monterey provides that it will pay the latter's full cost of service, including a 6.5 percent rate of return on Monterey's investment.

[5] This temporary authorization as well as the temporary authorizations sought by United Fuel and Ohio Fuel referred to *infra.*, were originally denied by the Commission by letters of July 6, 1962. However, after these companies filed a joint application for rehearing and reconsideration, the Commission, based upon assurances from, and a showing by, such companies that the facilities were necessary to meet increased requirements for the 1962–1963 heating season without reference to the certification of the Monterey project, granted the applications.

In Docket No. CP62–90,[6] United Fuel, in its supplemented application, seeks authorization to turbocharge all six compressor units at its existing Ceredo compressor station in Wayne County, West Virginia, in order to increase the existing horsepower of each unit from 2,000 to 2,800 horsepower or a total of 4,800 horsepower; and to construct 2.3 miles of 26-inch pipeline north from Ceredo station to the Ohio River at a total estimated cost of approximately $1,679,900. By letters dated August 14, 1962, and October 26, 1962, the Commission granted United Fuel temporary authorization[7] to construct and operate the facilities sought in the application as supplemented.

In Docket No. CP62–91, Ohio Fuel seeks a certificate authorizing it to construct and operate approximately 15.3 miles of 20-inch line at an estimated total cost of $1,300,000. The additional line would extend its line R–601 to United Fuel's existing Burlington delivery point. The Commission, on August 14, 1962, granted temporary authorization to Ohio Fuel to construct and operate the additional 15.3 miles of 20-inch line.[8]

Tennessee, in Docket No. CP62–291, seeks permission pursuant to Section 7(b) of the Natural Gas Act, to abandon its "A–K" line,[9] extending 366.7 miles from Agua Dulce, Texas, to Kinder, Louisiana, and to construct and operate facilities at Tennessee's station No. 1 near Agua Dulce, Texas, and station No. 823 near Kinder, Louisiana. Such facilities would be required in order to carry out the provisions of a transportation and exchange agreement between Monterey and Tennessee whereby Monterey would transport up to 60,000 Mcf of gas per day for Tennessee from points on the "A–K" line to Kinder, Louisiana, for a period of not less than three nor more than six years. Upon cancellation of this agreement after three years, or upon expiration after six years, the exchange arrangements become operative whereby Monterey will exchange up to 60,000 Mcf per day with Tennessee for the remainder of a 20-year contract term, Monterey delivering gas to Tennessee at the terminus of the "A–K" line near Agua Dulce, Texas, and at a few small-volume points and receiving equivalent volumes from Tennessee at existing points of receipt along the "A–K" line.

Procedural Developments

By Secretary's notice dated March 14, 1962, all of the applications in this proceeding except that of Tennessee in Docket No. CP62–291 were consolidated for hearing scheduled to commence on April 19, 1962. By its order issued April 17, 1962, the Commission granted sixteen petitions to intervene and indicated that ten state commissions had filed notices of intervention. In addition, after Tennessee's application had been consolidated with the other applications in this proceeding, the Commission in its order issued August 2, 1962, granted three additional petitions to intervene. Since some of the petitions to intervene were filed jointly by several different companies the total number of parties permitted to intervene in this proceeding totals forty-six exclusive of the ten state commissions.

On June 5, 1962, while the hearing was in progress, the Presiding Examiner pursuant to Section 1.11(a) of the Commission's Rules of Practice and Procedure, permitted Monterey and United Fuel to file amendments to their applications in Dockets No. CP62–88 and CP62–90, respectively, and received direct testimony and exhibits in support of the amended applications. In special

[6] Kentucky Gas Transmission Corporation originally a joint applicant in this docket filed a notice of withdrawal on April 9, 1962, which became effective as of May 10, 1962.

[7] See footnote 5, *supra*.

[8] See footnote 5, *supra*.

[9] The line sought to be acquired by Monterey in these proceedings.

rulings dated June 11, 1962, the Presiding Examiner also permitted Columbia Gulf to file first and second supplements to its application in Docket No. CP62–89. The hearing was then recessed until July 5, 1962, to enable Tennessee to prepare and file its application to abandon in Docket No. CP62–291, and to permit the issuance of the notice required by Section 1.19 of the Commission's rules. Such notice issued on June 14, 1962, consolidated Tennessee's application with the other applications in this proceeding and provided for the consolidated proceeding to reconvene on July 5, 1962. The hearing was concluded on July 30, 1962. Briefing was completed and the case fully submitted on October 17, 1962.

The following issues may be deemed involved in this proceeding:

1. Whether Monterey has established that its proposed services, sales, operations, construction, extensions, and acquisitions are required by the future public convenience and necessity.

2. Whether the proposed assignment and conveyance of Humble's leasehold interests to Monterey under the circumstances involved constitute a long-term sale of gas in interstate commerce subject to the jurisdiction of the Commission.

3. Whether Tennessee's application for permission and approval to abandon its "A–K" line should be granted on the basis that the present or future public convenience and necessity permits such abandonment.

4. Whether any certificates issued to Columbia Gulf in this proceeding be conditioned so as to restrict each of the Columbia Gas system companies from taking any gas from any of its pipeline suppliers at load factors greater than the load factors of purchasers under contract with Tennessee.

5. Should any permanent certificate issued to Columbia Gulf be conditioned to prohibit Columbia Gulf from utilizing its facilities to transport gas purchased by Columbia Gulf purportedly for compressor fuel or other company use pending compliance by Texaco, Inc. and Columbia Gulf with the principles expressed by the Commission in Lo-Vaca Gathering Co. Opinion No. 348, at 26 FPC 606, (appeal pending).

6. Whether permanent certificates should be issued to Columbia Gulf, United Fuel, and Ohio Fuel authorizing the operation and construction of the facilities requested in their respective applications in order to enable them to meet the increased requirements of their customers for the 1962–1963 heating season and 1963 summer storage operations.

7. In the event that Monterey's application for a certificate be granted, should a condition be attached to United Fuel's certificate permitting the cost equalization proposal?

The instant interrelated proceedings present a fundamental threshold issue which because of its jurisdictional nature and impact on the other issues usually involved in certificate proceedings must be resolved before such other issues can even be considered. Thus, the applicants and advocates for permanent certification, including Humble the proposed seller and an intervener in these proceedings, assert that the Commission does not have jurisdiction under the provisions of the Natural Gas Act to pass upon the aspects, price or other items involved in Humble's sale or assignment to Monterey of the leaseholds and the gas reserves contained therein.[10]

The Staff, on the other hand, asserts that the Federal Power Commission does have such jurisdiction and that "it is clear that it would be a useless endeavor for the Commission to use its conditioning powers, as suggested by the court in *CATCO*, in an effort to issue Monterey a certificate conditioned upon Humble's

[10] Humble in its brief characterizes the subject of the sale to be "interests in oil and gas leases covering the reservoirs from which Monterey will produce the gas for transportation and ultimate sale to United Fuel."

being allowed to charge 16 cents per Mcf (at 14.65 psia) for the gas involved in Monterey's contemplated leasehold purchase." [11]

This important issue has already been dealt within initial decisions in somewhat analogous situations. See *Tennessee Gas Transmission Company, et al.*, Docket No. G–14562 *et al.*, January 8, 1962, and *Texas Eastern Transmission Corporation, et al.*, Docket No. G–12446, *et al.*, June 29, 1962. In the latter case the Hearing Examiner basing his conclusion on his interpretation of the decisions in Panhandle (*F.P.C.* v. *Panhandle Eastern Pipe Line Company, et al.*, 337 U.S. 498) and Phillips (*Phillips Petroleum Co.* v. *Wisconsin, et al.*, 347 U.S. 672) decided that the Commission was without jurisdiction over the sale of certain leases and the natural gas under said leases until (1) the gas was connected to an interstate system of pipelines, or (2) the gas was dedicated to a sale in interstate commerce.[12]

In the Tennessee Gas Transmission case the Hearing Examiner after a thorough review of the legal precedents involved, including an analysis and reexamination of the effect of Panhandle viewed in light of the later Phillips decision, and for other cogent reasons contained in the well reasoned opinion concluded in favor of Commission jurisdiction saying, "* * * the statutory certification procedure should be followed when producers sell and pipelines buy gas in place (*i.e.* in bulk) as in the case of conventional per Mcf sales."

The issue assumes critical significance in the instant proceedings when viewed in the light of the irreconcilable conflict engendered on the one hand by Humble's insistance that it would not sell the gas to Monterey under a conditional certificate and that it would prefer to sell the gas intrastate if the proposed sales price were affected by any condition or any other form of Commission regulation in this proceeding [13] and, on the other hand, by the duty and obligation imposed on the Commission requiring it to attach to any producer certificate such conditions at it believes necessary, including conditions based upon the determination of the impact of proposed producer prices and "initial price." Furthermore, compliance with such duty and obligation necessarily entails the concomitant responsibility to examine the terms of the proposed contract not only to determine whether the proposed initial price is required by the public convenience and necessity but also whether other criteria for such determination are also satisfied. *Atlantic Refining Co., et al.* v. *Public Service Commission of New York, et al.*, 360 U.S. 360 U.S. 378; *United Gas Improvement Co.* v. *F.P.C.*, 287 F. 2d 159.

---

[11] Interveners, United Gas Improvement Company and New York Public Service Commission, strongly support the Staff's position with respect to Commission jurisdiction over the sales of the leaseholds from Humble to Monterey requiring Commission regulation of the transaction. The former, however, asserts that an alternative regulatory technique is available to the Commission which will require Commission examination of the price of the King Ranch reserves in accordance with the rationale of the *CATCO* case.

[12] This decision of the Hearing Examiner was qualified as follows:

> This is not to say, however, that the Commission is without jurisdiction to regulate the purchaser of the natural gas. * * * and to determine at what price the public convenience and necessity requires the dedication of the Rayne Field gas by Texas-Eastern (the purchaser of the leaseholds) to a sale in interstate commerce for resale to consumers of natural gas in other states. [29 FPC 263–264; parenthesis supplied.]

[13] It is well to note in this connection that the Tennessee Gas Transmission Company in the *CATCO* case, in a somewhat similar situation also threatened that if any price limitation were imposed in the certificate the producers would terminate the contracts with consequent loss of natural gas supplies required by its customers. The court in that case was apparently unimpressed by the threatened consequences.

The independent producer, of course, owning and selling a commodity, need not dedicate its gas supply to the interstate market at all or may propose and limit the amount it will so dedicate.[14] However, it must be recognized that the Commission cannot abdicate its responsibilities simply because the parties insist that the whole transaction will collapse unless the entire package as presented and the full price asked is approved. *Cf. Public Service Commission of the State of New York* v. *F.P.C.*, 287 F. 2d 143, 145. The Commission controlling the basis on which "gas may be initially dedicated to interstate use", (*cf. CATCO*, 360 U.S. 378, 389) is free to reject the producer's proposal.

The Natural Gas Act is framed to afford consumers a complete permanent and effective bond of protection from excessive rates and charges. It was designed to effectuate a legislative program for Federal regulatory responsibility. No construction should be placed upon it which could or would result in the emasculation of effective regulation. The heart of the Act is found in those provisions requiring initially that any proposed service, sale, operation, construction, extension or acquisition * * * will be required by the present or future public convenience and necessity (Section 7(e)). In view of the framework in which the Commission is authorized and directed to act, the initial certificating of a proposal under Section 7(e) of the Act as being required by the public convenience and necessity becomes crucial. See *Atlantic Refining Co., et al.* v. *Public Service Commission of New York, et al.*, 360 U.S. 378, 389. This is especially true where as here the determination by the Commission will undoubtedly set a pattern for future contracts in an area where enormous reserves of gas appear to be present.

The applicant in this proceeding, in effect, attempts to circumvent the scope of the Commission's power to inquire into the issue of public convenience and necessity by implicitly attaching a condition requiring the Commission to forego consideration of a critical element which is necessary in the formulation of a considered judgment as to the price the ultimate consumer will pay for the natural gas involved. Under such theory the evidence presented could be used to justify almost any price which it might be thought to be required as an incentive to bring adequate supplies of new gas to the interstate market and which has been negotiated at arms length in the competitive market. To accept the producer's contract price according to its theory of regulation would be tantamount to an abdication of the Commission's regulatory responsibility under the Natural Gas Act. *Cf. El Paso Natural Gas Company, et al.*, Opinion No. 358, June 11, 1962, 27 FPC 1134.

Suffice it to say in response to such attempt that the Commission's mandated authority cannot be deemed to be so tenuous as to be thwarted by contractual artifice. It cannot be so limited whether by direct or indirect methods. *Cf. Sunray Mid-Continent Oil Co.* v. *F.P.C.*, 364 U.S. 137, 152.

The negotiations between Humble and Columbia were allegedly conducted at arms length and there appears to be no evidence indicating the contrary.[15] However, the end result of such negotiations is that the estimated average price of the gas at the entrance to Monterey's main transmission system, to be

[14] The sale of the vast quantities of gas in other than interstate markets would hardly satisfy the many requirements urged by Humble as being a sine qua non for the sale to Monterey.

[15] Neither is there any evidence to indicate that such "arms-length" negotiations were carried on with the end in view of approximating the "in-line" price for the gas whether on an individual company basis or on an area price basis.

transported by Monterey and paid for by United on a cost-of-service basis[16] has been irrevocably fixed under a sale which the parties thereto allege to be beyond the jurisdiction and control of the Commission. The inevitable result of absence of Federal control over the initial transaction would be that the cost of the gas to the ultimate consumer would be fixed prior to the incidence of Federal regulation, and Federal rate control would be substantially impaired if not rendered futile. *Cf. Jersey Central Power and Light Co.* v. *F.P.C.*, 319 U.S. 61, 71, 72. The Natural Gas Act, however, was designed to avoid such situations where unreasonable charges become perpetuated in fixed items of cost which must be covered by rates charged subsequent purchasers of the gas, including the ultimate consumer. *Public Service Commission of the State of New York* v. *Federal Power Commission*, 287 F. 2d 143, 146, quoting with approval from *Interstate Natural Gas Company, Inc.*, v. *F.P.C., et al.*, 331 U.S. 682, 693.

The conclusion appears to be inescapable that any such result cannot be justified in view of the Supreme Court's pronouncement in *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, 682, to the effect that "* * * *we believe that the legislative history* (of the Natural Gas Act) *indicates a congressional intent to give the Commission jurisdiction over the rates of all wholesales of natural gas in interstate commerce, whether by a pipeline company or not and whether occurring before, during, or after transmission by an interstate pipeline company.*" [Parenthetical material and emphasis supplied.]

The Commission's responsibility in this connection takes on additional significance in light of the admonition and advice of the court in *Public Service Commission of the State of New York* v. *F.P.C.*, 287 F. 2d 147, 150, to the effect that, "We believe that the Supreme Court meant to impress upon the Commission an interpretation of the 'public interest' which, in the context of a rising natural gas market demands a real administrative effort to hold back prices."

It is against this backdrop of Federal regulation of interstate sales and transportation of natural gas, the purposes of the Natural Gas Act, as interpreted by the courts, *cf. Sunray Mid-Continent Oil Co.* v. *F.P.C.*, 364 U.S. 137, 147, the practical consequences of the applicant's, as well as Humble's claim, and the details of the transaction involved, that we must assess the validity of the applicant's argument that the Commission in determining whether to issue a certificate of public convenience and necessity has no jurisdiction over the very transaction which might well effectively nullify any future attempt to exercise effectual control not only over the initial rates to be charged but over the mode of their regulation thereafter.

All the factors involved surrounding the negotiation and execution of the agreements between Humble and Monterey establish the ultimate nature of the transaction. Humble's business was to sell gas. On the other hand, Columbia had to buy the gas competitively in such a manner that it could be shown that the purchase was in the public interest. No such guideline was deemed necessary in connection with the leasehold sales. The price negotiations were carried on significantly between Humble and Columbia System on the basis of Mcf, and when it was tested at 18 cents, the deal was made. Such negotiations furthermore, were admittedly carried on with the understanding that there would be formed a new company to acquire the leaseholds, build the transmission facilities and enter into a gas sales contract with United Fuel. Monterey became a corporate entity only after the consideration set forth in Exhibit 19 for the gas had been agreed upon between United Fuel and Humble.

[16] The fact that United is willing to pay the proposed price for the gas lends no substantial support for a determination that such proposed price is required by the public interest. See *Panhandle Eastern Pipe Line Company, et al.*, 27 FPC 35, 44.

A review of the complicated contractual arrangements between the two companies reveals the following:

(1) Humble conveys leaseholds warranted to contain 3,778,278,000 Mcf at a total cost of $536,276,520. It retains an oil and gas liquids net profits interest in such leaseholds.

(2) Upon Humble's conveyance of the leasehold interests to Monterey, the latter is obligated to employ Humble to manage the leasehold interests and process all gas. Parenthetically, it is indicative of the fact that Humble has complete freedom to develop the leaseholds, produce the wet gas therefrom, and transport the gas to its own processing plant.

(3) Humble is obligated to deliver a minimum quantity of 550,000 Mcf per day from the first leasehold purchase.

(4) When the gas enters Humble's plant title to all liquids extracted therefrom passes to Humble.

(5) Humble is given authority under the management agreement to sell liquids to which it has reserved full title unless a contract is involved with more than a one-year term in which case Monterey is given an opportunity to approve the contract.

(6) Monterey is obligated to take all reasonable steps to keep Humble in possession of leaseholds which Humble purported to convey to Monterey so long as there is any economic production from such leaseholds, including any extensions of renewals thereof.

(7) Humble is permitted to determine the maximum efficient rate of production from any reservoir. Humble is not obligated to perform any operation when such operation would "* * * be uneconomic to a lessee owning the full beneficial leasehold interests." In connection with the leasehold operations purportedly performed for Monterey, Humble has complete control of any pressure maintenance or secondary recovery operations and is not liable for errors in judgment so long as no willful misconduct is involved.

(8) Humble will file all necessary reports with the Texas Railroad Commission in its own name and conduct all hearings before the Texas Commission regarding the operation of the leaseholds which Monterey purports to own.

(9) The respective obligations of Monterey and Humble under the basic agreement are subject to the condition that the Federal Power Commission shall issue the necessary and appropriate certificates and orders under the Natural Gas Act, in form and substance satisfactory to Monterey and Humble permitting all the transactions including the transactions called for in Monterey's Gas Sales Contract with United.

Humble, in effect, retains complete control of the leasehold premises at all times and cannot be removed from physical possession of such leaseholds. While Attachment F to the Humble-Monterey agreement, the gas processing agreement, purports to show that Monterey is the producer of gas, the management and other agreements reveal the true situation, namely, should Monterey's application be approved Humble would continue to operate the leaseholds purportedly conveyed to Monterey as if no conveyance had ever taken place.

The testimony is clear, establishing beyond any doubt, that all the gas reserves contained in the assigned leaseholds to be purchased by Monterey was designed for shipment to and sale in other states. That was the course of the business and fixed and determined the interstate character of the transaction. *Cf. Lemke, etc.* v. *Farmer's Grain Co., etc.*, 258 U.S. 50, 55; *Currin, et al.* v. *Wallace, et al.*, 306 U.S. 1, 10. No imagination is required to bring the inter-

related transactions into proper focus. The agreements constitute in their entirety a transparent device to avoid Commission jurisdiction and regulation over ultimate rates to be charged for gas. The form which these agreements took should not and do not control, their essence is determined not by subtleties of draftsmanship but by their total effect. *Cf. Commissioner of Internal Revenue, et al.* v. *P. G. Lake, Inc., et al.*, 356 U.S. 260, 266, and 267.

Humble, in the final analysis, is selling natural gas to a proposed interstate pipeline transmission company. The gas flows from the producing wells to Humble's processing plant where extractable products and impurities are removed. After processing is completed the gas flows from the processing plant to a delivery point where the gas is delivered to Monterey, a proposed interstate pipeline company. The gas then continues its flow through the interstate pipeline system until delivery at Bunkie, Louisiana. This then, except for the format of an indirect sale of the gas, is the same pattern described, and held to be subject to Commission jurisdiction in *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, 675. No reason exists why such sales which are in essence sales in interstate commerce within the purview of the Natural Gas Act should not be similarly regulated as sales subject to the jurisdiction and regulation of the Commission. See *Deep South Oil Company of Texas* v. *F.P.C.*, 247 F. 2d 882.

The legal determination of the question rests not upon the parties' use of the word leaseholds but upon the actual disposition of the commodity involved, namely, natural gas. *Cf. Shell Oil Company* v. *F.P.C.*, 247 F. 2d 900, certiorari denied, 355 U.S. 930. Nor is the legal character of the transaction affected by the complicated device employed to circumvent Commission jurisdiction and regulation. The actual facts must govern. *Cf. Sprout* v. *City of South Bend*, 277 U.S. 163, 168. It is the nature of the beast not the label that is controlling. *Lo-Vaca Gathering Company, et al.*, 26 FPC 606, 612.

It is difficult to conceive that an independent producer can, by separating the sale of gas into its component parts, that is, a sale of leaseholds with reservations with respect to all items except the gas, convert the interstate shipment of the gas, and the concomitant Commission jurisdiction over the sale, into a nonjurisdictional transaction, thereby depriving the consumer of the benefits to which he is entitled by virtue of the design and intent of the Natural Gas Act. *Cf. Baltimore & Ohio Southwestern Railroad Company* v. *Settle, et al.*, etc., 260 U.S. 166, 170.

A decision negating jurisdiction over the initial purchase in the instant proceedings would, by legalistic legerdemain, in effect, make effective regulation dependent upon the desire of the regulated enterprise to subject itself to such regulation. In fact, Humble's position amounts to a declaration that not only does it prefer not to be subject to any regulation but that the entire transaction depends upon its freedom from such regulation. "But," as was said in *Sunray Mid-Continent Oil Company, et al.*, 19 FPC 618, 635, "Congress, this Commission and the courts have decreed otherwise."

As succinctly stated in *Saturn Oil & Gas Co., Inc.*, v. *F.P.C.*, 250 F. 2d 61, 66, citing from 347 U.S. 683, 684, "We are satisfied that Congress sought to regulate wholesales of natural gas occurring at both ends of the interstate transmission systems" and as was indicated in the *Phillips* case, sales in interstate commerce for resale by producers to interstate pipeline companies do not come within the producing or gathering exception. 347 U.S. 672, 680, 681, see also *Deep South Oil Company of Texas* v. *F.P.C.*, 247 F. 2d 882, 888, and 889.

There can only be one rational conclusion, that is, that the sale provided for in Exhibit 19, the contract of sale between Monterey and Humble and the interrelated contract between Monterey and United Fuel, taken together constitute a conventional sale in interstate commerce of natural gas for resale within the

purview of the Natural Gas Act, and, by reason of such sale, each of the companies so involved is subject to the regulatory provisions of the Act.[17]

Humble has not filed any application for a certificate seeking authorization for the sale of the leases and the subsisting gas reserves. If such application had been filed in the instant proceedings, there is no question but that the Commission would have authority to impose such conditions which may be required by the public convenience and necessity upon the seller where they belong rather than upon the purchasing pipeline which actually proposes to incur the costs without further recourse. *Cf. CATCO*, 360 U.S. 378, 391. The present and public convenience and necessity does not require that gas be allowed to flow at higher prices whatever the method, however disguised, employed in the sale of that gas. It would be difficult to deny that the channeling of vast quantities of natural gas into unregulated transactions at unregulated prices would result in a scarcity to regulated distributors and attendant general price increases. *F.P.C.* v. *Transcontinental Gas Pipe Line Corp.*, 365 U.S. 1, 30.[18] Certainly, no higher price should be allowed in those instances where the producer denies the jurisdiction of the Commission to regulate such price than that allowed others employing conventional methods for the sale of gas at the same time and in the same area. The sales price of the leaseholds and other aspects of the arrangements necessitated by the formation of Monterey and arising out of its contract with Humble have a direct and substantial effect on the price paid for the gas by ultimate consumers, *Cf. Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, 685, and any unreasonable charges enacted at this stage of the interstate movement of the gas would have to be covered by rates charged the ultimate consumers of such gas. The Natural Gas Act was designed to avoid such situations. *Cf. Peoples Natural Gas Co.* v. *F.P.C.*, 127, F. 2d 153, cert. den., 316 U.S. 700; *Interstate Natural Gas Co.* v. *F.P.C.*, 331 U.S. 682. The Commission is not required to blind itself to the effects of the purchase and use of the gas when its authority to certificate the transportation of such gas is involved.

The average annual cost of service for the first purchase leaseholds (3,487,200 Mmcf at 14.73 psia) at the entrance to Monterey's main transmission system is calculated by the applicant's own witness to be 24.48 cents per Mcf. This calculated price is substantially higher than the area price for Texas District No. 4,[19] as appears from the Commission's findings in *Skelly*, Opinion No. 362,

[17] Furthermore, a finding to the contrary might conceivably lead to an abandonment of interstate service without reference to or compliance with the terms of Section 7(b) of the Natural Gas Act. Thus, in the event of default by Monterey in its payments to Humble, the latter could, under the terms of the subsisting contract, foreclose its reserved lien and obtain the return of its leaseholds and the subsisting gas therein. Under such circumstances, Humble, still maintaining that the Commission has no jurisdiction over the transaction, might cut off United Fuel's source of supply without complying with the provisions of Section 7(b) of the Act. This anomalous result could undermine, if not entirely nullify, the Commission's function to provide for the continuity of service furnished and to determine the circumstances under which a natural gas company could withdraw, abandon, or cease its service. See *Sunray Mid-Continent Oil Co.* v. *F.P.C.*, 364 U.S. 137, 142, affirming 267 F. 2d 471.

[18] *Cf. United States, et al.* v. *Detroit and Cleveland Navigation Co.*, 326 U.S. 236, 241, where the court upheld the Interstate Commerce Commission's forecast of the future public convenience and necessity over an objection that there was no absolute showing that the forecast would come true.

[19] With respect to such area price ceilings it should be noted that the Commission in *El Paso Natural Gas Company, et al.*, Opinion No. 358, issued June 11, 1962, reiterated its position that the area ceiling represents the price line to be held by the Commission in the absence of compelling evidence to show that a higher price is required by the public convenience and necessity.

and in the contemporaneous amendment of its policy statement. (Fifth Amendment 61–1, August 30, 1962.) The wide discrepancy between the area price and the proposed cost-of-service price clearly signals a situation which is not in the public interest under the *CATCO* doctrine. 360 U.S. 378, 391. Any attempt to condition a certificate to Monterey at the lower price would be a futile gesture in view of the position with respect to jurisdiction adopted by the applicant and Humble. Such futility is furthermore apparent since such conditional price would render the entire project economically unfeasible. The complicated interrelated and dependent financial transactions, including Monterey's agreement to pay Humble a fixed contract price and United Fuel's agreement to pay for the gas under a complicated cost-of-service formula, renders it impossible to devise a method by which the Commission could so condition a certificate as to satisfy all the complicated financial arrangements including methods of payment, and at the same time do justice to the *CATCO* mandate.

All the circumstances have been considered pertaining to Monterey's acquisition of the leases and the effects of this transaction on the need and convenience of the public proposed to be served, including the extent and accessibility of this gas supply; the benefits to be derived therefrom in enabling United to meet consumer demands; the terms and conditions of the lease sale and purchase agreements including the price to Monterey of the gas thereunder; the claimed savings accruing to Monterey from acquiring the leases rather than purchasing the gas under gas purchase contracts; and the other benefits allegedly accruing to the public from the nature of the transaction employed here, and we conclude that Monterey's project, as it would include and rely on the acquisition of the King Ranch leases, the exclusion of Commission jurisdiction over the initial sale of the leaseholds and subsisting gas reserves, and acceptance on the basis of the terms of the proposed contracts, is not required by the public convenience and necessity under the requirements of Section 7(e) of the Act. *Cf. Texaco Inc.* v. *F.P.C.*, 290 F. 2d 149, 155.

The objectives of the Columbia companies in attempting to acquire the King Ranch reserves in a manner which will achieve rate stability of course deserve support. Clearly, the King Ranch reserves represent a desirable supply of gas and it is quite understandable that United Fuel has sought to acquire such gas for its use in the interstate market. However, as important as this project is to the Columbia System and to its customers it need not, and should not, be the vehicle for departure from Commission jurisdiction, or for that matter from the Commission's in-line pricing policies. It is clearly apparent that Commission jurisdiction to control effectively the acquisition price of the King Ranch gas either by regulation of the Humble-Monterey transaction or by conditioning any authorization granted to Monterey is essential to any certification of the project. The Commission must exercise its jurisdiction over the price at which natural gas, whether in the King Ranch reserves, or otherwise, will be sold in interstate commerce, and it has no choice but to fulfill its duty in the manner consistent with its statutory mandate. Only a showing of exceptional circumstances and compelling public necessity should be considered any justification for granting certificate authorization under these circumstances. The showing in the instant proceedings fails to warrant such an exception.

In view of the dispositive conclusion reached herein denying Monterey's application for a certificate of public convenience and necessity, no attempt has been made to evaluate the evidence bearing on the other issues involved in the usual 7(c) certificate application case. Suffice it to say, however, that failure to consider such evidence does not indicate blanket approval or acceptance of the applicant's case. Thus, for example, a substantial question is posed by the financial proposals submitted by Monterey. The Staff has raised serious objec-

tions to the financial plan basing such objections upon economic feasibility and stability. Such objections appear to be well founded possibly requiring either detailed conditions or the filing of amended plans of financing to satisfy Commission standards, particularly those requiring that not more than 75 percent of the total capitalization of the company be long-term debt and not less than 15 percent be common equity. See Opinion No. 371, *Transcontinental Gas Pipe Line Corporation*, December 11, 1962, 28 FPC 979 at p. 983 Fn. 7; *Northern Natural Gas Company, et al.*, 22 FPC 164, 169; *Houston, Texas Gas and Oil Corporation, et al.*, 16 FPC 118, 141.

Another issue of great importance involves the rather unique equalization cost proposal designed to effectuate United Fuel's payments to Monterey for the gas to be taken by United under its cost-of-service contract. The Staff strenuously opposes the proposal, for the reason, among others, that permitting such proposal would result in a departure from the cost concept for rate determination not only with respect to the cost of purchased gas but also with respect to taxes. No attempt has been made herein to evaluate either the validity of the objections or the advantages or disadvantages of the proposed equalization formula.

Tennessee Gas Transmission Company's Application for Abandonment Under Section 7(b), Docket No. CP62-291

In its application filed June 11, 1962, Tennessee seeks permission under Section 7(b) of the Act to abandon its "A–K" line consisting of 366.7 miles of 30-inch pipeline extending in a northeasterly direction from its compressor station No. 1, near Agua Dulce, in Nueces County, Texas, to compressor station No. 823, near Kinder, in Jefferson Davis Parish, Louisiana, together with related facilities, easements, rights of way, and compressor station sites.

Tennessee and Monterey have entered into an agreement dated June 1, 1962, in which Tennessee agrees to sell and Monterey agrees to purchase the "A–K" line and the related facilities all of which Tennessee proposes to abandon. In connection with this purchase, a proposed transportation exchange agreement is contemplated between the two parties which will allegedly enable Tennessee to continue performance of the functions now being performed through service from the "A–K" line, with one exception. Tennessee proposes to cure such exception through the proposed purchase by a subsidiary company of an undivided half interest in Humble's present King Ranch to Clear Lake pipeline for $11,000,000. In order for Monterey initially to transport gas for Tennessee through the "A–K" line and in order for Tennessee and Monterey subsequently to exchange gas through utilization of the "A–K" line, Tennessee also seeks authorization to construct and operate two metering stations, one to be a dual six-inch tube installation located at station No. 1, near Agua Dulce, Texas, and the other to be a dual eight-inch tube installation at Tennessee station No. 823, near Kinder, Louisiana, plus piping alterations at both stations. The total cost of the construction and operation of these jurisdictional facilities is estimated to be $92,200 which will be financed from cash on hand.

The Staff opposes the abandonment application, without reference to the entire transaction involved in this consolidated hearing, on the ground that the evidence submitted does not support the conclusion that the abandonment is permitted by the present public convenience and necessity. See *Michigan Consolidated Gas Co.* v. *F.P.C.*, 283 F. 2d 204, cert. denied, 364 U.S. 913. However, the abandonment application, it is clearly apparent, is inextricably intertwined with, constitutes and integral and indivisible part of, and is dependent upon authorization of the Monterey project and resultant approval

of Monterey's acquisition of the "A–K" line and the transportation and exchange agreement between the two parties. It cannot be considered separate and apart therefrom. Tennessee urges that its abandonment to Monterey of the "A–K" line is in the public interest because not only would such transaction avoid duplication of pipelines but there would also be a resultant greater utilization of existing facilities. Furthermore, it is alleged, the abandonment and substitution would also result in substantial economies. These claims cannot be sustained without reference to the substitute arrangements which are bottomed upon authorization and approval of the Monterey project in these proceedings. Accordingly, this dependent application must fall in view of the denial of the application upon which its possible validity depends. The application for abandonment in this docket is, therefore, denied.

Columbia Gulf, United Fuel, and Ohio Fuel Applications, Docket Nos. CP62–89, 90, and 91

The applications for certificates requested by Columbia Gulf, United Fuel, and Ohio Fuel, authorizing construction and operation of facilities required for the 1962–63 heating season for the summer of 1963, are unopposed. The conventional issues generally considered in certificate application proceedings were not raised by the Staff or any other parties as contested questions requiring special rulings by the Examiner. The evidence submitted in support thereof satisfies the usual criteria required in Section 7(c) applications without reference or dependence upon Monterey for a gas supply.

Temporary certificates have already been issued to these applicants authorizing them to construct and operate all the facilities which they had requested in their original applications for the 1962–63 heating season. The necessity for the condition attached to the temporary certificate issued to Columbia appears to be supported by the evidence adduced at the hearing, and, consequently, the permanent certificate issued to Columbia should be conditioned to provide that "no part of the facilities herein authorized shall be used to transport any additional gas purchase by Columbia Gulf purportedly for compressor fuel or any other company use.

In connection with any certificate issued to the Columbia System companies in these proceedings Tennessee has requested that the final order be conditioned to "provide a condition that the constituent companies in the Columbia System be required to maintain as high a load factor in their purchases from Tennessee as they maintain from any other pipeline suppliers including their controlled supplier, Columbia Gulf." Tennessee also urged the Commission to attach a similar condition to the temporary authorization issued to Columbia Gulf. The Commission, in its letter dated August 14, 1962, effectively disposed of such issue by stating, "So long as the Columbia companies purchase gas from Tennessee in accordance with the provisions of Tennessee's filed F.P.C. Gas Tariff it appears that Tennessee has no just cause for complaint. It would not be appropriate for the Commission in a certificate proceeding, without notice to all parties, to change the provisions of a filed tariff." The evidence adduced at the hearing does not support any contrary conclusion. Accordingly, Tennessee's request for such condition is denied.

ADDITIONAL FINDINGS AND CONCLUSIONS

The following findings are made upon consideration of the record made of these proceedings and constitute a summary of and are deemed to be supplementary to, the foregoing findings and conclusions:

(1) Monterey Gas Transmission Company is a Delaware corporation with its principal place of business located in Houston, Texas. Upon completion of the proposed construction of the proposed project and commencement of operations thereunder, Monterey would be a natural gas company within the purview of the Natural Gas Act.

(2) The facilities, as proposed by Monterey, would be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission and the construction and operation thereof by Monterey are subject to the requirements of Section 7, subsections (c) and (e) of the Natural Gas Act.

(3) The proposed sale of the leasehold interests and the gas reserves contained therein, under the contract between Humble and Monterey, is subject to the jurisdiction of the Federal Power Commission.

(4) The acquisition, construction, and operation of the facilities including the service to be provided as proposed by Monterey are not required by the public convenience and necessity and a certificate therefor should not be issued and an order should be entered denying the application for such certificate.

(5) The facilities proposed to be abandoned by Tennessee as hereinbefore described and as more fully described in the application herein are used in the transportation and sale of natural gas in interstate commerce and are subject to the jurisdiction of the Commission. Such abandonment is subject to the requirements of Section 7(b) of the Natural Gas Act.

(6) The proposed abandonment by Tennessee is neither permitted nor required by public convenience and necessity and permission and approval therefor should be denied.

(7) The applicant, Columbia Gulf Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a natural gas company within the meaning of the Natural Gas Act.

(8) The applicant, United Fuel Gas Company, a West Virginia corporation having its principal place of business in Charleston, West Virginia, is a natural gas company within the meaning of the Natural Gas Act.

(9) The applicant, The Ohio Fuel Gas Company, an Ohio corporation having its principal place of business in Columbus, Ohio, is a natural gas company within the meaning of the Natural Gas Act.

(10) The facilities of the Columbia applicants hereinbefore described are proposed to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission and the construction and operation thereof by the Columbia applicants are subject to the requirements of Section 7, subsections (c) and (e) of the Natural Gas Act.

(11) The construction and operation of the facilities hereinbefore described as proposed by the Columbia applicants for the 1962–63 heating season are required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

(12) The public convenience and necessity required that the general terms and conditions as set forth in paragraphs (a), (b), (c) and (e) of Section 157.20 of the Commission's Regulations shall attach to the issuance of the certificates to the Columbia applicants.

ORDER

Wherefore, *it is ordered*, Subject to review by the Commission on appeal, or review by the Commission on its own motion as provided by its Rules of Practice and Procedure, that:

(A) The application by Monterey for permission and approval of the acquisition, construction, and operation of the facilities including the services thereby

provided as proposed in its application and as more fully described in said application and exhibits in this proceeding is hereby denied.

(B) The application by Tennessee for permission and approval of its abandonment of its "A–K" line and the facilities hereinbefore described and more fully described in the application and exhibits in this proceeding is hereby denied.

(C) Permanent certificates of public convenience and necessity shall be issued authorizing Columbia Gulf Transmission Company, United Fuel Gas Company, and The Ohio Fuel Gas Company to construct and operate the proposed facilities and to transport natural gas as hereinbefore described in the applications of these companies in this proceeding for the 1962–63 heating season subject to the condition imposed upon Columbia Gulf Transmission Company to the effect that no part of the facilities herein authorized shall be used to transport any additional gas purchased by Columbia Gulf purportedly for compressor fuel or other company use.

(D) The certificates granted in paragraph (C) and the rights granted thereunder are conditioned upon the applicants' compliance with all applicable Commission regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of said regulations.

MAX L. KANE,
Presiding Examiner

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

ORDER NO. 271

AMENDING REGULATIONS TO GOVERN THE FILING OF RATE SCHEDULES BY PUBLIC UTILITIES AND LICENSEES, DOCKET NO. R–227

(Issued September 26, 1963)*

The Commission has under consideration in this proceeding the amendment of Part 35—Filing of Rate Schedules, of Subchapter B—Regulations under the Federal Power Act, of Chapter I of Title 18 of the Code of Federal Regulations, to prescribe revised regulations governing the filing of rate schedules by public utilities and licensees.

Part 35 corresponds to and appears at pages 60–67 of the Commission's pamphlet publication of its Regulations under the Federal Power Act. It was included as part of the Regulations under the Federal Power Act by Order No. 141, effective January 1, 1948 (12 F.R. 8498), as amended by Order No. 158, effective May 1, 1951 (16 F.R. 2388).

This amendment completely revises the present regulations. More detailed cost and other data will be required hereafter in support of rate schedule submittals, which will enable the Commission to process rate schedule filings more expeditiously.

This proceeding was commenced by notice of proposed rulemaking served upon interested parties, including State and Federal regulatory agencies, and by publication in the Federal Register on January 4, 1963 (28 F.R. 128). Copies of the proposed regulations were served and published as a part of that general notice. Subsequent to the general public notice of rulemaking in this pro-

*Published in The Federal Register on October 2, 1963 (28 F.R. 10572).

ceeding, comments and suggestions were filed by the following classes of respondents:[1]

Public Utilities	57
State Commissions	8
Accounting Firms	1
Law Firms	1
Total	57

The majority of the comments were directed to the cost of service data required to be filed in support of rate schedule filings, and particularly to the data required to be submitted under Section 35.13 in support of rate increases. Most of the parties filing comments stated that they considered this data to be burdensome and costly to compile. Many parties stated that the required cost of service data is not appropriate for power pooling and interchange agreements, and several objected to the required submission of over-all cost of service data. Objection was also made to the requirement of an opinion of an independent public accountant.

Accordingly, several changes have been made in Section 35.13. The cutoff figure for rate increases which will require a full cost of service showing has been increased from $5000 to $50,000; the rate of return information required has been reduced substantially; and the requirement of an opinion of an independent public accountant has been eliminated. In addition, for rate increases comprising an integral part of coordination and interchange arrangements in the nature of power pooling transactions, only a summary statement of cost computations is required, rather than the detailed cost data required to be filed in support of other rate increases.

The requirement of over-all cost of service data, where applicable, has been retained because it is necessary to assess cost components recoverable through rates which are not subject to this Commission's jurisdiction in order to make the essential allocations between jurisdictional and nonjurisdictional factors. The remaining detailed cost data, which has been retained, is necessary for expeditious processing of rate schedule filings by the Commission.

There was also a substantial number of comments directed to the basic priniciples for design of fuel clauses. These principles have been simplified and numerous clairfying editorial changes have been made. It is anticipated that this simplification and clarification will satisfy many of the objections which were made to the fuel clause principles.

Clarifying editorial changes have also been made in several other sections of the Regulations, in response to suggestions made in the written comments.

Other comments not incorporated in the revision of the Regulations were rejected because they were considered to be unnecessary or impractical. Several requests were made for a hearing. Since the parties have set forth their positions fully and completely in their written presentations, further amplification of these views in a hearing would serve no constructive purpose.

The Commission finds:

(1) The notice and opportunity to comment in this rulemaking proceeding with respect to the matters presently before the Commission through the sub-

[1] All parties were given to and including February 5, 1963, which date was later extended to March 1, 1963, to submit views and comments in writing concerning the aforesaid proposed revisions in the Commission's Regulations to Govern the Filing of Rate Schedules by Public Utilities and Licensees.

mission, in writing, of data, views, comments and suggestions in the manner described above are consistent and in accordance with all procedural requirements therefor as prescribed in Section 4 of the Administrative Procedure Act (60 Stat. 238; 5 U.S.C. 1003).

(2) In view of the foregoing, and upon consideration of all relevant matters presented, it is necessary and appropriate for the purposes of the Federal Power Act that Part 35—Filing of Rate Schedules, of Subchapter B—Regulations under the Federal Power Act, of Chapter I of Title 18 of the Code of Federal Regulations be amended in its entirety as hereinafter provided.

(3) Good cause exists for the amendment of the Regulations to Govern the Filing of Rate Schedules by Public Utilities and Licensees, effective November 1, 1963; all as hereinafter provided.

The Commission acting pursuant to its authority under the Federal Power Act, as amended, particularly Sections 19, 20, 205, 206(a), 208, 209, 301, and 309 thereof (41 Stat. 1073, 49 Stat. 851, 852, 853, 854, 858; 16 U.S.C. 812, 813, 824d, 824e(b), 824g, 824h, 825, and 825h), *orders:*

(A) Part 35—Filing of Rate Schedules, of Subchapter B—Regulations under the Federal Power Act, of Chapter I of Title 18 of the Code of Federal Regulations is amended in its entirety to read as follows:

(B) This order shall become effective on November 1, 1963.

(C) The Secretary of the Commission shall cause prompt publication of this order to be made in the Federal Register.

Commissioner Ross *dissenting* to that part of Section 35.14(a)(i), prescribed by this order, which requires a public utility "at least every five years" to make appropriate amendments in fuel clauses of its filed rate schedules.

Commissioner Black *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G–13221, ET AL.; ROBERT B. PRENTICE, ET AL., DOCKET NO. G–18710, ET AL.[1]

ORDER APPROVING RATE SETTLEMENT PROPOSAL, SEVERING AND TERMINATING PROCEEDINGS, PRESCRIBING REFUNDS, AND ISSUING A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 26, 1963)

On August 7, 1963, Robert B. Prentice, *et al.* (Prentice), filed a Settlement Proposal encompassing its currently effective gas rate schedules. No objections or protests to said proposal have been filed.

In summary the settlement proposal provides:

(1) In one instance a settlement rate, including tax reimbursement, below the applicable area ceiling, and, in the other, a rate which is an exception to said ceiling;

(2) Prentice waives the right to file for contractually authorized increased rates until July 1, 1966. Prentice reserves the right to file for any increased rates, if contractually authorized, up to the applicable area-rate levels determined through area hearing, or other proceeding, or by amendment of the Commission's Statement of General Policy No. 61–1, or any contractually authorized increase in tax reimbursement;

[1] See the appendix hereto for the additional dockets and applicable proceedings.

(3) Extension of the make-up period under the take-or-pay provision in Prentice's FPC Gas Rate Schedule No. 2 from the present one year period to five years;

(4) Refunds, with interest at the applicable rate, under the rate schedule where collection was made subject to refund, of the difference between the revenues actually collected and those which would have been collected at the applicable initial ceiling rate, for a period of five months preceding the date of issuance of an order approving said settlement proposal.

In support of its proposal, Prentice states that the settlement rates, moratorium periods and other provisions thereof, some of which are not specifically noted herein, with the added benefit of termination of its rate proceeding, are in the public interest in that the proposed rates are reasonable, and will provide price stability for a long period of time for natural gas moving in interstate commerce.

With respect to refunds, the various parties to the settlement conferences utilized cost of service studies. Such studies revealed that Prentice's costs for its jurisdictional sales of natural gas exceeded its jurisdictional revenues. However, its proposed increased rate, which it had been charging and collecting, subject to refund, exceeded the applicable area ceiling for initial service. Consequently, we believe it appropriate that Prentice make refunds for amounts collected by it over and above said ceiling rate for the period agreed to by the parties herein. Prentice's future annual revenues will be decreased approximately fifteen percent as a result of the settlement.

One of the proposed settlement rates is an exception to the applicable area ceiling. This is a sale to United Gas Pipe Line (United) by Prentice in the Houma Field, Terrebonne Parish, Louisiana. Prior to May 14, 1959, this sale was made under a ten year contract, which was to expire in 1960. On May 14, 1959, Prentice and United entered into two contracts for twenty-year terms, and subsequent thereto Prentice dedicated additional acreage to the sale, which resulted in increased annual deliveries under these contracts.[2]

The renegotiated contracts were filed on August 21, 1959, and concurrently therewith, Prentice filed a proposed increase in rate thereunder, under Section 4 of the Act. The renegotiated contracts were filed in Docket No. G–19292, and the proposed increase in rate was subsequently suspended and proceedings initiated in Docket No. G–19475. The renegotiated contracts did not encompass any acreage which was not covered by the certificate originally granted Prentice in Docket No. G–9018, and therefore, such filings should properly have been considered as amendments to the original filing. Therefore, we shall sever Docket No. G–19292 from the proceedings in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, and cancel such proceeding.

The current rate for gas sold under the renegotiated contracts is 23.25 cents per Mcf, while the settlement rate is 17.5 cents per Mcf. The proposed settlement rate therefore exceeds the increased rate ceiling, but is below the initial rate ceiling. In view of the above circumstances, we find the settlement rate of 17.5 cents per Mcf for this sale to be proper, and approve the same.

The settlement proposal includes one rate for which issuance of a related permanent certificate is pending (Rate Schedule No. 2, Docket No. G–18710). This proceeding was consolidated with the proceeding in *Union Texas Petroleum, et al.*, Docket No. G–13221; *et al.*, wherein the hearings were concluded on July

[2] One contract is for natural gas produced from "shallow" horizons, and the second is for natural gas produced from "deep" horizons. A definite and certain drilling obligation was imposed upon Prentice by the deep horizon contract.

25, 1963. Consequently, we shall sever Prentice's application from *Union Texas* and shall issue it a certificate of public convenience and necessity herein.

Our action herein should not be construed as constituting approval of any future rate increase, if any, that may be filed under the subject rate schedules, and is without prejudice to any findings or order of the Commission in any future proceedings, involving Prentice's rates and rate schedules.

The Commission finds:

(1) The proposed settlement of the subject proceedings on the basis described herein, as more fully set forth in the settlement proposal filed on August 7, 1963, as herein modified, is in the public interest and it is appropriate in carrying out the provisions of the Natural Gas Act that it be approved and made effective, and good cause exists for approving the settlement rates, for terminating proceedings, and providing for refunds.

(2) The sale of natural gas by Prentice, as more fully described in its application, will be made in interstate commerce, subject to the jurisdiction of the Commission, and such sale by Prentice together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The sale of natural gas by Prentice together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity and a certificate therefor should be issued.

(4) Prentice is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

The Commission orders:

(A) The settlement of these proceedings on the basis of the Settlement Proposal, filed August 7, 1963, is approved and made effective.

(B) The applicable settlement rates set out in the appendix hereto is approved and such rates shall be effective as of the date of issuance of this order.

(C) Within 90 days from the date of this order, Prentice shall make such filings under its rate schedules as are required to make effective the terms of the Settlement Proposal.

(D) Within 90 days from the date of this order, Prentice shall (1) refund, with interest as specified computed to the date of actual refund, the difference between the rate collected subject to refund, for a period five months prior to the issuance of this order and the related settlement rate; and (2) report to the Commission, in writing, the amount of refunds made to its purchaser, showing separately the amount of principal and interest so paid, and the bases used for such determination, together with releases from its purchaser showing receipt of the refunds in conformity with the Settlement Proposal as approved herein.

(E) The proceedings in Docket No. G–18710 are hereby severed from the consolidated proceedings in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*

(F) A certificate of public convenience and necessity be and the same is hereby issued in Docket No. G–18710, upon the terms and conditions of this order, authorizing the sale by Prentice of natural gas in interstate commerce for resale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary for such sale, all as fully described in its application and exhibits in this consolidated proceeding.

(G) The certificate granted in paragraph (F) above is not transferable and shall be effective only so long as Prentice continues the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(H) The grant of the certificate issued in paragraph (F) above shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's Regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Prentice. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contracts herein involved. Nor shall the grant of the certificate aforesaid for service to the particular customer involved imply approval of all of the terms of the respective contracts, particularly as to the cessation of service upon termination of said contracts, as provided by Section 7(b) of the Natural Gas Act. Nor shall the grant of the certificate aforesaid be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sales of natural gas subject to said certificate.

(I) Docket No. G–19292 is hereby severed from the proceedings in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, and is hereby canceled.

(J) Upon full compliance by Prentice with all the terms and provisions of this order applicable to it, the section 4(e) proceeding in Docket No. G–19475, listed in the appendix hereto, shall terminate.

(K) This order is without prejudice to any findings or orders which have been or may be made hereafter by the Commission, and is without prejudice to claims or contentions which may be made by Prentice, the Commission staff, or any affected party hereto, in any proceedings now pending, or hereafter instituted by or against Prentice or any other companies, person or parties affected by this order.

Commissioner Black *not participating.*

APPENDIX A

ROBERT B. PRENTICE, ET AL., DOCKET NO. G–18710, ET AL.

Rate schedule No.	Field	Purchaser	Contract date	Certificate docket	Initial rate	Last firm rate	Last effective rate	Settlement rate [f]
					Cents	*Cents*	*Cents*	*Cents*
2	Hollywood	United G.P.L. Co.	5–14–59	G–18710 [a]	[b] 20.25	20.25	20.25	20.25
[c] 3	Houma	do	5–14–59	G–19292 [d]	10	10	[e] 23.25	17.5

[a] Temporary authorization issued June 30, 1959. No rate condition.

[b] 18.5¢ base price, plus 1.75¢ tax reimbursement.

[c] The original contract covering this sale, dated March 13, 1950, provided for a ten-year term extending into 1960. It was filed with the Commission by letter dated June 6, 1955, and was designated as Rate Schedule No. 1. This contract was later superseded by two contracts, both executed May 14, 1959, one covering "shallow" gas and the other covering "deep" gas. The "shallow" gas contract was designated as Rate Schedule No. 3. The "deep" gas contract was designated as Supplement No. 2 to Rate Schedule No. 3. The rate provided by Rate Schedule No. 3 was suspended by order issued September 18, 1959, in Docket No. G–19475.

[d] Upon application seeking authorization for the sale under the March 13, 1950, contract, the Commission issued a certificate of public convenience and necessity on January 4, 1956, in Docket No. G–9018.

[e] 21.5¢ base price, plus 1.75¢ tax reimbursement.

[f] The total settlement rates set out above, as applicable to each sale to United, include a commodity rate and tax reimbursement. The reimbursement portion of each such total settlement rate shall be that portion expressed as tax reimbursement in each respective contract and the remaining balance of such total settlement rate shall be considered as the commodity rate.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

HASSIE HUNT TRUST, DOCKET NO. RI64–53; WILLIAM HERBERT HUNT TRUST ESTATE, DOCKET NO RI64–54

ORDER DENYING MOTION FOR RECONSIDERATION

(Issued September 27, 1963)

On August 29, 1963, Hassie Hunt Trust (Hassie Hunt) and William Herbert Hunt Trust Estate (William Herbert Hunt) filed a motion for reconsideration[1] of the Commission's suspension order issued July 31, 1963, in Docket Nos. RI64–53 and RI64–54, 30 FPC 413, requesting that the Commission vacate its suspension order.

The proceeding in Docket No. RI64–53 involves a proposed increase in rate from 13.8733 cents per Mcf to 14.3733 cents per Mcf for sales of gas to Texas Eastern Transmission Corporation from Southwest Speaks Field, Lavaca County, Texas (Railroad District No. 2). The proposed increased rate[2] was suspended until January 1, 1964 and thereafter until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

The proceeding in Docket No. RI64–54 involves a proposed increase in rate from 13.8733 cents per Mcf to 14.3733 cents per Mcf for sales of gas to Texas Eastern Transmission Corporation from Arneckeville Field, DeWitt County, Texas (Railroad District No. 2). The proposed increased rate[3] was suspended until January 1, 1964, and thereafter until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

The proposed rates of 14.3733 cents per Mcf were suspended as in excess of the applicable 14.6 cents per Mcf increased rate ceiling because they were considered to be equivalent to rates of 14.8733 cents per Mcf when the cost to the buyer of 0.5 cent per Mcf for dehydration and central point delivery was taken into consideration.

In support of their motion, Hassie Hunt and William Herbert Hunt contend that there is no cost to Texas Eastern for dehydration because dehydration is performed at Socony Mobil Oil Company's (Socony) Goliad plant[4] and that the cost of delivery is minimal because of the short distance of Hunt's wells from Texas Eastern's transmission line. They conclude on the foregoing basis that the proposed rates of 14.3733 cents per Mcf, plus the actual cost to Texas Eastern for dehydration and central point delivery, are less than the 14.6 cents per Mcf area price level for Texas Railroad Commission District No. 2, as established under the Second Amendment to the Commission's Statement of

---

[1] Hassie Hunt and William Herbert Hunt termed their motion as an application for rehearing and reconsideration. Applications for rehearing of an interlocutory order such as here involved, may not properly be filed. [Section 1.30(e) of the Rules of Practice and Procedure (18 CFR 1.30(e)).] The instant tender has been considered as a motion for reconsideration pursuant to Section 1.12 of the Commission's Rules of Practice and Procedure.

[2] The increased rate filing was designated as Supplement No. 14 to Hassie Hunt Trust FPC Gas Rate Schedule No. 2.

[3] The increased rate filing was designated as Supplement No. 13 to William Herbert Hunt Trust Estate FPC Gas Rate Schedule No. 2.

[4] Hunt's position, however, fails to take cognizance of the fact that the dehydration cost of Socony is offset against Texas Eastern's transportation charge when the processing plant is in operation, and when the processing plant is not in operation under the contract between Texas Eastern and Socony there is a one-fourth cent per Mcf charge by Socony for dehydration.

General Policy No. 61–1,[5] and, therefore, the increased rate filings should not have been suspended.

The area price levels set forth in the Statement of General Policy No. 61–1, as amended (18 CFR, Chapter I, Part 2, Section 2.56), are applicable to pipeline quality gas as that term is generally understood in each area. The announced price levels for Texas Railroad Commission District No. 2 are considered to apply to sales of dehydrated natural gas with delivery at a central point in the field. Texas Eastern maintains a standard contract differential of 0.5¢ per Mcf for dehydration of gas to 7 pounds of water per 1,000,000 cubic feet, and central point delivery in the area. Since the actual cost for the dehydration and central point delivery of Hassie Hunt's and William Herbert Hunt's gas is not ascertainable pending a hearing, it was proper for us to utilize the standard 0.5¢ differential for the limited purposes of exercising our discretionary suspension functions under Section 4(e) of the Act. Specifically, petitioners are not entitled to have factual issues resolved in their favor without a hearing whenever they file increased rates and the Commission must within the 30 day statutory period decide whether to allow them to become effective or suspend them. Accordingly, the proposed rates were properly suspended because they appear to exceed the 14.6¢ per Mcf applicable area rate ceiling under the Second Amendment.[6]

The Commission finds:

The motion for reconsideration filed by Hassie Hunt and William Herbert Hunt on August 29, 1963, in the above-designated proceedings, sets forth no new facts or legal considerations which were not fully considered prior to the issuance of our order of July 31, 1963, or which now having been considered, warrant the modification of said order.

The Commission orders:

Hassie Hunt Trust's and William Herbert Hunt Trust's August 29, 1963, motion for reconsideration of the Commission's order issued July 31, 1963, in the proceedings in Docket Nos. RI64–53 and RI64–54, is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

KASKASKIA NATURAL GAS COMPANY, DOCKET NO. CP63–326

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued September 27, 1963)

On May 28, 1963, as supplemented on June 28 and July 23, 1963, Kaskaskia Natural Gas Company (Applicant) filed in Docket No. CP63–326 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Com-

[5] The Second Amendment price ceiling is applicable, since pursuant to a settlement agreement accepted by the Commission's orders issued May 29, 1963, petitioners eliminated favored nation and price redetermination clauses from the contracts which relate to the subject rate schedules.

[6] The suspended rate increases will in due time be consolidated with the area hearing governing Texas Railroad District No. 2, and we will determine therein the materiality of any claim that an individual producer is entitled to special consideration as a result of any differences which may exist in the cost of processing its gas to bring it up to pipeline quality.

mission directing Natural Gas Pipeline Company of America (Natural) to establish physical connection of its transmission facilities at a point in Marion County, Illinois, with facilities proposed to be constructed by Applicant, and to sell and deliver to Applicant 400 Mcf of natural gas per day for resale and distribution in the community of Kinmundy, Illinois, as hereinafter described, all as more fully described in the application.

Applicant proposes to construct and operate a 4.2-mile 2-inch lateral transmission line, with appurtenant facilities, and a distribution system to serve the community of Kinmundy. The estimated cost of these facilities is $140,000, to be financed by the issuance of common stock and mortgage notes. Applicant's third-year maximum requirements are estimated to be 400 Mcf of natural gas per day, and 35,800 Mcf per annum (at 14.73 psia).

Applicant has received appropriate authorization from Kinmundy and the Illinois Commerce Commission.

On June 12, 1963, Natural advised the Commission that it is willing to provide the requested connection and service. Natural estimates its cost of installing facilities at the new delivery point at $11,320.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on August 29, 1963 (28 F.R. 9488). No protest, petition to intervene or request for hearing has been received.

The Commission finds:

(1) Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) Applicant, Kaskaskia Gas Company, an Illinois corporation having its principal place of business in Salem, Illinois, is duly authorized to engage in, and will engage in, the distribution of natural gas in the community of Kinmundy, Illinois, upon the completion and operation of the facilities proposed to be constructed as hereinbefore described.

(3) It is necessary and desirable in the public interest to direct Natural Gas Pipeline Company of America to establish physical connection of its transmission facilities with those proposed to be constructed and operated by Applicant, and to sell and deliver natural gas to Applicant under Natural's appropriate rate schedules on file with the Commission, for resale as described in the application in this proceedings.

(4) Natural should be required to sell and deliver to Applicant up to its estimated third year peak day requirement of 400 Mcf of natural gas per day and such requirement will not place any undue burden on Natural nor impair its ability to render adequate service to its existing customers.

(5) Applicant should be prepared to receive natural gas from Natural within one year from the date on which this order issues.

The Commission orders:

(A) Natural Gas Pipeline Company of America be and it is hereby directed to establish physical connection of its transmission facilities with the proposed facilities of Applicant, and to sell and deliver up to 400 Mcf per day to Applicant, all as hereinbefore described and as set forth in the application in this proceeding.

(B) Applicant shall be prepared to receive natural gas from Natural within one year from the date on which this order issues.

(C) Natural shall report to the Commission in writing the date of commencement of service to Applicant within ten days after said commencement.

OPINION NO. 404

NORTHERN NATURAL GAS COMPANY, DOCKET NOS. CP62-85 AND CP62-178; IOWA ELECTRIC LIGHT & POWER COMPANY, CP62-119; AMERICAN GAS COMPANY OF WISCONSIN, INC., CP63-34; WISCONSIN SOUTHERN GAS COMPANY, INC., CP63-11; CITY OF TIPTON, IOWA, CP63-54

OPINION AND ORDER ADOPTING IN PART AND MODIFYING IN PART DECISION OF THE PRESIDING EXAMINER

(Issued September 30, 1963)*

Syllabus

1. The 12-year deliverability standard has never been so rigid that Commission would ignore circumstances justifying a departure therefrom. P. 862.
2. Pipeline's showing with respect to gas supplies and reserves is such that its 10-year deliverability life is sufficient to meet requirements of its presently certificated and anticipated increased markets as proposed . P. 863.
3. General rule is that firm commitments will be required only where the contemplated large volume industrial sales appear to have a strong bearing on economic feasibility of expansion project and where there is reason to question whether in fact sales will be made. P. 864.
4. To properly determine whether signed contracts should be required for proposed industrial sales, it is necessary to calculate relative importance of each individual sale to the total revenues from applicable branch line. P. 865.
5. Under instant circumstances industrial sales which account for more than 15 percent of projected branch line revenues require signed contracts. P. 865.
6. Proposed base zone feasibility test *rejected* as unreasonable and unneeded—rather each branch line must be tested for feasibility upon revenues it will actually receive as measured against incremental costs which will actually be incurred, using best projection available at time of proposal. P. 866.
7. Commission *approves* employment of branch line feasibility test of Opinion No. 324. P. 866.
8. Aggressive branch line extension policy is in the public interest; Commission encourages such investment and service where there is no significant threat of detriment to present customers of pipeline. P. 866.
9. Cost of additional system compression facilities, benefiting all mainline customers, cannot properly be used to measure economic feasibility of the branch lines. P. 867.
10. Curtailment of overrun sales *rejected* as factor in determination of branch line feasibility. P. 867.
11. Commission *issues* certificates of public convenience and necessity under Section 7, of the Natural Gas Act. P. 868.

Justin R. Wolf, C. A. Case, Jr., Donegan Mann, L. I. Shaw, F. Vinson Roach and *D. B. O'Brien* for Northern Natural Gas Company.

John F. Gaston and *Ted P. Lewis* for Iowa Electric Light & Power Company.

Albert J. Feigen for American Gas Company of Wisconsin, Inc. and City of Tipton, Iowa.

Glen H. Bell for Wisconsin Southern Gas Co., Inc.

Richard M. Merriman, Peyton G. Bowman, III and *Donald R. Ross* for Great Plains Natural Gas Company.

*Initial decision appears on p. 869.

John W. Scott and *Louis L. DaPra* for Minnesota Valley Natural Gas Company.

John A. McGrath, Jerome S. McGrath and *Thomas C. Williams* for Fuels Research Council, Inc., Midwest Coal Producers Institute, National Coal Association, United Mine Workers of America and Upper Lake Docks Coal Bureau, Inc.

William E. Torkelson and *Leonard Bessman* for Wisconsin Public Service Commission.

Lloyd J. Marti for Western Power & Gas Company.

Robert S. Hunt for Northwestern Public Service Company.

George C. Pardee for Metropolitan Utilities District of Omaha.

A. R. Renquist for Northern States Power Company.

Edward J. Hartman for Iowa-Illinois Gas and Electric Company.

Mark W. Putney for Iowa Power and Light Company.

Justin A. Stanley for Northern Illinois Gas Company.

C. A. Ellwanger for Iowa Public Service Company.

George C. Mastor and *Patrick L. Farnand* for Minneapolis Gas Company.

Eugene O. Gehl and *R. J. Sutherland* for Wisconsin Power and Light Company.

Willard S. Stafford, Charles V. Shannon and *Louis Flax* for Milwaukee Gas Light Company.

W. F. Spurrier and *Ned Willis* for North Central Public Service Company.

Henry F. Lowe for NR Gas, Inc.

Robert Edward Losch for North Central Public Service Company and New Richmond Gas Company.

David S. Lichtenstein and *John J. Mullally* for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

O'CONNOR, *Commissioner:*

This consolidated proceeding is before us on exceptions to the Presiding Examiner's decision issued on April 26, 1963. That decision would grant certificates of public convenience and necessity under Section 7 of the Natural Gas Act, as amended, (the Act) to Northern Natural Gas Company (Northern) authorizing it to construct and operate certain facilities in order to initiate natural gas service to 76 communities in the states of Nebraska, Iowa, Minnesota, and Wisconsin and to increase its system capacity to meet the increased contract demand of its present customers. As set forth below, we are granting the applications with modifications.

Northern owns an interstate pipeline system originating in the Panhandle of Texas and extending northeasterly through Kansas, Nebraska, and Iowa with branches running east to Dubuque, Iowa, north to Minneapolis, Minnesota, and parts of Wisconsin and northwest into South Dakota. Northern's application in Docket No. CP62-85 proposes the construction and operation of facilities consisting of a mainline loop, branchlines and appurtenant facilities estimated at a cost of $16,126,800 to provide service to 71 communities in the above-mentioned states. The cost of these facilities is proposed to be financed from cash on hand and operating revenues.

Applications were filed pursuant to Section 7(a) of the Act by Iowa Electric Light and Power Company (Docket No. CP62-119), American Gas Company of Wisconsin, Inc. (Docket No. CP63-34), Wisconsin Southern Gas Company, Inc. (Docket No. CP63-11) and City of Tipton, Iowa (Docket No. CP63-54).[1] These distributors requested orders of the Commission directing Northern to construct certain branchline and measuring facilities and to sell natural gas to each

[1] Additionally, Great Plains Natural Gas Company (Great Plains) filed a Section 7(a) application (Docket No. CP63-78). By order issued January 2, 1963, the Commission granted Great Plains' motion filed November 13, 1962, to withdraw its application.

for resale in five communities. Their applications were consolidated with Northern's application in Docket No. CP62–85. Thus, the combined proposals are to serve 76 new communities, 47 of which are in Wisconsin,[2] 15 in Minnesota, 13 in Iowa and 1 in Nebraska. Northern proposes to supply from its Redfield, Iowa underground storage field 53,454 Mcf per day of contract demand to these communities in their third year of service. To supply the pipeline capacity for the requirements of these 76 communities, Northern proposes to construct and operate 14.1 miles of 26-inch mainline loop east of its Waterloo, Iowa compressor station and the necessary branchlines and measuring stations, at an estimated cost of $17,883,500 including interest and overhead. Upon completion of these facilities, Northern will have a system salable capacity of 1,876,973 Mcf per day.

In Docket No. CP62–178 Northern requests authority to construct and operate additional facilities required to provide certain of its existing customers 34,718 Mcf per day of increased contract demand. To meet these increased requirements Northern proposes to install 3,000 horsepower of compression at its Redfield, Iowa, compressor station and to turbo-charge two existing 2,000 horsepower units to 2,700 horsepower each for a total increase of 4,400 horsepower at the Redfield Station. In addition, Northern will construct 2.4 miles of 30-inch pipeline loop north of South Sioux City, Nebraska. The estimated $1,853,400 cost of these additions, including interest and overhead, is to be financed by short term loans and funds on hand. Northern also requests in this docket that the authorized maximum inventories for the St. Peter-Elgin Reservoir be increased from 40 billion cubic feet to 50 billion cubic feet and for the Mt. Simon Reservoir from 56 billion cubic feet to 70 billion cubic feet. On October 5, 1962, the Commission issued a temporary certificate authorizing the sale of the additional contract demand and the increase in maximum storage inventories as requested in Northern's application in Docket No. CP62–178.[3]

---

[2] Included in these 76 communities is the community of Monroe, Wisconsin, served by North Central Public Service Corporation (North Central). This community was originally proposed for service in Docket No. CP 62–85. Subsequent to filing and before hearing commenced, the Commission, by order issued November 16, 1962, in Docket No. CP62–292, directed Northern to establish physical connection of its facilities with the facilities of North Central and to sell gas to North Central for resale in Monroe. As stated in that order, it was agreed by Northern and North Central that Northern would purchase the necessary branchlines and appurtenant facilities to be constructed by North Central, on condition that such purchase is authorized in Docket No. CP62–85. Northern amended its application in that docket to apply for such authority (Tr. 2191).

[3] Northern's application in Docket No. CP62–85 was filed on September 29, 1961, supplemented on January 12, 1962, and amended on April 30, 1962. Northern's application in Docket No. CP62–178 was filed on February 5, 1962, and amended on May 9, 1962, September 4, 1962, and September 24, 1962. By order issued October 19, 1962, the 7(a) applications were consolidated with Northern's application in Docket No. CP62–85. Wisconsin Public Service Commission filed notice of intervention in these proceedings and the Commission permitted intervention by 25 additional parties. There were 22 days of hearing, commencing October 23, 1962, and concluding February 1, 1963. Briefs were exchanged and the Presiding Examiner's decision was issued on April 26, 1963. Exceptions to the examiner's decision were filed by Northern; jointly by Fuels Research Council, Inc., National Coal Association, United Mine Workers of America, Mid-West Coal Producers Institute, Inc. and Upper Lake Docks Coal Bureau, Inc. (hereinafter referred to as the Coal Intervenors); jointly by Iowa Power and Light Company, Metropolitan Utilities District of Omaha, Minneapolis Gas Company, Northern States Power Company and Western Power and Gas Company (hereinafter referred to as Joint Intervenors) and by Wisconsin Southern Gas Company. Minnesota Valley Natural Gas Company (Minnesota Valley) filed a response to the exceptions of Joint Interveners. On May 13, 1963, four interveners filed a joint motion for opportunity to present oral argument. This motion was denied by order issued June 3, 1963.

The examiner found that Northern's evidence satisfied the conventional elements of public convenience and necessity, that Northern is able and willing to perform the service proposed and that certificates accordingly should be issued subject to the conditions contained in Ordering Paragraphs (B) and (C) of his decision.

Considering the facts of record we find that the basic elements properly to be considered in determining public convenience and necessity, as contained in the Natural Gas Act and as applied in the Commission and judicial decisions, have been amply satisfied.

The Issues.—The principal issues in this proceeding are the adequacy of Northern's gas reserves to meet the proposed expansion of service; the reasonableness of the market estimates; the necessity of obtaining firm commitments from interruptible customers; and the proper test for measuring the economic feasibility of the proposed branchlines.

Gas Supply.—We agree with the examiner's findings that, on the basis of the record, Northern has adequate gas resources to meet the anticipated requirements of its expanded markets as proposed in this proceeding, and that such expansion will not jeopardize the rest of Northern's system. However, in view of the fact that Northern's gas reserves do not meet the 12-year deliverability life standard used by the Commission in the past, it is appropriate here to discuss in more detail Northern's reserves and deliverability.

The 12-year deliverability standard has never been so rigid that the Commission would ignore circumstances justifying a departure from it. On this point we stated in *Midwestern Gas Transmission Company, et al.*, 21 FPC 653 at 657; "While we believe that a showing of a twelve year deliverability life should be the minimal requirement, we also believe that our judgment should be tempered by the peculiar facts surrounding the situation before us."[4] In that case the Commission allowed Tennessee Gas Transmission Company an 11-year deliverability life. This was found to be adequate in view of the location of Tennessee's system with regard to possible new supplies and its demonstrated ability to attach new sources of supply.

In this proceeding Northern has shown that a nine to eleven year full line load or deliverability life will enable it to maintain a maximum reserve status without serious over-supply problems, and will permit it to negotiate new gas purchase contracts on a more favorable basis from the standpoint of price stabilization and volumes purchased. Northern showed that if it is required to maintain 12 years of full line load at all times, it will accumulate excess supplies and will incur additional costs associated with maintaining an unneeded supply.

The record shows that as of December 31, 1961, total gas reserves under contract to Northern were estimated to be 12.196 trillion cubic feet of gas. These dedicated reserves will enable Northern to meet the combined peak day and annual requirements of its presently certificated and anticipated increased markets as proposed in Docket Nos. CP62–85 and CP62–178 for a period of ten years without a deficiency.[5]

Northern is an established pipeline with an active gas purchasing organization. In the past it has demonstrated as much as a 13-year deliverability life. *Northern Natural Gas Company*, 22 FPC 164, 169. Its lines extend into production areas in which new reserves are being discovered continuously. The principal sources of supply for Northern are the Hugoton-Panhandle area, the

[4] Compare Docket No. R–239, 18 CFR 260.7, proposed rulemaking relating to gas supply.

[5] On the basis of the total expanded markets Northern has a reserve life index of 20.1 years.

Anadarko Basin area and the Permian Basin. Northern showed (Tr. 52) that these producing areas are by no means fully explored or developed and will be a source of new supplies for many years in the future, and that there are now in the Anadarko and Permian areas discovered but uncommitted reserves available for purchase by Northern. It was shown that Northern could enter into gas purchase contracts covering approximately two to three trillion cubic feet of gas from these reserves. Northern's showing herein with respect to gas supply and reserves is such that its 10-year deliverability life is sufficient to meet the requirements of its presently certificated and anticipated increased markets as proposed in Docket Nos. CP62–85 and CP62–178.[6]

Any future proposed expansion of Northern's markets will, of course, require a determination, at the time of such proposal, that Northern as of that date has gas reserves of an adequate deliverability life after considering Northern's purchase patterns in the interim and the then available undedicated reserves. In the future we propose to maintain a periodic scrutiny of the adequacy of the reserves of all jurisdictional pipelines, including Northern. We do not believe, however, that any reason exists to reopen Docket No. CP62–85, as requested by Coal Interveners in their brief and exceptions, in order to make an investigation of Northern's gas supply picture beyond that contained in the present record.

Market Estimates.—The examiner, after requiring that firm contracts be obtained from two prospective industrial customers, concluded that the estimates of peak day and annual sales presented on the record are both reasonable and attainable, based upon his finding that all the proposed distributors demonstrated the need for natural gas in the communities proposed for service.[7] The distributors for the original 71 communities proposed for service in Docket No. CP62–85 have all executed service agreements reflecting their first, second and third year contract demands. All of the 7(a) applicants expressed a willingness on the record to execute similar service agreements reflecting the contract demands which Northern considers to be reasonable for each of their proposed communities.

Exception is taken by Joint Interveners to the examiner's finding and conclusion regarding Northern's favorable experience in attaching new communities to its system, arguing that it is contrary to the actual experience in towns connected to Northern's system in 1959 and 1960, and that the market estimates made by Northern in Docket No. G–17485, *et al.* in support of the communities connected in 1959 were not realistic nor obtained. However, the record shows that the market estimates in this proceeding are comparable to actual performances of communities similar in size after they were connected to Northern's system in 1959 and 1960. Northern showed (Exhibit No. 63, p. 1) that those communities attained an average residential heating saturation of 27.4 percent in the first full year of service compared with a like figure of 29.2 percent estimated for the 71 communities originally proposed for service in Docket No. CP62–85. The residential heating saturation for the second full year of service for communities connected in 1959 was shown to be 40.7 percent compared with

---

[6] Coal Interveners contend in their exceptions that Northern has not demonstrated beyond a reasonable doubt that it should be permitted to deviate from the 12-year rule. As previously noted, the 12-year rule has never imposed a rigid test. It is sufficient that we are convinced that Northern's application here is required by the public convenience and necessity despite its present failure to meet a 12-year deliverability test, which is being re-examined in a pending rulemaking proceeding.

[7] Northern refused to propose the City of Tipton for service because it did not believe that the City's market estimates were reasonable and attainable. The City consented to service on the basis of Northern's own market estimates, which the examiner approved.

a like figure of 37.1 percent estimated for the 71 communities.[8] We adopt the examiner's findings that the market estimates in these proceedings are reasonable.

Firm Commitments.—The examiner conditioned the issuance to Northern of certificates for two laterals upon two distributors obtaining firm commitments in the form of signed contracts with their large volume industrial customers. His order required American Gas Company of Wisconsin, Inc. to obtain a signed contract covering the sale of natural gas to Peavy Paper Mills, and required Wisconsin Southern Gas Company, Inc., to obtain a signed contract covering the sale of natural gas to the Burgess Cellulose Company.

Coal Interveners except to the examiner's failure to require other distributors to submit firm commitments from prospective industrial customers, which they contend the record shows are necessary in order to assure Northern and its present customers that the proposed branchline extensions will be economically feasible. In support of this exception, it is contended that there are many industries proposed to be served herein whose present fuel costs are such that it is highly questionable whether or not the distributor will be able to displace the present fuel being used, thus jeopardizing the revenues to be received by Northern to defray the branchline costs; and that the highly competitive market demands more firm commitments than the examiner would require.

Joint Interveners also except to the examiner's finding to the effect that all large volume interruptible customers need not execute firm contracts, claiming that the economic feasibility of many of the proposed projects depends heavily on estimated large volumes of interruptible sales at prices equal to or in excess of present competitive fuels. They state that other large volume interruptible sales, in addition to those designated by the examiner, constitute such a substantial percentage of sales within the communities involved that the economic feasibility of the branchlines will be adversely affected if these estimated loads are not attached.

The Commission concluded long ago in *Kansas Pipe Line & Gas Co.*, 2 FPC 29, that there is no reason to require certificate applicants in all cases to obtain firm commitments from their anticipated customers. It is sufficient, the Commission held, "if the applicants show that, on the basis of experience in similar territory, there are reasonable grounds for anticipating that customers will be attached to the proposed facilities." 2 FPC at 45. Stated generally, the rule which has developed for expansions which include sales to large volume industrial customers is that firm commitments will be required only where the contemplated sales appear to have a strong bearing on the economic feasibility of the project and where there is reason to question whether in fact the sales will be made. See *Kansas–Nebraska Natural Gas Co., Inc.*, 29 FPC 1058, 1067, Opinion 389 (1963); *City of Grant City, Mo.*, 29 FPC 754, 758, Opinion 386 (1963); *Midwestern Gas Transmission Co.*, 22 FPC 775.

We note that none of the proposed industrial sales here questioned are firm sales providing demand service at all times and requiring increased capacity in the lateral, as were the sales in several past cases requiring firm commitments. Moreover, both the distributors and Northern have included the disputed sales in their market estimates notwithstanding the absence of contracts. Northern's experience demonstrates that most industrial plants are committed to receiving

[8] Joint Interveners also contend that Northern's experience with communities connected in 1959 and 1960 is distorted by the inclusion of Blaine, Minn., and therefore unrepresentative of the experience which can be expected in the Wisconsin communities which the record shows have a relatively stagnant economy. However, the elimination of Blaine from Northern's exhibit would have no material effect on the average residential heating saturation for the communities shown therein. See Tr. 2559 and Ex. 63.

natural gas after the first year of operation of a new distribution system. Finally, the examiner found that in this proceeding the distributors adequately supported their estimated sales to anticipated industrial customers and that, on the basis of their previous experience, there are grounds in this record for anticipating that most of the estimated industrial sales will be made.

Under these circumstances we conclude that the proper method for determining whether signed contracts should be required for the proposed industrial sales is to calculate first the relative importance of each individual sale to the total revenues of the branchline from which it will be made. This is done by comparing the projected annual revenues from each industrial sale to the projected total annual revenues of the related lateral. We do not find that all industrial sales in a given community or all industrial sales from a given lateral should be grouped together for these purposes. No sufficient grounds have been presented which suggest that all or even many of the anticipated sales will not materialize. Rather, the risk, if any, is that perhaps one or two sales may not develop as anticipated.

Having calculated the relative importance of each individual sale, we can identify those industrial sales which will have such a strong bearing upon the branchline's economic feasibility that a contract should be required. It is our judgment that in the circumstances of this case industrial sales which account for more than 15 percent of the projected branchline revenues can reasonably be classified as such. In this category are the sale from the Belleville Lateral to the Pet Milk Company, the sale from the Buffalo Lateral to a milk drying plant and the sale from the Winthrop Lateral to the Tri County Dairy. We shall condition the certificates for these three laterals upon the submission of contracts covering these sales or upon a showing by Northern that the lateral involved meets the feasibility test even if revenues (and costs) associated with the industrial sale are excluded. Any materials submitted hereunder shall be served on all parties to this case, who shall have an opportunity to comment thereon within 15 days from such service.

In the light of these determinations, we conclude that the exceptions of the Joint and Coal Interveners are not justified and that the examiner erred in requiring firm commitments in the two cited instances.

Economic Feasibility.—In determining the economic feasibility of the 29 new laterals proposed by Northern, the examiner employed the branchline feasibility test prescribed in Opinion 324, *Northern Natural Gas Co.*, 22 FPC 164. This test requires that third year revenues from a proposed lateral or branchline be at least sufficient to defray the annual cost of service of the branchline (including measuring stations) and out-of-pocket costs of the gas to be delivered at the town border stations (cost of gas in the field plus incremental transmission costs). If the revenues from a particular branchline do not cover these costs, contributions to the cost of construction of the branchline are required by the distributor involved or service must be denied.

Joint Interveners except to the method of applying this branchline feasibility test by the examiner. They note that in determining the incremental costs associated with a branchline, which are compared with the incremental revenues from branchline sales, the examiner and Northern used *system-wide average* incremental transmission costs rather than the *actual* incremental transmission costs for the gas delivered to the distributors by each proposed lateral. Thus, the interveners argue the incremental transmission costs for gas delivered by laterals at the northern end of Northern's system were understated.

Joint Interveners in essence contend that since the average incremental transmission costs were used in determining branchline feasibility, average

branchline revenues should also be used. Thus, they propose the base zone feasibility test whereby Zone 2 (presumably an average zone) rates are used in computing branchline revenues in all zones, which are then compared with branchline costs to determine feasibility. The result is that a number of proposed laterals become economically infeasible.

We agree with the Joint Interveners that a technical error was committed by the examiner in using system-wide average incremental transmission costs rather than the actual incremental transmission costs for each branchline. However, we believe the proposed base zone feasibility test is unreasonable and unneeded, in that it uses Zone 2 rates to determine the revenues for branchlines which will be located in Zone 3 and which will in fact realize higher rates and thus much larger revenues. Rather, we believe that each branchline must be tested for feasibility upon revenues it actually will receive as measured against the incremental costs which actually will be incurred, using the best projections available at the time of the proposal.

In determining the feasibility of each branchline the examiner correctly determined the prospective revenues of the branchline from actual rates to be charged. To ascertain the incremental costs associated with the branchline and thereby measure feasibility, the examiner correctly determined the actual annual cost of service of each branchline and the actual field cost of gas. His error, as noted above, was in using average rather than actual out-of-pocket transmission costs.

We note that incremental transmission costs, which cover only compression fuel, line losses, etc., are a very minor part of the total incremental costs of branchline sales which also include the field cost of gas and the branchline annual cost of service. The average incremental transmission cost on Northern's system is only 1.26 cents per Mcf (See Exh. 60). Thus, the difference between average and actual incremental transmission costs could only be very slight in terms of the total incremental costs. We believe this demonstrates *prima facie* that the examiner's error in using average incremental transmission costs was *de minimus*. Joint Interveners neither allege nor show that the use of actual incremental transmission costs would render any of the branchlines economically infeasible. For this reason we conclude that there was no prejudicial error.

We believe the examiner was correct in employing the branchline feasibility test of Opinion No. 324 and in finding all 29 laterals economically feasible thereunder. Northern has proposed service to 71 of the communities involved and has agreed to serve the 5 additional communities that request service. Northern has not requested contributions in aid of construction of the branchlines from the customers to be served, but has agreed to undertake the full construction cost of each of the 29 laterals. While an aggressive branchline extension policy of this nature is not uniform in the industry, we believe it is in the public interest and we encourage such investment and service where we are assured that there is no significant threat of detriment to the present customers of the pipeline. We find that the branchline feasibility test of Opinion 324 provides such assurance by requiring that the incremental revenues from the proposed branchline sales cover the incremental costs associated with the sales.[9]

[9] Of course in approving Northern's voluntary adoption of a relatively liberal branchline feasibility test, we are not here deciding that this test should also be used to formulate the minimum investment in branchlines to be imposed upon companies under the more restrictive standards of Section 7(a). See *Kansas-Nebraska Natural Gas Co., Inc.*, 29 FPC 1058 (1963), Opinion 389.

Other Exceptions.—Joint Interveners except to the examiner's finding that the proposed service to all 76 communities would return incremental net revenues of $456,070 annually. They contend that the examiner omitted as an incremental investment $1,261,936 of compression facilities which would have an estimated annual cost of $252,387 [10] and that Northern should deduct from projected branchline revenues $740,740 annually to reflect curtailment of overrun sales now made to present customers which will be pre-empted by the new branchline service. With these two adjustments, Joint Interveners allege that the proposed branchline service will result in an annual deficiency of $993,127 in lieu of the excess of $456,070 found by the examiner.

The compression facilities referred to by Joint Interveners are those proposed at Redfield Storage Field in Docket No. CP62-178. These facilities were proposed in a separate application by Northern, and the record does not conclusively show that the facilities would be needed only in conjunction with the new service proposed from the 29 laterals. However, assuming arguendo that the service proposed for the new communities accelerated the need for additional mainline compression, the cost of the additional compression facilities is an addition to mainline investment which benefits all mainline customers and cannot properly be used to measure the economic feasibility of the branchlines.

In *Battle Creek Gas Company* v. *Federal Power Commission*, 281 F. 2d 42 (CADC), the court affirmed the Commission's holding that where a pipeline's expanded facilities, including an additional compressor station, will form part of an integrated system and where new gas is to be commingled with old gas and both are to be distributed together to all customers, the cost of those facilities should be treated as system-wide costs and not as incremental costs to be borne by a new customer served from a new line forming part of the expansion. Thus, Joint Interveners' contention that the examiner erred in not including the $1,261,936 of additional compression facilities as an incremental branchline cost in Docket No. CP62-85 is without merit.

The second argument by the Joint Interveners—that in determining economic feasibility the Commission should subtract from branchline revenues all revenues from current overrun sales which allegedly will be curtailed by the branchline sales—was not covered in the record. However, it will not be necessary to reopen the record to develop the facts pertinent to this point, for we do not deem it meritorious.

The essence of Joint Interveners' argument is that revenue losses from curtailment of overrun sales, which allegedly will result by initiating branchline service, should figure in the determination of branchline feasibility. However, overrun sales represent merely volumes of gas available on the pipeline system in excess of customers' firm requirements as they may exist from day to day. Since there is no assurance that any specific volume of overrun gas may be available during a period of time and since there is fluctuation in the volume of available overrun gas from season to season and year to year, there can be no assurance of continuation of a particular amount of revenues from such sales. Thus to calculate the curtailment of overrun sales as a real and permanent loss to the pipeline system would be to give far greater significance and permanence than either the pipeline or the customers can properly attribute to them. Moreover, and most important, such a policy would eliminate all but the most lucrative branchline expansions,[11] and valuable pipeline capacity would continue to be

[10] Joint Interveners estimate cost of service at 20 percent of net investment.

[11] Under the Joint Interveners' formula only the contract demand revenues to be paid by branchline customers under the firm schedule would be available as branchline revenues to measure against incremental branchline costs. Joint Interveners would also eliminate present costs associated with the overrun gas from branchline incremental costs.

used for the temporary expedient of overrun sales rather than providing needed demand gas service to new customers and new communities. We find nothing in the statute or prior cases which compels this Commission, which was established to promote the public interest in its broadest sense, to adopt such a result.

Finally, Northern excepts to the figure of 280,000 Mcf per day of contract demand which the examiner would authorize Northern to supply from its Redfield Storage Field. It contends that the third year peak day requirements of the 5 communities proposed to be served in the 7(a) applications, in the amount of 3,610 Mcf of contract demand were inadvertently omitted and the figures should be changed to 283,610. The record shows that Northern is correct and we will modify the 280,000 figure accordingly.

The Commission further finds:

(1) Applicant, Northern Natural Gas Company, a Delaware Corporation having its principal place of business in Omaha, Nebraska, is a "natural gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued April 6, 1943, in Docket No. G–280 (3 FPC 967).

(2) The facilities hereinbefore described, as more fully described in the applications as supplemented and amended in this proceeding, will be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission and the acquisition, construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed construction and operation of facilities are required by the public convenience and necessity, and permanent certificates therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificates issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c), (d), and (e) of Section 157.20 of said regulations.

The Commission orders:

(A) Permanent certificates of public convenience and necessity be and the same are hereby issued in Docket Nos. CP62–85 and CP62–178, *et al.*, authorizing Applicant to construct and operate the facilities hereinbefore described, all as more fully described in the respective applications (and in the applications in Docket Nos. CP62–119, CP63–34, CP63–11 and CP63–54), as supplemented and amended, in these proceedings, upon the terms and conditions of this order.

(B) The following condition shall attach to the certificate issued in Docket No. CP62–85 in Paragraph (A): With respect to the Belleville, Buffalo and Winthrop laterals, Northern shall submit contracts covering the proposed sales by the distributors to the Pet Milk Co., the milk drying plant and the Tri County Dairy, respectively, or shall demonstrate that each lateral is economically feasible after excluding revenues (and costs) associated with these sales. Any such submission or demonstration shall be served on all parties to this case, who shall have an opportunity to comment thereon within 15 days from such service.

(C) Pursuant to our determination, *supra*, Applicant is authorized to supply from its Redfield Storage Field 283,610 Mcf per day of contract demand.

(D) The certificates issued in Paragraph (A) are conditioned and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission regulations under the Natural Gas Act, and particularly

the general terms and conditions set forth in paragraphs (a), (b), (c), (d), and (e) of Section 157.20 of said regulations.

(E) Applicant is authorized to acquire by purchase and to operate the branchline and measuring facilities constructed by North Central Public Service Corporation to serve the community of Monroe, Wisconsin, in accordance with the agreement set forth in the order issued November 16, 1962, in Docket No. CP62-292.

(F) The facilities hereby authorized shall be acquired (in the case of North Central), constructed and placed in actual operation and the transportation and delivery of natural gas authorized in Paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date on which this order is issued.

(G) The Presiding Examiner's initial decision issued herein on April 26, 1963, is hereby adopted by the Commission to the extent not inconsistent herewith. Exceptions to the examiner's decision not herein granted are denied.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY UNDER THE NATURAL GAS ACT

(Issued April 26, 1963)

LANDE, *Presiding Examiner:* Involved herein is a consolidated proceeding concerning two separate applications filed by Northern Natural Gas Company (Northern) for Certificates of Public Convenience and Necessity pursuant to Section 7 of the Natural Gas Act, as amended, and four separate applications filed pursuant to Section 7(a) of the Natural Gas Act, by Iowa Electric Light and Power Company (Iowa Electric), American Gas Company of Wisconsin, Inc. (American), Wisconsin Southern Gas Company, Inc. (Wisconsin), and City of Tipton, Iowa (Tipton), for orders of the Commission directing Northern to construct certain branchline and measuring facilities and to sell natural gas to each for resale in the communities as more fully described in their respective applications. Various of Northern's present utility customers, the proposed new distributors and the 7(a) applicants intervened in the proceedings and participated in the hearing. The Public Service Commission of Wisconsin filed a Notice of Intervention and presented on the record a Statement of Position urging the certification of Docket No. CP62-85. Fuels Research Council, Inc., Mid-West Coal Producers Institute, Inc., National Coal Association, United Mine Workers of America and Upper Lake Docks Coal Bureau, Inc. (The Coal Interest) also intervened in the proceeding. The Coal Interest presented no witness, but actively cross-examined the witnesses of all the other parties.

The hearing commenced as scheduled on October 23, 1962, and was concluded on February 1, 1963, embracing in all 22 days of actual hearing. The evidence presented at the hearing consisted of the direct and cross-examination of Northern's witnesses, the utility customer witnesses and the witnesses presented by the Section 7(a) applicants. Northern's witnesses sponsored 31 exhibits and the utility customer and Section 7(a) interveners sponsored approximately 28 exhibits in support of Northern's projects. Opposition testimony to some of the service proposed by Northern in Docket No. CP62-85 was presented on behalf of five interveners, Metropolitan Utilities District of Omaha, Iowa Power and Light Co., Minneapolis Gas Company, Northern States Power Co. and Western Power and Gas Co. (Joint Interveners). Two members of the Commission's technical staff testified with respect to the views of the staff on gas supply and branchline standards. Chairman Bessman of the Wisconsin Public Service

Commission made a statement in which he said his Commission supported Northern's application. He said that the Wisconsin communities proposed to be served in this proceeding have a relatively stagnant economy, and are historically dependent on the lead and zinc mining industries. His Commission believes that those economies would be aided if natural gas is delivered to these communities.

Opportunity to file briefs was afforded to all parties. The initial brief was filed by Northern. Briefs were subsequently filed by the Commission Staff Counsel, the Public Service Commission of Wisconsin and by all other parties to the proceeding. Applicants replied thereto on April 1, 1963, as of which date the case was considered submitted for decision.

The Applications

Northern owns an interstate pipeline system originating in the Panhandle of Texas and extending northeasterly through Kansas, Nebraska, and Iowa with branches running east to Dubuque, Iowa, north to Minneapolis, Minnesota and northwest into South Dakota. Northern's application is Docket No. CP62–85, originally filed on September 29, 1961, supplemented on January 12, 1962, and amended on April 30, 1962, for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities in order to render initial service to 71 communities in the states of Nebraska, Iowa, Minnesota, and Wisconsin.

The proposed new facilities consist of a main line loop, branchlines and appurtenant facilities estimated to cost a total of $16,126,800 which is proposed to be financed from cash on hand and operating revenues.

The 71 communities would have a third year contract demand of 49,844 Mcf/d in the third year of service. Northern Natural proposes to provide the peak requirements from its Redfield Storage Field (*i.e.*, through increased injections and withdrawals from that field).

To make the sales proposed herein, Northern relies upon a gas supply in excess of 12.2 trillion cubic feet as of January 1, 1962. Assuming expansion of the Northern system including services certificated but not yet connected, projects now pending before the Commission and the instant proposal, these reserves represent a life index of 20.5 years.

On February 5, 1962, as amended on May 9, 1962, Northern Natural also filed an application in Docket No. CP62–178 for a certificate of public convenience and necessity under Section 7 of the Natural Gas Act, authorizing the construction and operation of 4,400 additional horsepower at the Redfield Compressor Station and 2.4 miles of 30-inch line in order to increase its system capacity in the amount of 34,718 Mcf per day to meet the increased contract demand requirements of its present customers.

The cost of the above facilities would amount to about $1,853,400. Northern Natural would finance the proposed project by short term loans and funds on hand.

The application was further amended on the record to conform the proof to include the additional communities proposed by the 7(a) applicants. There were four separate applications filed pursuant to Section 7(a) of the Natural Gas Act by Iowa Electric Light & Power Company (Iowa Electric); American Gas Company of Wisconsin, Inc. (American); Wisconsin Southern Gas Company, Inc. (Wisconsin Southern); and City of Tipton, Iowa (Tipton) for orders of the Commission directing Northern to construct certain branchline and measuring facilities and to sell natural gas to each for resale in the communities described in their respective applications. These 7(a) applications were con-

solidated with the main application of Northern by order issued October 19, 1962. Additionally, Great Plains Natural Gas Company (Great Plains) also filed an application pursuant to Section 7(a) of the Natural Gas Act (Docket No. CP67–78). By order issued January 2, 1963, the Commission granted a motion filed by Great Plains on November 13, 1962, to withdraw its application. By including the five 7(a) towns the total project cost for the 76 towns would be $17,883,500. The communities involved are: Alden, Conrad, DeWitt, Ellsworth, Jewell, Maynard, Mount Vernon, Lisbon, Radcliffe, Randall, Monroe, Prairie City and Tipton, *Iowa;* Albany, Amery, Bangor, Barron, Belleville, Bloomer, Boscobel, Brodhead, Cameron, Chetek, Clear Lake, Cuba City, Cumberland, Evansville, Fennimore, Lancaster, Monticello, Muscoda, New Auburn, New Glarus, Rice Lake, Richland Center, Shullsburg, Sparta, Camp McCoy, Tomah, West Salem, Baraboo, Benton, Darlington, Dodgeville, Hazel Green, Lake Delton, Mineral Point, Platteville, Portage, Reedsburg, Sauk City, Prairie Du Sac, Spring Green, Wisconsin Dells, New Richmond and Monroe, *Wisconsin;* Mound, Spring Park, Saint Bonifacius, Arlington, Eagle Lake, Gaylord, Pierz, Sauk Centre, Winthrop, Big Lake, Buffalo, Monticello, Foley, Lake City, Wabash, *Minnesota,* and Gretna, *Nebraska.*

The Issues

The following issues may be deemed involved in this proceeding:

1. Whether Northern's expansion into new territory is warranted though its deliverability life of gas reserves may be sufficient to meet a demand of less than 12 years?

2. Whether Docket No. CP62–85 should be reopened in order to fully investigate Northern's gas supply picture?

3. Is Northern's proposal in Docket No. CP62–178 required by the public convenience and necessity?

4. Does the public convenience and necessity require extension of service to the 76 communities herein or to any of said communities?

5. Do the 76 communities proposed for service herein meet the branchline feasibility test of *Northern Natural Gas Co.* (1959), 22 FPC 164, at 174, so as to require no contributions?

6. Whether the distributors of gas off of Northern's proposed branchline extensions should be required to present signed contracts with interruptible customers?

7. Is the market data submitted adequate and accurate enough to permit reaching a conclusion regarding economic feasibility of the project as a whole?

8. Are the cost estimates for facilities submitted herein by Northern and the Section 7(a) Applicants accurate and complete?

Adequacy of Northern's Gas Reserves

Coal Interest Contentions.—Northern's gas supply and deliverability life falls short of minimum requirements. In this proceeding Northern is attempting to avoid compliance with the Commission's 12-year deliverability test, referred to in 21 FPC 653 at 657, 709; 24 FPC 1 at 4, 349. Northern has not attempted to increase its reserve picture even though it could do so and satisfy the 12-year requirement. This allegedly places Northern in a position to negotiate a better deal and to protect itself against take-or-pay-for penalties. Docket No. CP62–85 should be reopened to make a thorough analysis of the 12-year deliverability standard and to determine whether, in fact, any relaxation of the rule is warranted. The reopened proceeding could also deal with the production allocation and allowable take problems posed before the Supreme Court in *Northern*

Natural Gas Co. v. *State Corporation Commission of the State of Kansas*, No. 62. Opinion issued February 18, 1963. Since all of the 76 communities proposed to be served presently have ample supplies of fuels other than natural gas, reopening of the record herein would work no hardship on them.

Northern's Rebuttal.—The record readily demonstrates that it would not be in the public interest to require Northern to maintain a 12-year full line load life because such deliverability coverage cannot be maintained without a serious oversupply which would be costly to the ultimate consumer. Northern has an adequate gas supply to meet the peak day and annual requirements of its expanded markets as proposed in this proceeding. The various matters which the Coal Interest contends that they should be further explained are matters upon which a full and complete record has already been made. The recent decision of the Supreme Court in the Kansas case affords no basis for reopening this record, because the decision is not relevant to any issue in the instant proceeding.

The Opinion of the Experts.—Mr. Grimm, Northern's Manager of Gas Supply, testified that Northern's market is a growing rather than a static market and that Northern's dedicated reserves come from reservoirs in various stages of depletion and possess a wide range of characteristics. Northern's gas supply is made up of both associated and non-associated gas and includes some casinghead gas, the latter having a relatively short life as compared to dry gas preserves. Considering the factors as they affect Northern's operations, Mr. Grimm demonstrated that if Northern is permitted a range of nine to eleven years of full line load or deliverability life, Northern will be able to maintain a maximum reserve status without serious oversupply problems and will be able to negotiate new gas purchase contracts on a more favorable basis both from the standpoint of price stabilization and volumes purchased. Mr. Grimm stated that in his judgment, Northern could assure its customers adequate gas supplies in the future at lower cost under a flexible full line load situation than is possible under a rigid 12-year full line load requirement. He said that recently discovered and uncommitted reserves in the areas tributary to Northern's pipeline system are plentiful; that these areas are by no means fully explored or developed and will be a source of new supplies for many years in the future. Northern's gas supply is obtained from the Hugoton-Panhandle area of Kansas, Oklahoma and Texas, the Anadarko Basin area of Kansas, Oklahoma and Texas, and the Permian Basin area of West Texas and Southeastern New Mexico. Individual fields range in size from the Hugoton field, the largest, single gas reservoir in the United States, down to various smaller areas. As of December 31, 1961, total proven reserves dedicated to Northern are estimated to be 12.196 trillion cubic feet of gas. These dedicated reserves will enable Northern to meet the combined peak day, average day and annual requirements of its presently certificated and anticipated increased markets as proposed in Docket Nos. CP62–85 and CP62–178 for a period of ten years without a deficiency. On the basis of the total expanded markets Northern has a Reserve Life Index of 20.1 years.

Mr. Nelson, Staff witness, testified that until 1959, there was no indicated minimum deliverability life set by the Commission although it had indicated dissatisfaction in certain cases with gas supply showings. In the Midwestern opinion issued in G–16841, May 12, 1959, the Commission stated that a 12-year deliverability life was the minimum requirement to satisfy the "adequacy criteria" as to gas supply, but did not explain the reason for choosing the figure of 12 years. The witness said that in his opinion three points should be considered in setting up a deliverability life standard: effect on rate of return

of pipeline companies, effect on producers, and the effect on consumers. On cross-examination, Mr. Nelson said that under present conditions Northern could get along with approximately nine years, and might be able to maintain nine-year deliverability in the near future. He suggested that the Commission should give the various pipelines an opportunity to build up to the 12-years deliverability if they are now below 12 because of take-or-pay, and with the reduction of the 100% provisions to 80% there would be the opportunity for them to grow back up to 12-years deliverability.

Finding.—It is noted that the Coal Interest are the only party that questions the adequacy of Northern's gas supply. They urge that Northern be required to maintain 12 years of deliverability or full line load life. Yet, should a shortage of gas occur in that area the Coal Interest business would only benefit from such deficiency. On the other hand, the other parties herein, all customers of Northern showed no concern over foreseeable gas shortages. The testimony of the Staff witness and the testimony of Mr. Grimm respecting the adequacy of Northern's gas supply is compatible. Mr. Nelson recommends that the Commission adopt a flexible approach toward the problem of deliverability life of the reserves dedicated to natural gas pipelines, particularly in regard to established pipeline companies such as Northern. He recognizes that under present conditions with producer sales contracts reflecting a 1 to 7300 or 1 to 8000 ratio, pipeline companies cannot continue to maintain 12 years of deliverability life without increasing the cost of gas sold. Mr. Nelson suggests that ultimately the solution to the problem is modification of the take-or-pay-for provisions in producer sales contracts but he recognizes that such modification cannot and should not be accomplished in this proceeding.

We are not concerned herein with the broad aspects of gas supply reserves. In issue is whether Northern has sufficient gas reserves and a sufficient gas supply potential to meet the additional gas requirements of the service proposed for the 76 new communities and at the same time not jeopardize the rest of its system. On the basis of this record it is found that Northern does have adequate gas resources to meet the anticipated requirements of its expanded markets as proposed in this proceeding. Such expansion will not jeopardize the rest of Northern's system.

Branchline Feasibility

Northern's Presentation. The economic feasibility of Northern's project to initiate natural gas service to the proposed 76 communities has been tested by a comparison of Northern's incremental revenues in the third year of service with Northern's incremental cost of service in the same year, including a 6.25% return on Northern's additional plant investment. Northern's computations were supported by a competent industry witness and accepted in substance by the Commission's Staff. The record shows that the revenues from the proposed new service will exceed incremental cost of service by $456,070. The proposed service will benefit Northern's system operations and the consumers served from its system. Northern's showing in this regard is consistent with the requirements of Section 157.14, Exhibit N of the Commission's Regulations under the Natural Gas Act and, in light of the facts of record, is adequate. In the selection of the 76 communities proposed for service, Northern applied the criteria initially adopted by the Commission in *Northern Natural Gas Company*, Opinion No. 324, 22 FPC 164. This opinion provides for contributions in aid of construction for a given branchline *only* if the estimated annual revenues from the sale of natural gas to communities served from a given branchline in the third year of service do not cover (1) the estimated variable cost of gas delivered to the town border measuring station, (2) the cost of service including return attributable to the

branchline and measuring stations, and (3) some additional revenue to defray the mainline cost of service.

Each of the 29 branchlines proposed by Northern in this proceeding meets or exceeds the branchline criteria of Opinion No. 324 and yields some additional revenues to defray Northern's mainline costs. The estimated net revenue from the individual branchlines ranges from a high of $47.94 Mcf of contract demand to a low of $2.23 per Mcf of contract demand. Under the criteria of Opinion No. 324, no contributions in aid of construction are required and none has been requested by Northern from the proposed distributors.

Staff Position. Staff witness Wassom presented testimony outlining the criteria he would recommend to test the economic feasibility of the lateral extensions in this proceeding. It was Staff witness' opinion that in the third year of service each individual lateral's revenues must be greater than its associated costs. Such costs would be the sum of the average purchased gas costs, the out-of-pocket transportation costs, and the lateral line cost of service, including measuring station facilities. Such excess revenues would, under his criterion, be available to pay something in addition to the out-of-pocket transportation costs toward the cost of service of the mainline facilities. He further indicated that it is impossible to determine, with any degree of exactness, what the new customers' "proper or equitable share" is of the mainline incremental cost of service. It would appear that a proposal that each lateral or branchline carry a fixed amount of mainline costs is tantamount to saying that a specific set of facilities is associated with this same lateral. The Commission has consistently rejected allocation methods which would in effect assign costs of particular mainline facilities to a specific customer (see *Battle Creek Gas Co.* v. *F.P.C.*, 281 F. 2d 42). Staff's position is that every lateral or branchline must independently produce revenues sufficient to meet incremental lateral facility costs with something beyond that to be applied on mainline costs.

In proposing any feasibility test, four primary interrelated factors must be considered: (1) the pipeline companies' financial integrity must be protected; (2) the existing customers must not be submitted to undue burdens; (3) the pipeline company must be allowed to expand its system in an orderly fashion, in order that it might render natural gas service in an efficient and economic manner, and (4) a lateral line policy which would unreasonably restrict the growth of major pipelines and prevent service to growing communities would not be in the public interest.

Assuming that Northern's cost and revenue data were reasonably accurate, Staff witness determined that each of the several laterals Northern proposes to construct to serve the 76 communities meet the proposed staff criterion and yield an excess.

Position of Joint Interveners. The rebuttal case of the Joint Interveners was directed towards the issue of economic feasibility and consisted of the testimony of five witnesses, seven exhibits and one item by reference.

Joint Interveners contend that proof of the economic feasibility to the pipeline of a proposed extension is one of the minimum requirements for a showing of public convenience and necessity. *El Paso Natural Gas Co.* 26 FPC 687, 688 (1961). The burden of proving this requirement is on an applicant. This principle has long been recognized. *Kansas Pipe Line & Gas Co.*, 2 FPC 29, 55 (1939). The feasibility test now applied by Northern in this proceeding is unduly discriminatory and preferential between rate zones on Northern's system, between present and new customers and among pipelines in the general market area. The Commission, in *Northern Natural Gas Company*, 14 FPC 11 (1955), established zone rates on Northern's system. It prescribed a 2-cent differential between zones at a 70 percent load factor. The rates therefore for Zone 2 were

two cents per Mcf higher than Zone 1 and Zone 3 rates were four cents per Mcf higher than Zone 1 based on a 70 percent load factor. Subsequent to this change Zones B and C were established on Northern's system with rates six cents and eight cents higher than Zone 1 at a 70 percent load factor. Each successive zone is further north on Northern's system and further away from the gas supply than the preceding zone. Northern's present feasibility test does not, however, give recognition to the basis for the existing rate differentials between zones. The feasibility test applied by Northern produces different results based solely on the location of a branchline. This difference in treatment unreasonably discriminates against the lower rate zones on Northern's system and gives an undue advantage to the higher rate zones. Northern's feasibility test unreasonably discriminates among pipelines because it places Northern in the unique position of being able to invest more money to serve a new community without cost to the community than any other pipeline in the general area.

Position of Milwaukee Gas Light Co. Joint Interveners who are present customers of Northern Natural are in the position of having already accepted the benefits of Northern Natural's branchline formula to provide natural gas to their own communities, now argue that the Wisconsin communities should be denied the application of the same formula. Northern States Power attached six new communities pursuant to Opinion 324 and Iowa Power and Light attached 21 new communities. Until these objectors show a clear and substantial difference between selling natural gas in small communities in Wisconsin and selling to similar communities in Minnesota and Iowa, their self-serving objections should be dismissed. It would be improper at this juncture to change a lateral line policy which has made it possible for so many midwestern communities to receive this natural resource and, at the same time, has been in no small measure responsible for Northern Natural's continued prosperity. The only new matter raised by the Joint Interveners in this docket that wasn't passed upon in the earlier case is that Zone 2 rates be used in computing revenues from communities which pay Zone 3 rates. Milwaukee Gas Light Co. contends that this is an attempt to rationalize a result which the Joint Interveners would like to attain, to wit: a substantial contribution by the Wisconsin distributors. In the first place, it has no relationship to the actual revenues generated by the sale of gas in the new communities. Secondly, and more important if the standards of actual revenues and actual rates are to be abandoned, ficticious markets might just as logically be used. The fundamental fallacy in this approach is that it fails to recognize that the zone rate differential covers *both main and branchline differential costs.* The cost of delivering gas throughout the zone, and not only in areas adjacent to the mainline extension, is included in the higher zone rate and the customer who pays this higher cost is, therefore, entitled to a more expensive lateral if necessary to effect delivery. Undue discrimination would result if this were not true.

Findings. The base zone feasibility test proposed by the Joint Interveners would require many distributors to make substantial contributions in aid of construction despite the fact that such contributions are not needed to make Northern's proposal herein economically feasible.

Northern and the proposed utility customers have demonstrated that the proposed markets have reasonably estimated and in fact are attainable. The project as a whole will yield third year incremental revenues in excess of third year incremental cost of service including a 6.25 percent rate of return. In the face of this favorable economic showing which adequately protects the financial integrity of Northern and which casts no burden on Northern's present customers, there is no justification for adopting a more stringent branchline test than the one prescribed by the Commission in Opinion No. 324. The Opinion requires

contributions in aid of construction by a proposed distributor only if Northern's third year revenues on a given branchline do not equal third year branchline and applicable measuring station cost of service plus the cost of gas. Each of the 29 branchlines proposed in Docket No. CP62–85 meet or exceed this test. The test prescribed in Opinion No. 324 does not require a branchline in any zone to yield excess revenues to defray mainline cost of service. Under the base zone feasibility test of the Joint Interveners only communities located in Zone 2 would meet the requirement because only a Zone 2 community would have its feasibility tested by the same rates which it would in fact pay for gas service. Conversely, communities located in Zones 3, B or C would have their feasibility tested by rates substantially lower than they would actually pay. This means that communities located in Zones 3, B or C would in fact be required to make a substantial revenue contribution to mainline costs in order to qualify for service.

The Joint Interveners complain that the branchline formula prescribed in Opinion No. 324 ignores the differential between rate zones. The only way in which the differential between rate zones can be given effect is to recognize that a distributor in Zone 3, B or C pays higher rates than one located in a lower rate zone. Opinion No. 324 achieves this objective by using applicable zone rates to test the feasibility of each branchline.

The Joint Interveners failed to substantiate their claim that the branchline test prescribed by Opinion No. 324 unlawfully discriminates against present customers in favor of new customers. *Cf. Minneapolis Gas Company* v. *F.P.C.* 278 F. 2d 870 cert. denied 364 U.S. 891. It is impossible to achieve with mathematical precision perfect equity between old, recent and prospective customers of any pipe line. At best zone rates are a method of rendering substantial equity between customers in reference to the location of their markets and the source of supply. The Opinion 324 Branch Line Formula is the current best means of achieving equity on the basis of averaging estimated costs and revenues from all of the markets on a particular branch. As a practical matter, it has worked well. Where it has been applied estimates have become actual, and Northern Natural is enjoying reasonable rate of return on the incremental facilities costs. No undue burden has been cast upon the old customers and the new service adds to the financial health of the entire system.

The Interruptible Loads

The Coal Interest argue that in almost every major branchline extension proposed herein the distributors are relying heavily upon the assumption that large sales of gas would be made on an interruptible basis. Northern in making its branchline feasibility studies has assumed that these interruptible sales will be made. It is therefore appropriate for the Commission to once again insist that where interruptible sales are relied upon the distributors obtain signed contracts with the anticipated interruptible customers. Northern proposes to build 29 branchlines. There are interruptible loads on 17 of the these lines. The most uneconomic branchline is the extension into the Bloomer, Wisconsin area. Should the distributors along that line not attach the anticipated interruptibles, an annual deficit would occur. The Richland Center, Wisconsin, and Lake City and Winthrop, Minnesota, extensions and the Belleville branchline may also be marginal operations.

The Joint Interveners propose that Northern shall serve the Bloomer, Richland Center, Sparta and Winthrop branchline communities only if prior to the commencement of construction of the branchline involved, the distributors serving those communities obtain and file firm contracts with each of the large

volume interruptible customers included in the estimated third-year market estimates applicable to said communities stipulating that they will convert their facilities to burn natural gas for the purpose and in the general amount indicated in the market estimates prior to the start of the third year of service and further provided that prior to commencement of construction of the branchline involved, the distributors serving those communities make contributions to the cost construction of the branchline. In the event that a distributor serving a community on said branchlines does not obtain said contracts with large volume interruptible customers prior to commencement of construction of the branchline involved, Northern shall serve said communities if prior to construction of the branchline the distributor serving those communities makes a contribution to the cost of the construction of the branchline.

The Staff points out that in the often cited case of *Kansas Pipe Line & Gas Co., et al.*, 2 FPC 45, the Commission said that there was *no* reason to require applicants to submit *firm commitments* for the sale of natural gas *in all cases.* This ruling is sufficiently flexible to give us a certain latitude. In the cases cited by interveners it was clear that the service was not feasible without sale to the large interruptible industrial market. (*Cf. Iron Ranges* 22 FPC 164, 174; *Atlantic Gulf Gas Co.* 10 FPC 79, 83; *Midwestern Gas Transmission Co.*, 22 FPC 775, 792, 796.) The Staff submits that it can find no merit in a proposal which would virtually remove the Commission from its statutory responsibility of determining whether a project is economically feasible on the basis of estimates. There have been cases where some industrials have not signed but there are other cases where industrials that were not even suggested by the applicant have also been signed. So radical a remedy as proposed herein by interveners should only be adopted by a showing that Commission practice has resulted in a widespread failure of estimates and some actual grievance resulting therefrom. Experience has not demonstrated any such wide divergence between estimates and the capacity of major lines to build feasible branch projects.

Finding. In the Commission's decisions which required contracts in advance, the loads were very large and of such major importance that they could be dealt with considerably in advance of the time when gas might become available. The problem is quite different in dealing with the generally small interruptible loads involved herein. On the basis of this record, there is no factual justification for the recommendation that the proposed distributors be required to obtain signed contracts from *all* prospective industrial customers prior to branchline construction by Northern. The Joint Interveners have expressed fear that industrial sales may not materialize. They have not shown that such fear has been the result of either their own experience or the experience of Northern. Evidence shows that as a general rule industrial plants are reluctant to sign contracts prior to the time a distribution system is in actual operation. Northern's experience demonstrates that most industrial plants are connected and begin receiving natural gas after the first year of operation of a new distribution system. Nor is there any reason to expect an industrial plant to contract for the purchase of natural gas substantially in advance of the time when gas will be actually available. In these circumstances the requirement of a signed contract with industrial plants prior to branchline construction by Northern will place a hardship on the proposed distributor. Staff Counsel has correctly analyzed previous Commission decisions on this point. Nothing in those decisions would support the conclusion that signed contracts in advance of branchline construction should be the general rule in the instant proceeding. The next chapter will deal with two special cases of the Wisconsin-Southern and American Gas Companies.

Market Estimates

The market estimates in this record will be evaluated in light of the prior finding that: (1) The base zone feasibility test advocated by Joint Interveners is not applicable in this proceeding, and (2) Signed contracts from prospective industrial customers will be required only in extreme instances.

American Gas Co. of Wisconsin, Inc. On July 31, 1962, this company filed an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Northern to establish physical connection between its existing transmission facilities and certain proposed facilities of Applicant and to sell and deliver natural gas to Applicant for resale in the communities of Ladysmith, Bruce, and Weyerhauser, Wisconsin.

There is no existing gas distribution facilities in any of the three communities proposed to be served by Applicant. Applicant proposes to construct the distribution systems in the communities of Ladysmith, Bruce, and Weyerhauser at a cost of $541,870 which will be financed by the issuance of bonds. Cost of additions estimated to be required during the second and third years of operation in the amounts of $35,550 and $23,160, respectively, will be financed out of earnings. The total estimated cost at the end of three years operations will be $600,580.

Northern, in its answer to the application, states that service to the three above-mentioned communities was not proposed in CP62–85 or in its amendment to CP62–85. However, Northern moved on the record to amend its application in Docket No. CP62–85 to include service to the three communities.

The branchline required to bring gas to Ladysmith, Bruce, and Weyerhauser is actually an extension of the so-called Rice Lake branchline proposed to be constructed by Northern. It is proposed to intergrate the operation of the Ladysmith, Bruce, and Weyerhauser systems with the operations of a 15-town project which is presently under construction and which will obtain its gas supply from the Mid-western Gas Transmission Company under Docket No. CP62–104. The three towns have combined population of approximately 47,308 and are located due east of Northern's proposed extension to Rice Lake, Wisconsin.

The prospective industrial customers are all located in Ladysmith. The anticipated interruptible sales will amount to a total of 525,400 Mcf annually. By far the largest prospective industrial customer is Peavy Paper Mills, accounting for 346,000 Mcf volume or $117,640 in revenues.

There is considerable discussion in the record as to whether American Gas can sell to Peavy Paper Mills on a competitive basis with other fuels. It appears that industrial sales will constitute about 75% of total sales, of which Peavy Paper Mills is the main customer. The witness for American Gas indicates that he made contact with potential industrial customers. However, there is no evidence that signed contracts have been obtained from such customers. This falls within the rule in the *Kansas Pipe Line & Gas Co.* case, 2 FPC 29 at p. 45, that where a substantial percentage of sales from a branchline depends upon a large volume customer, the Commission will require firm contracts. An exception can be made for American's smaller industrial customers, but not for Peavy Paper Mills, which is expected to use 346,000 Mcf of gas. Therefore, it is found that as a condition to the issuance of a certificate to American Gas Co., that firm commitments be obtained from the Peavy Paper Mills. If that condition were met the project becomes economically feasible and the requested authorization for service to the three communities by American Gas Co. will be granted.

Wisconsin Southern Gas Co., Inc. On July 12, 1962, this company filed an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Com-

mission directing Northern Natural Gas Company (Northern) to establish physical connection between its existing transmission facilities and certain proposed facilities of Applicant and to sell and deliver natural gas to Applicant for resale in the city of Prairie du Chien, Wisconsin, as hereinafter described, or as more fully described in the application herein.

Applicant states that it has been informed by Northern that in order to supply natural gas to Prairie du Chien, Northern will be required to construct a 26½ mile 6-inch lateral from a point near Fennimore, Wisconsin, on Northern's proposed Cuba City-Richland Center line. Applicant is advised that the cost of such lateral is estimated by Northern at approximately $622,000, that the town border station at Prairie du Chien will cost approximately $22,000, and that the cost of enlarging the Cuba City-Richland Center line will be approximately $57,000.

Applicant will construct a distribution system for service to Prairie du Chien at a total estimated cost of $298,689. Applicant will finance its project through temporary bank loans. It appears that prospective industrial sales will amount to 191,537 Mcf and total sales to 363,037 Mcf.

On the basis of the percentage of industrial load to total sales and calculations which assume the absence of the industrial interruptible load and the revenues attributable thereto, it appears that the project would not be economically feasible without such load. The Staff recommended as a condition to the issuance of a certificate to Wisconsin Southern that firm commitments be obtained from the prospective industrial customers.

In rebuttal Wisconsin Southern submitted that no contracts should be required for interruptible loads. No special contract requirements should be imposed upon Wisconsin Southern with respect to interruptible loads at Prairie du Chien. Many communities have larger interruptible loads than Prairie du Chien. Wisconsin Southern is an established, financially sound and successful gas distributing company in Wisconsin. Estimates for Prairie du Chien, including interruptible gas, are reasonable and reliable. Wisconsin Southern has a low interruptible rate. It is impracticable to secure contracts two and three years in advance. The project at Prairie du Chien has been approved by the Public Service Commission of Wisconsin. Both Northern and Wisconsin Southern are willing to make the investments required to serve Priarie du Chien. To impose special contract requirements at Prairie du Chien would constitute discrimination. The time involved to secure contracts may upset Northern's Construction program. If Prairie du Chien does not get natural gas in this proceeding it will lose its only chance for natural gas service.

Wisconsin Southern prepared a table comparing the percentages of interruptible loads to total sales in the third year of operations proposed for the other communities in this proceeding. This comparison fails to distinguish between the large volume and the small volume of interruptible loads. The company relies on a letter from its large prospective industrial customer—Burgess Cellulose. The manager of said company said that they "would be interested in natural gas when it is available". However, this particular prospective industrial load is the subject of some controversial cost comparisons:

> Q. You say "For instance, in the case of Burgess Cellulose Company the coal cost per 1,000 [100,000] BTU's is 3.62 cents, while the equivalent gas cost is 4.10 cents, but the annual coal cost is $29,686.08, compared with $29,831.60 for gas."
>
> Now, are you saying that that is a valid comparison sir?
>
> A. It would be the—it would be on the total fuel usage, yes. [Tr. 1390]

The evidence in this record as applicable to the Burgess Cellulose Company is not satisfactory. Under these circumstances it is found that as a condition to the issuance of a certificate to Wisconsin Southern firm commitments be obtained for the Burgess Cellulose Company gas load. If this condition were met, the project would be economically feasible, and the authorization for service by Wisconsin Southern should be granted.

The Other Communities. The market evidence in this record demonstrates that the estimates of peak day and annual sales for the other new communities are both reasonable and attainable.

Northern satisfied itself with the estimates submitted by the distributors respecting the total peak day and annual sales in the third full year of service. To this end, upon receipt of the market estimates submitted by various utilities, Northern made a "working" market estimate for each community based on a field survey of the community by Northern personnel and historical fuel use factors and meter saturations developed from a study of nearly 150 communities connected to Northern's system since 1950. Northern's "working" market estimates were then checked against the estimates submitted by the utilities for the various communities. If there was no great disparity between the two, Northern accepted the utility estimate as being reasonable and attainable despite the fact that the individual factors employed by the utility might not in all instances agree with the individual factors used by Northern.

If, on the other hand, there was a substantial disparity between the estimates, Northern further analyzed the market data submitted by the utility to ascertain the elements of the underlying calculation which caused the difference. If no reconciliation could be affected, the community was not proposed for service. Even though the City of Tipton, Iowa, a 7(a) applicant, was feasible for service under the branchline test utilized by Northern in this proceeding, Northern refused to propose the City of Tipton for service because it was felt that the market estimates submitted by the witness for the City were not reasonable and attainable. Thus, Northern presented its own market estimates for the City of Tipton. Northern's witness estimates a third year contract demand of 914 Mcf per day and annual sales in the third year of 139,534 Mcf. The record indicates that Northern is willing to initiate service to the City of Tipton, but only on the basis of the above figures. This was consented to by the City of Tipton.

All of the other proposed distributors sponsored detailed exhibits and testimony which demonstrate the need for natural gas in the communities here proposed for service and that there is indeed a market for the gas estimated to be sold. As stated before, this proceeding pertains to 76 communities, of which 47 are in Wisconsin, 15 in Minnesota, 13 in Iowa and 1 in Nebraska.

The Public Service Commission of Wisconsin filed a brief contending that the present or future public convenience and necessity requires that service to all the 47 Wisconsin communities should be granted. Also, all Wisconsin distributors herein have obtained certificates of authority from the Public Service Commission of Wisconsin authorizing them to construct and serve in the communities involved. These certificates were obtained after full public hearing before the Wisconsin Commission.

Joint Interveners, Milwaukee Gas, Minnesota Valley Natural Gas, Wisconsin Power and Light, Iowa Electric Light and Power, The American Gas Co. of Wisconsin, The City of Tipton and Wisconsin Southern Gas, submitted evidence and filed briefs and memoranda requesting approval of the proposed service to their own respective communities. The distributors for the original 71 communities have all executed service agreements reflecting their first, second and third year contract demands. All of the 7(a) applicants, including the

City of Tipton, have expressed a willingness on this record to execute similar service agreements reflecting the contract demands which Northern considers to be reasonable for each of their proposed communities.

The market estimate for the Bloomer lateral does not leave much margin for error. The potential industrial customers are expected to use 1,382,000 Mcf of gas annually. It appears that it would require at least one million Mcf of large volume industrial sales to enable the Bloomer line to show any revenue surplus. After giving due consideration to all the doubts raised by the Coal Interest, it is nevertheless found that Northern's estimates command much reliance. This record contains considerable data about Northern's experience in connecting some 170 similar communities in the last four years. This experience shows that communities connected in 1959 and 1960, after the first full year of natural gas service, attained a heating saturation of 27.4% based on dwelling units. The 71 communities proposed in this docket have an estimated residential heating saturation of 29.2% at the end of the first full year of gas service. After the second full year of service, the actual experience of comparable communities is 40.7% heating saturation, whereas the 71 new communities proposed in this docket estimate 37.1% saturation. That is, the estimated saturations are 9% less than the actual experienced saturations attained in comparable communities.

Northern's policy witness Sampson is definitely optimistic about these new communities:

> We feel we can make money on the new towns. In addition, though, you have to look at the well being of the area, and I am still on the financial well being. Our market territory is made up of hundreds of quite small agricultural communities. The financial well being of our metropolitan centers such as Omaha, Sioux City, Des Moines, et cetera, are highly—is highly dependent upon the agricultural economy of our territory.
>
> They draw very heavily for business from these small towns. [Tr. 2172.]
>
> * * * * * * * *
>
> As a marketing official of the company, I feel in the long run these communities will definitely contribute over the years to the financial well being of Northern and to the present customers, too.
>
> I think they will begin contributing. We build branchlines of such size, and are here proposing to build branchlines of sufficient size to take care of the requirements in the eighth or tenth year. We use a feasibility formula of the third year, so if these towns get six or seven years of growth under their belts, they would definitely present a better picture. [Tr. 2173.]

In general, interveners' proposal for signed contract for large volume industrials has merit as an expression of concern that projects which are substantially dependent upon such sales should not be certified without careful scrutiny of the revenue effect on feasibility. In this proceeding the distributors have adequately supported their estimated sales to anticipated industrial customers. On the basis of the previous experience of these distributors, particularly the experience of the Wisconsin distributors in dealing with particular industrial markets in Wisconsin, there is a basis in this record for anticipating that most of the estimated industrial sales will in fact be made. On the other hand, it is clear that if distributors are required to secure signed contracts with industrial customers prior to construction by Northern, they will be forced to negotiate at the most inopportune time which will place an undue hardship on the distributor. With the exception of the Peavy Paper Mills and the Burgess Cellulose Company instances, the voluminous evidence in this proceeding justifies Northern's optimism. It is in the public interest to avoid the cumbersome contract requirements

wherever possible. However, the requirement for firm contracts appears unavoidable with respect to the Peavy Paper Mills and the Burgess Cellulose Company. The estimates applicable to these two large industrial customers must be augmented with firm commitments. Otherwise, Northern has demonstrated by its evidence that it has satisfied the conventional elements of public convenience and necessity. It is able and willing to perform the service proposed herein. Section 7 of the Act warrants the grant of the certificates requested by applicant in the instant case, but subject to the above conditions, and that the 7(a) applications should be dismissed as moot.

ADDITIONAL FINDINGS AND CONCLUSIONS

Upon consideration of the record in these proceedings, it is specifically found and concluded, in addition to the findings and conclusions heretofore stated that:

1. Northern Natural Gas Company, a Delaware Corporation having its principal place of business at Omaha, Nebraska, is a "natural gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its Order of April 6, 1943, *In the Matter of Northern Natural Gas Company*, Docket No. G–280 (3 FPC 967).

2. At Docket No. CP62–85, Northern proposes to expand and extend its pipeline system and to initiate natural gas service to 76 communities located in the States of Iowa, Nebraska, Minnesota and Wisconsin. Northern proposes to supply these new communities with contract demand in the amount of 24,807 Mcf per day for the first year of service, 41,631 Mcf per day for the second year and 53,454 Mcf per day for the third year, which contract demand volumes will be supplied from Northern's Redfield, Iowa underground storage field. Upon completion of these facilities Northern will have a system salable capacity (unadjusted) of 1,876,973 Mcf per day.

3. To render the additional service proposed at Docket No. CP62–85, Northern proposes to construct and operate 14.1 miles of 26-inch mainline loop east of its Waterloo, Iowa compressor station and the necessary branchline and measuring stations. The total estimated cost of this construction is $17,883,500.

4. At Docket No. CP62–178 Northern proposes to construct and operate additional facilities required to provide certain of its existing utility customers 34,718 Mcf per day of increased contract demand for the 1962–63 heating season. These additional volumes of contract demand will be supplied from Northern's Redfield, Iowa underground storage field.

5. To supply the 34,718 Mcf per day of additional contract demand in Docket No. CP62–178, Northern proposes to construct and operate 3000 HP of compression at its Redfield, Iowa compressor station and to turbo-charge 2 existing 2000 HP units at the same station to 2700 HP each. In addition, Northern proposes to construct and operate 2.4 miles of 30-inch pipeline loop north of South Sioux City, Nebraska and 450 feet of 12–inch connecting line. The estimated cost of these additions is $1,853,400. Upon completion of these facilities, Northern will have a system salable capacity (unadjusted) of 1,911,691 Mcf per day, inclusive of the third-year contract demand for the 76 new communities.

6. Northern also proposes at Docket No. CP62–178 that the authorized maximum inventory for the St. Peter-Elgin Reservoir be increased from 40 billion cubic feet to 50 billion cubic feet and that the maximum authorized inventory for the Mt. Simon Reservoir be increased from 56 billion cubic feet to 70 billion cubic feet.

7. Northern's gas reserves are reasonably estimated to be 12.196 trillion cubic feet as of December 31, 1961, which will enable Northern to meet the combined peak day, average day and annual requirements of its presently certificated and

anticipated increased markets as proposed in Docket Nos. CP62–85 and CP62–178 for a period of 10 years. Northern's gas supply is adequate to meet the anticipated requirements of its expanded markets as here proposed.

8. With regard to Docket No. CP62–178, Northern has established an adequate market for the increase in contract demand for certain of its present customers, that its facilities are properly designed and adequate to render the service proposed, that the costs are reasonable, that its underground storage is fully capable of supplying the increased volumes, that the maximum inventories should be increased as requested, that it can be financed and that the project is feasible.

9. With regard to Docket No. CP62–85, Northern has proven that its facilities are properly designed and adequate to render the service, that the costs thereof are reasonable, that its underground storage is fully capable to supply the volumes of contract demand proposed and that the project can be financed.

10. Northern has an adequate market and the market estimates presented as to peak day and annual sales for the 76 new communities are generally found to be reasonable and attainable.

11. The issuance of a certificate to American Gas Co. shall be conditioned upon obtaining a firm commitment from the Peavy Paper Mills to purchase industrial gas. The issuance of a certificate to Wisconsin Southern Gas Company shall be conditioned upon obtaining a firm commitment from the Burgess Cellulose Company to purchase industrial gas. Otherwise, Northern has proven that its project in Docket No. CP62–85 is economically feasible without the need for contributions in aid of construction by any distributor.

12. Since Northern now proposes to initiate service to all communities proposed by the 7(a) applicants herein, all such applications filed pursuant to Section 7(a) of the Natural Gas Act should be dismissed; provided that service to the City of Tipton, Iowa shall be conditioned upon the City executing service agreements with Northern for the volumes of contract demand as proposed by Northern.

13. Northern is able and willing to render the service proposed at Docket Nos. CP62–85 and CP62–178.

14. The additional contract demand service Northern proposes to render to the 75 communities covered by its application as amended and the construction and operation of the necessary facilities as proposed at Docket No. CP62–85 are required by the public convenience and necessity and a certificate therefor should be issued.

15. The increased volumes of contract demand Northern proposes to supply to certain of its existing customers covered by its application as amended, the construction and operation of the facilities as proposed in Docket No. CP62–178 and the increase in maximum inventories for its storage reservoirs are required by the public convenience and necessity and a certificate therefor should be issued.

16. Northern is hereby authorized to acquire by purchase the branchline and measuring facilities constructed by North Central Public Service Corporation to serve the community of Monroe, Wisconsin in accordance with Docket No. CP62–292.

ORDER

Wherefore, *It is ordered*, Subject to review by the Commission, that:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Northern Natural Gas Company to construct with reasonable dispatch the proposed facilities hereinbefore described, and as more fully described in the applications in Docket Nos. CP62–85, CP62–178, CP63–34, CP63–11 and CP63–54 in these consolidated proceedings and to operate such

facilities for the transportation and sale of natural gas in interstate commerce for resale, all as more fully described in said applications subject to the jurisdiction of the Commission and upon the terms and conditions of this Order. Such certification also includes: authorization to Northern to acquire, by purchase at original cost and subject to conditions hereinafter set forth, the branchline and measuring facilities constructed by North Central Public Service Corporation to serve the community of Monroe, Wisconsin in accordance with Docket No. CP62-292; permanent authority to sell an additional 34,718 Mcf of contract demand to existing utility customers and to construct and operate the facilities necessary therefor; and authority to increase the maximum inventory of natural gas in the St. Peter-Elgin Reservoir and the Mt. Simon Reservoir of its Redfield, Iowa Underground Storage Field to 50 billion cubic and 70 billion cubic feet, respectively, and to supply up to 280,000 Mcf per day of contract demand from such storage.

(B) The certificates issued by paragraph (A) above and the exercise of rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued to Northern in (A) above shall be further conditioned as follows:

(i) The issuance of a certificate to serve American Gas Co. is conditioned upon obtaining and filing with the Commission by January 1, 1964, a firm signed contract covering the sale of natural gas to Peavy Paper Mills, which contract shall be satisfactory to the Commission.

(ii) The issuance of a certificate to serve Wisconsin Southern Gas Company is conditioned upon obtaining and filing with the Commission by January 1, 1964, a firm signed contract covering the sale of natural gas to the Burgess Cellulose Company, which contract shall be satisfactory to the Commission.

(D) The certificate issued in paragraph (A) shall be deemed accepted and of full force and effect, unless refused in writing and under oath by Northern.

(E) Northern shall report to the Commission in writing, under oath, the date of commencement of service to be rendered to the various communities named herein.

ALLEN C. LANDE,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

PLACID OIL COMPANY, DOCKET NO. G-13183; OCEAN DRILLING & EXPLORATION COMPANY, DOCKET NO. G-17342; OCEAN DRILLING & EXPLORATION COMPANY (OPERATOR), ET AL., DOCKET NO. G-17343

ORDER DENYING STAY TO PROVIDE OPPORTUNITY FOR CONSIDERATION OF OFFER OF SETTLEMENT AND REJECTING OFFER OF SETTLEMENT

(Issued September 30, 1963)

On September 6, 1963, applicants in Docket Nos. G-17342 and G-17343 (ODECO) filed a motion to stay the effectiveness of Opinion No. 398, 30 FPC 283, particularly ordering paragraphs (B) and (D), to set a date for all interested parties to comment on an offer of settlement filed concurrently by ODECO, and to stay consideration of ODECO's previously-filed application for rehearing.

We have already considered and denied ODECO's application for rehearing, among others, in Opinion No. 398–A, issued September 11, 1963. Accordingly, ODECO's first and third requests are moot. Moreover, we have received comments on the ODECO offer of settlement in an answer filed on September 17, 1963, by the Pennsylvania Public Utility Commission and an outright opposition filed on September 18, 1963, by Consolidated Edison Company of New York, Inc. As Consolidated Edison points out, ODECO's proposal with respect to refunds would put it in a substantially better position than that of other parties to these proceedings who settled early in the litigation. (See *Texaco Inc.*, 28 FPC 247.) Further consideration of the offer of settlement filed by ODECO on September 6, 1963, would serve no useful purpose.

The Commission orders:

The motion to stay effectiveness of Opinion No. 398 filed by ODECO on September 6, 1963, is denied and the accompanying offer of settlement is rejected.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UTAH POWER & LIGHT COMPANY, DOCKET NO. E–7127

ORDER PROVIDING FOR HEARING AND SUSPENSION OF PROPOSED RATE SCHEDULE CHANGES

(Issued September 30, 1963)

Utah Power & Light Company (Utah Power), Salt Lake City, Utah, on September 3, 1963,[1] tendered for filing, pursuant to Section 205 of the Federal Power Act, proposed changes in its filed rate schedules purporting to increase, as of October 4, 1963, its present rates and charges for wholesale electric service to seventeen municipal and rural electric cooperative customers in the State of Utah: Kaysville City, Price City, Helper City, Strawberry Water Users Association, Brigham City, Logan City, Bountiful City, Heber Light & Power Board, Nephi City, Provo City, Monticello City, Hyrum City, Lehi City, Blanding City, Morgan City, Mexican Hat Association, and Murray City. The proffered rate schedules have been tentatively designated in the files of the Commission as follows:[2] Utah Power's Rate Schedule FPC No. 71, Rate Schedule FPC No. 72, Rate Schedule FPC No. 73, Supplement No. 3 to Rate Schedule FPC No. 37, Supplement No. 2 to Rate Schedule FPC No. 39, Supplement No. 2 to Rate Schedule FPC No. 40, Supplement No. 2 to Rate Schedule FPC No. 44, Supplement No. 3 to Rate Schedule FPC No. 45, Supplement No. 1 to Rate Schedule FPC No. 50, Supplement No. 2 to Rate Schedule FPC No. 51, Supplement No. 1 to Rate Schedule FPC No. 57, Supplement No. 1 to Rate Schedule FPC No. 59, Supplement No. 1 to Rate Schedule FPC No. 60, Supplement No. 1 to Rate Schedule FPC No. 61, Supplement No. 1 to Rate Schedule FPC No. 62, Supplement No. 1 to Rate Schedule FPC No. 66, and Supplement No. 1 to Rate Schedule FPC No. 70.

The proffered rates and charges would increase Utah Power's present rates to the aforesaid municipalities and rural electric cooperatives by approximately $136,657 per annum, or 7.1%, based upon deliveries of power and energy for the 12-month period ended June, 1963. For that 12-month period Utah Power's

[1] Although the revised rates were originally submitted on May 16, 1963, the filings were not completed until September 3, 1963, the date that the Company requested as the filing date.

[2] Applicable to the municipalities and rural electric cooperatives in the order as previously listed.

revenues from these customers aggregated $1,927,021. Applying the proffered supplemental rate schedules, Utah Power's operating revenues for service to those customers would be increased to $2,063,678. Utah Power is not proposing any other rate increases.

On March 15, 1963, Utah Power began serving the 15 former wholesale customers of Telluride Power Company (Telluride) at the rates proposed herein to Utah Power's heretofore designated 17 wholesale customers in Utah.[3] With respect to these customers Utah Power filed an aggregate of eight initial rate schedules, including newly negotiated contracts, five on May 16, 1963, two on July 25, and one on September 17, and then made seven initial filings containing rate schedules only on September 19, 1963, for the seven remaining former customers of Telluride. These initial filings embody rates identical to those proposed herein to Utah Power's 17 aforesaid wholesale customers in Utah. These initial rate filings have been designated in the files of the Commission as follows: Utah Power's Rate Schedule FPC No. 74, California-Pacific Utilities Co., Rate Schedule FPC No. 75, Kanosh City; Rate Schedule FPC No. 76, Levan City; Rate Schedule FPC No. 77, Manti City; Rate Schedule FPC No. 78, Spring City; Rate Schedule FPC No. 79, Oak City; Rate Schedule FPC No. 80, Monroe City; Rate Schedule FPC No. 81, Holden City; Rate Schedule FPC No. 82, Fillmore City; Rate Schedule FPC No. 83, Beaver City; Rate Schedule FPC No. 84, Meadow City; Rate Schedule FPC No. 85, Mount Pleasant City; Rate Schedule FPC No. 86, Flowell Electric Association, Inc., Rate Schedule FPC No. 87, Garkane Power Association; and Rate Schedule FPC No. 88, Ephraim City.

Protests have been received from seven of Utah's wholesale customers, namely, Lehi City, Morgan City, Logan City, Provo City, Monticello City, Heber Light & Power Board and Bountiful City, as well as Intermountain Consumer Power Association, representing 24 municipalities and four cooperatives. Protestants generally oppose the proposed rate increases, asserting *inter alia* that Utah Power's rates are second highest in the nation, that the rate increase is unwarranted in view of fuel costs available to Utah Power, and that Utah Power discriminates between wholesale customers with generating facilities and those without generating sources regarding terms and conditions of service. On September 19, 1963, Utah Power filed an answer to the aforementioned individual protests.

Utah's Power's aforementioned rate schedules as proposed to be changed have not been shown to be justified; may result in excessive rates or charges; may place an undue burden upon ultimate customers; and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful within the meaning of the Federal Power Act. Unless suspended by order of the Commission, the proposed supplemental rate schedules would become effective as of October 4, 1963, to the extent and in the manner provided in Section 205 of the Federal Power Act and the Commission's Regulations under that Act.

Examination of the proposed supplemental rate schedules and other data currently before the Commission indicates that the rates and charges embodied therein, among other things, may produce an excessive return on Utah Power's net investment properly allocated as a rate base to its service to these 17 wholesale customers; may be based in part upon test year cost allocations that have not been shown to be reasonable or representative; and may reflect preferential

[3] By order issued January 21, 1963, *Utah Power & Light Company*, 29 FPC 128, the Commission authorized Utah Power's acquisition and merger of the facilities of Telluride with its own facilities pursuant to Section 203 of the Federal Power Act.

or discriminatory rates as to terms and conditions of service to wholesale customers with generating sources and those without generating facilities.

The Commission further finds:

In view of the foregoing, it is necessary and appropriate for the purposes of the Federal Power Act that the Commission, pursuant to the authority of that Act particularly Sections 205, 206, 308 and 309 thereof, enter upon a hearing concerning (1) the lawfulness of Utah Power's aforementioned filed rate schedules as proposed to be supplemented in the manner provided in its proffered Rate Schedule FPC No. 71. Rate Schedule FPC No. 72, Rate Schedule FPC No. 73, Supplement No. 3 to Rate Schedule FPC No. 37, Supplement No. 2 to Rate Schedule FPC No. 39, Supplement No. 2 to Rate Schedule FPC No. 40, Supplement No. 2 to Rate Schedule FPC No. 44, Supplement No. 3 to Rate Schedule FPC No. 45, Supplement No. 1 to Rate Schedule FPC No. 50, Supplement No. 2 to Rate Schedule FPC No. 51, Supplement No. 1 to Rate Schedule FPC No. 57, Supplement No. 1 to Rate Schedule FPC No. 59, Supplement No. 1 to Rate Schedule FPC No. 60, Supplement No. 1 to Rate Schedule FPC No. 61, Supplement No. 1 to Rate Schedule FPC No. 62, Supplement No. 1 to Rate Schedule FPC No. 66, and Supplement No. 1 to Rate Schedule FPC No. 70, and the objections thereto and the lawfulness of Utah Power's rate schedules for service to its other interstate wholesale customers; (2) that the Commission's staff undertake an examination of all Utah Power's interstate rates and charges, utility operations and system costs, and (3) that the operation or effectiveness of the seventeen proposed supplemental rate schedules set forth in (1) above under the Federal Power Act be suspended and the use thereof deferred, all as hereinafter provided.

The Commission orders:

(A) A public hearing be held concerning the lawfulness of Utah Power's seventeen proffered supplemental rate schedules, all as designated in finding paragraph (1) above, and the lawfulness of Utah Power's other interstate wholesale rate schedules on file with this Commission and the objections raised to the aforesaid proposed supplemental rate schedules, at a time and place to be specified by notice of the Secretary.

(B) Pending such hearing and decision thereon, the operation under the Federal Power Act of the proffered rate schedule supplements set forth in finding paragraph (1) above, hereby is suspended and the use thereof deferred until October 5, 1963. On that date the proffered rate schedule supplements shall take effect in the manner prescribed by the Federal Power Act, subject to further order of the Commission, unless this proceeding has been disposed of at a date previous thereto.

(C) During the period of suspension Utah Power's currently effective Rate Schedule FPC No. 21 and Supplements Nos. 1 and 2 thereto, Rate Schedule FPC No. 30 and Supplement No. 1 thereto, Rate Schedule FPC No. 31 and Supplement No. 1 thereto, Rate Schedule FPC No. 37 and Supplements Nos. 1 and 2 thereto, Rate Schedule FPC No. 39 and Supplement No. 1 thereto, Rate Schedule FPC No. 40 and Supplement No. 1 thereto, Rate Schedule FPC No. 44 and Supplement No. 1 thereto, Rate Schedule FPC No. 45 and Supplement No. 2 thereto, Rate Schedule FPC No. 50, Rate Schedule FPC No. 51 and Supplement No. 1 thereto,, Rate Schedule FPC No. 57, Rate Schedule No. 59, Rate Schedule FPC No. 60, Rate Schedule FPC No. 61, Rate Schedule FPC No. 62, Rate Schedule FPC No. 66, and Rate Schedule FPC No. 70 for service to the seventeen

aforesaid wholesale customers in Utah now on file with the Commission shall remain and continue in effect.

(D) Unless otherwise ordered by the Commission, Utah Power shall not change the terms or provisions of its seventeen proffered supplemental rate schedules referred to in paragraph (A) above or those of its currently effective rate schedules and supplements thereto on file with the Commission for service to those seventeen wholesale customers and referred to in paragraph (C) above, until this proceeding has been disposed of or until the period of suspension has expired.

(E) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.37) on or before October 31, 1963.

Chairman Swidler and Commissioner Black *dissent* to limiting the suspension to one day, on the ground that the circumstances of this case warranted and in the exercise of reasonable discretion required suspension of the proposed increases in rates for the full statutory period of five months.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

CALIFORNIA ELECTRIC POWER COMPANY AND SOUTHERN CALIFORNIA EDISON COMPANY, PROJECT NOS. 325, 344, 440, 474, 481, 532, 677, 711, 782, 830, 882, 1008, 1353, 1388, 1389, 1390, 1395, 1396, 1397, 1398 AND 1582.

ORDER APPROVING TRANSFER OF LICENSES OR INTEREST THEREIN AND DISMISSING APPLICATION FOR APPROVAL IN OTHER RESPECTS

(Issued October 1, 1963)

Joint application was filed on June 11, 1963, and supplemented on July 3, 1963, by California Electric Power Company, licensee for the following projects:

PROJECT NOS.

325	677	1353	1396
344	711	1388	1397
440	782	1389	1398
474	830	1390	1582
481	882	1394	
532	1008	1395	

and Southern California Edison Company, of Los Angeles, California, for Commission approval of transfer of the licenses for the above-designated projects from the former to the latter.

According to the application, the approval herein sought is part of a merger transaction between the proposed transferor and transferee. Application for authority to consummate the merger has been filed with the Commission in a proceeding designated as Docket No. E–7106. Joint Applicants herein request that Commission approval of the transfer of the licenses involved be made conditional upon consummation of the merger and be made effective as of the effective date of the merger.

The licenses for Project Nos. 481 and 677 waive Section 8 of the Federal Power Act, and consequently no Commission approval of the transfer is required.

The licenses for Project Nos. 325, 440, 474, 481, 711, 782, 830, 882, 1008, 1353, 1397, and 1582 are for transmission lines only which, according to a staff study of the function of each of such lines, are not primary lines or parts of a "project" as defined in Section 3(11) of the Federal Power Act. However, in view of the pending merger, we are approving the transfer of the licenses for these lines, subject to the requirement that the transferee obtain authority from the appropriate Government agency for the continued occupancy by the lines of the Government lands involved, and upon obtaining such authority to then apply for surrender of its licenses or interest therein for the lines.

Our records show that the licenses for transmission line Project Nos. 325 and 1397 are held jointly by California Electric Company and Imperial Irrigation District to the extent of their respective interests in the lines. Our

approval of the transfer of the licenses for these two lines is restricted to California Electric Company's interest only in the lines.

California Electric Company agrees to pay all annual charges accrued under its licenses to the effective date of the transfer of the licenses. Southern California Edison Company agrees to accept the licenses and all the terms and conditions therein and of the Federal Power Act, and agrees to be bound thereby to the same extent as though it were the original licensee of the projects herein involved.

The Commission finds:

(1) The proposed transferee is a corporation organized under the laws of the State of California.

(2) Transmission line Project Nos. 325, 440, 474, 481, 711, 782, 830, 882, 1008, 1353, 1397 and 1582 are not parts of a "project" as defined in Section 3(11) of the Federal Power Act.

(3) Approval of transfer, upon the conditions hereinafter set forth, of the licenses for Project Nos. 344, 440, 474, 532, 711, 782, 830, 882, 1008, 1353, 1388, 1389, 1390, 1394, 1395, 1396, 1398, and 1582, and of the tranferor's interest in the licenses for Project Nos. 325 and 1397 to the proposed transferee will not be inconsistent with the public interest.

(4) The joint application should be dismissed to the extent that it seeks Commission approval of the transfer of the licenses for Project Nos. 481 and 677.

The Commission orders:

(A) The transfer of the licenses or interest therein for the projects designated in finding (3) above from California Electric Company to Southern California Edison Company is hereby approved, effective as of the effective date of the merger referred to above, subject to Section 9.3 of the Commission's rules and regulations, and subject to the further condition that the net investment in the projects will not be increased on account of the transfer; provided that the transferee shall be subject to the conditions and obligations of the licenses and to all the provisions of the Act to the same extent as though it were the original licensee for the projects. Our approval respecting the licenses for Project Nos. 325, 440, 474, 481, 711, 782, 830, 882 1008, 1353, 1397 and 1582 is subject to the requirement that the transferee obtain authority for the continued occupancy by the lines of the Government lands involved, and upon obtaining such authority to then apply for surrender of its licenses for those lines.

(B) The application is dismissed to the extent that it seeks Commission approval of transfer of the licenses for Project Nos. 481 and 677.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Federal Power Act, and failure to file such an application shall constitute acceptance of the licenses or interests therein for the projects designated in finding (3) above by Southern California Edison Company. In acknowledgement of the acceptance of such licenses, this instrument shall be signed for Southern California Edison Company, the new licensee, and returned to the Commission within 60 days from the date of issuance of this order.

OPINION NO. 405

CONTINENTAL OIL COMPANY, DOCKET NO. G–16966; CONTINENTAL OIL COMPANY, DOCKET NOS. G–11337, G–13608, G–14264, G–14599, G–15236, G–15409; CONTINENTAL OIL COMPANY (OPERATOR), ET AL., DOCKET NO. G–15417

OPINION AND ORDER AFFIRMING EXAMINER'S ORDERS

(Issued October 1, 1963)*

Syllabus

1. Record here will not justify reduction of Producer's existing rates since evidence presented showed cost of service exceeded comparable revenues in years as to which evidence was presented. P. 892.
2. Present area price levels cannot be used as base for reducing rates filed prior to Statement of General Policy. P. 892.
3. Commission *rejects* suggestion that Section 5(a) proceeding be held in abeyance; no useful purpose will be served thereby since record is stale and new record would have to be made. PP. 892–893.
4. Commisson *dismisses* investigation; *terminates* certain suspension proceedings and *disallows* proposed increased rate, in proceedings arising under Section 5(a) and 4(e) of the Natural Gas Act. PP. 894; 929–930.

Daniel C. Arnold, Bruce R. Merrill, Robert E. Morse, Jr., Gene M. Woodfin, David T. Searls, Robert C. Hawley, and *Lloyd F. Thanhouser* for *Continental Oil Company.*

William R. Duff, Edward M. Barrett, and *David K. Kadane* for Long Island Lighting Company.

William R. Duff, Fred Broadfoot, Edward S. Kirby, James R. Lacey, John F. McDonald, and *J. Harry Mulhern* for Public Service Electric and Gas Company.

Henry P. Sullivan for Philadelphia Electric Company.

J. David Mann, Jr. and *John E. Holtzinger, Jr.,* for *The United Gas Improvement Company.*

Edwin F. Russell for Brooklyn Union Gas Company.

William R. Joyce, Jr., John A. Lodge, and *James O'Malley, Jr.,* for Consolidated Edison Company of New York, Inc.

Patrick G. Sullivan, Allen R. Grambling, George D. Horning, Jr., and *George J. Meiburger* for El Paso Natural Gas Company.

Harry L. Bristol for New York State Electric & Gas Corporation.

Christopher T. Boland, Thomas F. Brosnan, William E. Feldhaus and *Thomas F. Ryan, Jr.,* for Texas Gas Transmission Corporation.

Norman A. Flaningham, C. William Cooper, and *George C. Williams* for The East Ohio Gas Company, Hope Natural Gas Company, The Peoples Natural Gas Company, Lake Shore Pipe Line Company and New York State Natural Gas Corporation.

Kent H. Brown and *Barbara M. Suchow* for Public Service Commission of New York.

Harry L. Albrecht, Luke R. Lamb, William J. LeBuhn, and *W. Russell Gorman* for the Staff of the Federal Power Commission.

*Initial decision appears on p. 894.

Before Commissioners: Joseph C. Swidler, Chairman: L. J. O'Connor, Jr., Harold C. Woodward, and David S. Black.

SWIDLER, *Chairman:*

On January 26, 1956, the Commission instituted an investigation under Section 5(a) of the Natural Gas Act of the rates charged by Continental Oil Company (Continental) and by Stanolind Oil and Gas Company, predecessor of Pan American Petroleum Corporation. On November 18, 1958, the investigation of Continental was severed and consolidated with 10 other proceedings under Section 4(e) of the Act to review 12 rate increases proposed by Continental and suspended by the Commission. Three of these Section 4(e) proceedings were later severed and terminated.

The examiner's decision, issued June 13, 1963, ordered that the Section 5(a) proceeding be dismissed. It further ordered that six of the seven remaining proceedings under Section 4(e) be terminated. With respect to the seventh, involving Continental's Rate Schedule No. 107, Supplement No. 10 (Docket No. G–13608), the examiner found the proposed rate increase in excess of 14 cents per Mcf to be unjust and unreasonable. He therefore disallowed the increase and ordered it refunded with interest.

No exceptions to the examiner's orders were taken by any party insofar as the 4(e) proceedings were concerned, and we will adopt his conclusions.

Four intervenors (Long Island Lighting Company, Philadelphia Electric Company, Public Service Electric and Gas Company, and The United Gas Improvement Company) filed an exception to the examiner's dismissal of the Section 5(a) proceeding. They state that the record would justify this Commission in directing Continental to reduce all rates now on file to the applicable area price levels previously established. In the alternative they suggest that the Section 5(a) proceeding should be held in abeyance as was done in *Hunt Oil Co.*, 28 FPC 623, urging that this is necessary to protect the ultimate consumer during the interim period while awaiting final decision in the various proceedings to determine area rates for independent producers.

We do not feel that the evidence in this case would justify an order to Continental to reduce its existing rates. Under the evidence presented, Continental's cost of service exceeded comparable revenues in the years as to which evidence was presented. While the intervenors point out that Continental's revenues increased so that in 1961 it realized more per unit of gas sold than the 1957 cost of service, there are no figures in the record for cost of service in 1961. Hence this is not a sufficient showing on which to base a finding that revenue exceeded cost of service in 1961.

Neither do we feel that the present area price levels can be used as a basis for reducing rates filed prior to the Statement of General Policy (S.G.P. 61–1), which first promulgated area price levels. As noted in *Wisconsin, et al.* v. *Federal Power Commission, et al.*, 373 U.S. 294, 299, n.7, 10 L. Ed. 2d 357, 83 Sup. Ct. 1266, 1269, the statement provides area price levels which were fixed without notice or hearing "for the purpose of guidance and initial action by the Commission and their use will not deprive any party of substantive rights or fix the ultimate justness and reasonableness of any rate level."

We have given serious consideration to the suggestion that the Section 5(a) proceedings be held in abeyance rather than dismissed. This issue was commented on by the Supreme Court in *Wisconsin* v. *F.P.C.*, *supra* at 83 S. Ct. 1277:

> * * * the fact that the commission in this case terminated the § 5(a) proceedings, rather than merely holding them in abeyance as it did in *Hunt Oil Co.*, Docket No. G–9065, *et al.*, Opinion No. 365 (Oct. 17, 1962), is a circumstance of no significance . . . the Commission remains free to reactivate the investigation of Phillips' individual rates if the area proceedings are unduly delayed or if circumstances should otherwise warrant. The distinction between termination and suspension of the § 5(a) proceedings is thus one of form and not of substance * * *

After considering the state of the record in this case, it appears that no useful purpose would be served by holding this case open. The record in this case is stale, and a new record would have to be made. This record would be in addition to those being made in our area rate proceedings where 5(a) determinations of Continental's rates in each area are also to be decided (AR61–1, AR61–2). This duplication of effort is not justified. If the situation should change a new 5(a) proceeding could be initiated as readily as this one could be reactivated.

The intervenors have also excepted to various determinations of the examiner incident to his determination of the jurisdictional cost of service. At the hearing evidence was presented by the Staff, by Continental, and by the intervenors with respect to Continental's cost of service in previous years. It is undisputed that no matter which test year is used, and no matter whose evidence is accepted, and no matter how the exceptions are decided, Continental's jurisdictional cost of service exceeded corresponding revenues for any given year. None of the exceptions taken by the intervenors, if such exceptions were allowed, would cause any change in these conclusions. It appears unnecessary, therefore, to pass on them; and we neither adopt nor disapprove the examiner's decision on these points.

The Commission staff has excepted to the allowance by the examiner of a 14 percent return on common equity in computing jurisdictional cost of service. Continental argues that its particular circumstances call for this rate of return, although it is higher than that allowed by the Commission in *Phillips Petroleum Company*. 24 FPC 537. A determination of this question by the Commission would also have no effect on the outcome of this case. In such circumstances, it seems to be neither necessary nor desirable to analyze at length the conflicting testimony and arguments of the parties. This question, therefore, we do not decide, but leave open for future consideration should the need arise.

The Commission finds:

(1) Continental is a natural-gas company subject to the provisions of the Natural Gas Act, and the sales of natural gas for resale which are the subject of the order, hereinafter included as a part of this decision, are sales of natural gas in interstate commerce subject to the jurisdiction of the Commission.

(2) The proposed increased rates and charges filed by Continental in Docket Nos. G–11337, G–14264, G–15236, G–15409, and G–15417 are just and reasonable, and the proceedings in these dockets should be terminated.

(3) The proposed increased rate filed by Continental in Docket No. G–13608, insofar as it exceeds the rate of 14.0 cents per Mcf, is unjust and unreasonable and should, to that extent, be disallowed and ordered refunded as hereinafter provided.

(4) On motion of Continental, and upon all the evidence submitted in this case, the proceedings in Docket No. G–16966 should be terminated and dismissed.

The Commission orders:

(A) The orders of the examiner, issued June 13, 1963, in the above-entitled proceeding, are hereby adopted as the orders of the Commission.

(B) For the reasons stated above, the exceptions to the examiner's decision are hereby denied.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON PROCEEDINGS PURSUANT TO SECTION 5(a) AND SECTION 4(e) OF THE NATURAL GAS ACT INVOLVING THE RATES AND CHARGES OF A PRODUCER

(Issued June 13, 1963)

SIMPSON, *Presiding Examiner:* The proceedings commenced as an investigation under Section 5(a) of the Natural Gas Act (Act) of the jurisdictional gas rates and charges of Continental Oil Company (Continental) and another.[1] That part of the investigation concerning Continental, having been carried on separately, was severed by order of the Commission issued November 18, 1958, and, under the designation Docket No. G–16966, therewith consolidated for purposes of hearing with ten other proceedings pending under Section 4(e) of the Act with respect to certain proposed and suspended increases in Continental's jurisdictional gas rates pertaining to sales of natural gas to Montana-Dakota Utilities Company, (Montana-Dakota), Texas Eastern Transmission Corporation (Texas Eastern), El Paso Natural Gas Company (El Paso), Lone Star Gas Company (Lone Star), Mississippi River Fuel Corporation (Mississippi), and Consolidated Gas Utilities Corporation (Consolidated).[2]

In accordance with the terms of the Commission's order issued November 18, 1958, *supra*, the matters involved and the issues presented in these consolidated proceedings came on for hearing and were heard commencing on December 9, 1958, and concluding, after requisite interim recesses, on June 8, 1960. Fifteen parties became interveners, four actively participating in the introduction of evidence.[3] Continental presented 11, Interveners 3, and

[1] Stanolind Oil and Gas Company, now Pan American Petroleum Corporation, Docket No. G–9279. Order issued January 27, 1956.

[2] Since reduced to seven such proceedings by the filing of a superseding rate schedule in Docket No. G–11640 (Continental's FPC Gas Rate Schedule No. 2, applicable to sales to Montana-Dakota), and the acceptance by the Commission of a settlement offer in Docket Nos. G–15170 and G–15171, (Continental's FPC Gas Rate Schedules Nos. 84, 114 and 125, applicable to sales to Texas Eastern). Remaining are the proceedings in Docket Nos. G–14264, G–15409, and G–15417, (Continental's FPC Gas Rate Schedules Nos. 146, 109, 85, and 92, applicable to sales to El Paso), Docket No. G–15236, (Continental's FPC Gas Rate Schedule No. 89, applicable to sales to Lone Star), Docket Nos. G–11337 and G–13608, (Continental's FPC Gas Rate Schedule Nos. 113 and 107, applicable to sales to Mississippi), and Docket No. G–14599 (Continental's FPC Gas Rate Schedule No. 147, applicable to sales to Consolidated).

[3] In most instances an earlier intervention in Docket No. G–9279 was transferred by the Commission's general order on interventions issued November 26, 1958, in these proceedings, otherwise status as an intervener was obtained by petition and subsequent orders of the Commission issued December 9, 1958 (El Paso; G–14264, G–15409, G–15417; United Gas Improvement Company; G–16966) and January 29, 1960 (El Paso; G–16966), or as Mississippi's in G–11337 by order issued June 3, 1957. The four interveners participating actively in the hearing were: Long Island Lighting Company, Philadelphia Electric Company, Public Service Electric and Gas Company of New Jersey, and The United Gas Improvement Company.

Staff 7 witnesses. Simultaneous initial and reply briefs have been filed on behalf of Continental, four Interveners (jointly) and Staff, and a final memorandum on behalf of Continental.[4]

The record consists of 4526 pages of transcript taken during 29 session days, 67 of 69 exhibits offered in evidence, and 4 items incorporated by reference embracing the testimony of 12 witnesses taken in the so-called *Omnibus* proceeding in Docket No. G–9277.

On January 14, 1959, at the conclusion of Staff's case-in-chief, Continenal, as respondent in the general investigation (G–16966), filed a formal motion to dismiss on the grounds that the Staff had failed to maintain its burden of proof. The motion was opposed by answers filed jointly by Public Service Electric and Gas Company (Public Service) and Long Island Lighting Company (Long Island) and separately by the United Gas Improvement Company (United Gas)[5], the New York Public Service Commission (New York Commission), and Commission Staff counsel. By order issued February 24, 1959, the Commission deferred ruling.

Thereafter, on March 9, 1959, after cross-examination of Staff's witnesses and the call upon interveners', Continental filed its renewal of motion to dismiss, which was opposed by interveners and Commission Staff counsel; and, on February 29, 1960, filed its request for ruling on its renewal of motion to dismiss to which opposition was again entered.

The foregoing several motions remain pending, to be disposed of by the findings and conclusions of this decision.

The Issues

Section 5(a) of the Act provides, in effect, that whenever the Commission shall find, after hearing, that a jurisdictional rate or charge is unjust or unreasonable, it shall determine the just and reasonable rate or charge to be thereafter in force and order a decrease where the rate is unjust or otherwise unlawful, or not the lowest reasonable rate.[6]

Section 4(e) of the Act provides, in part, that whenever a new rate schedule is filed the Commission may enter upon a hearing concerning the lawfulness of the rate or charge, suspend the operation of the schedule for a period not to exceed five months, and make such orders with reference to the rate as would be proper in a proceeding initiated after the schedule had become effective.

In the Section 5(a) proceeding (G–16966) the Commission by the aforesaid order of November 18, 1958, directed the Staff to precede, while the Act specifically provides that in a Section 4(e) proceeding the burden of proof shall be upon the natural-gas company.

Subject to further consideration of the specific issues raised by the contentions of participants, or inherent in the evidence, the ultimate issues in these consolidated proceedings are:

(1) Whether, the rates and charges contained in Continental's established rate schedules are, within the meaning of the Act, unjust, unreasonable, unduly discriminatory, or preferential or not the lowest reasonable rates; and, if unlawful, what rates or charges shall be determined in the premises to be just and reasonable;

---

[4] El Paso also filed an initial but not a reply brief.

[5] The later answer was adopted by Philadelphia Electric Company.

[6] Section 5(a) provides, however, that the Commission shall have no power to order an increase in a rate contained in a currently effective schedule unless the increase be in accord with a new schedule filed by the natural gas company.

(2) Whether, or to what extent, Continental has discharged its burden of proof to show that proposed increased rates or charges are just and reasonable; and, with respect to those which have already gone into effect, to what extent, if any, amounts received by Continental shall be refunded.

Contentions

Staff

Staff contends that the rates of a natural-gas company must relate to its revenue (cost) requirements, and, that in order to more closely relate joint costs and revenues, cost of service should be determined by homogeneous cost districts and not on a company-wide basis.

Staff also contends that combination lease joint production and company-wide exploration costs should be allocated at the lease and to the area respectively, by a relative value (realization) method; that general and administrative expenses should be allocated in the ratio of departmental operating expense; and that regulatory expenses, which allegedly cannot be verified in this case as related to regulatory matters, should be treated simply as if a part of production department and headquarters general expenses.

Staff further contends that an average test-year net investment rate base is appropriate for the determination of rates in this proceeding; that a cost of capital rate of return of 10.8%–11.2% on Continental's common stock equity is fair and reasonable; and that an allowance for Federal income taxes should not be provided as impliedly such taxes are not actually paid with respect to the Company's oil and gas production functions.

Staff also contends that over the period 1955–1958 changes in unit costs have been compensating; that, accordingly, the use of 1955 as a test year, without adjustments for later changes, is reasonable and appropriate; and, that a reduction in rates as indicated in Staff's Exh. No. 16 should be ordered.[7]

Staff concedes that with due regard to limitations inherent in the evidence of these proceedings a 1955 cost of service computed in conformity with the principles of the *Phillips* case (24 FPC 537 (1960)) results in company-wide test year unit costs in excess of unit revenues.

Continental

The Respondent-Applicant contends, in substance, that application of a cost of service method to a producer of oil, liquids and gas involves allocations between these products of a substantial and arbitrary nature and is also unsuitable because of the geographical nature of exploration costs, indefiniteness of the gas reserves used to derive costs,[8] and ultimate resulting erratic variations in unit costs between producing areas. Continental contends that on the other hand such data as cost indicators and competitive market prices, as well as discounted cash flow analyses, should be used to test the lawfulness of a producer's rate.

Against the possible adoption of a conventional cost of services method, however, Continental contends that cost should be determined on a company-wide basis;[9] joint production costs of oil-gas leases, including development dry holes, should be allocated on the basis of a weighted relative cost

[7] No rates are recommended for CATC–MCN offshore transactions on the ground that production in that area had not become stabilized.

[8] Affecting depletion, amortization, and various unit costs.

[9] Continental does not seek a company-wide rate but reserves the right to seek rates which would equate to such an overall rate and be sufficient to make itself whole.

method, and of gas-condensate leases on the basis of the Btu of production sales; general and administrative expense should be allocated to departments on the basis of gross operating assets, and to leases and functions in the ratio of direct operating expenses; company-wide exploration costs should be allocated directly to gas according to the Btu of the test-year's production; and gasoline plant processing cost should be allocated between gas and liquids according to functions, with adjustment for volumetric and Btu losses resulting from removal of liquids.

In its initial brief Continental also contends for the inclusion of regulatory expense ($200,000); use of 1957 as the test year, with allowance for later trends; use of a year-end investment rate base; and a rate of return of 14% with Federal income tax allowances based on a 52% rate adjusted for interest charges.

In its reply and final briefs, Continental objects to both 1955 and 1957 as test years as too remote but oppose reopening of the proceedings for taking of evidence related to a new test year as a "wasteful procedure."

Continental, concluding that its existing and proposed rates are supported by the market price standard and are, cost-wise below a just and reasonable level, requests dismissal of the Section 5(a) proceedings[10] and approval of the rates involved in the Section 4(e) proceedings.

Interveners

The distributor interveners (Distributors)[11] contend that the record contains no evidence justifying a departure from traditional cost evidence or, inferentially reliance upon indices of increased costs or market prices for gas; Staff's area (district) cost of service, including company-wide exploration costs, creates impractical price extremes which would disturb existing purchase patterns; and Staff should be required to propose appropriate rate ranges for each major price area and Continental appropriate competitive and non-disruptive rates within such ranges to yield total jurisdictional revenue equal to the jurisdictional cost of service.

Distributors further contend that the reserve-added-realization (RAR) method of allocating joint exploration expense and investment costs to gas would reflect the results of Continental's exploratory efforts and its motivation in adding reserves; the Btu method of allocation of joint costs is unsupported on either engineering or economic grounds; the relative cost method of allocating on-lease direct and indirect[12] production investment costs and expense to joint products is reasonable,[13] and that compression costs are properly assignable entirely to plant liquids.

Distributors also contend that Continental has not established a need for working capital over and above cash available from normal operations; rate of return should be determined on the basis of Continental's entire business;

---

[10] The 1957 wellhead unit cost of service computed by Continental in its main brief totalled $0.4089, the unit revenue deficiency $0.3206 per Mcf. Corresponding results obtained by Continental's use of what it refers to as the *Phillips'* procedures are $0.1942 and $0.1059 per Mcf, respectively. However, Continental here disagrees with the economic factor used in the allocation of exploration costs, the return, and the computation of Federal income taxes.

[11] Long Island Lighting Company, Philadelphia Electric Company, Public Service Electric and Gas Company, and The United Gas Improvement Company.

[12] Except special facility expenses and investment.

[13] Excluding four offshore gas leases in determining unit relative costs on the ground production from these leases had not reached a representative stage.

and, citing *El Paso Natural Gas Company* v. *F.P.C.*, 281 F. 2d 567 (5th Cir., 1960), a computed allowance for Federal income taxes in lieu of actual taxes would be improper.

On the basis of 1957 company-wide costs, exclusive of the Western Region,[14] Distributors obtain an average cost of jurisdictional gas of 13.44¢ per Mcf, or, upon the basis of their concept of the procedures used by the Commission in Opinion No. 338 in the *Phillips* case (*supra*), 12.34¢ per Mcf,[15] i.e., in either instance in excess of corresponding revenues for the year.

El Paso contends that with respect to sales to it Continental's cost of service fails to justify rates higher than those provided by its contracts.

The Evidence

Company Operations

Continental and subsidiaries constitute a large integrated oil and gas enterprise engaged in the exploration for, and production of, crude oil and natural gas, the refining of crude oil, and the transportation and marketing of petroleum and its products.[16]

In 1955 production of some 47,500,000 barrels of crude oil and condensate from working interest and oil payment leases yielded revenues in excess of $128,000,000,[17] while delivery of some 127,000,000 Mcf of natural gas yielded revenues in excess of $10,722,000.[18]

During the same year it owned a working interest in 2150 domestic producing leases, located in 194 counties of 15 states. Gas was sold from 960 of these leases, of which 715 were operated by Continental. At the end of the year domestic holdings consisted of 379,435 producing and 8,440,133 undeveloped acres.[19]

As of this same time Continental had an interest equivalent to 8,268 net

---

[14] *I.e.*, California—non-jurisdictional.

[15] Noting that the Btu content of gas sold in the field is unknown.

[16] Continental, the eighth largest producer of crude in the U.S., was originally organized in 1875 as a marketing organization operating in Iowa, Utah, and Wyoming, remaining so until 1924 when, merged with Mutual Oil Company, it became a fully integrated operation. After a 1929 merger with Marland Oil Company Continental was owner of 2,966 oil wells. Sudsidiaries include Continental Oil Company (Texas, Ky.) Continental Petrochemical Company, Continental Pipe Line Company, Richardson Lubricating Company, and Westcott Oil Corporation. The Company's marketing area includes the Midwestern, Southwestern and Rocky Mountain states, and part of the Southern United States.

[17] Oil production includes that of subsidiaries and by major states was: Texas, 31%; Wyoming, 28%; Kansas, 9%; California, 8%; Oklahoma, 7% and Louisiana 6%. Since 1946 its crude production has increased some 150%. In 1957 Continental produced a daily average of 133,652 barrels of crude and 11,906 barrels of natural gas liquids.

[18] From sales of wellhead gas, lease share of liquids extracted from gas in processing plants, and residue gas after extraction. Gas sales by volumes were: Texas, 40%; Lousiana, 28%; California, 11%; New Mexico, 11%; and offshore, 0.8%. Miscellaneous revenues from the sale of carbon dioxide, iodine, and sulphur amounted to but $45,000. Since 1947 deliveries of natural gas have increased some 140%. In 1957 Continental delivered 136,086,000 Mcf of natural gas.

[19] At the end of 1957 comparable figures were 437,000 producing and 7,377,000 undeveloped net acres including 140,000 in the offshore area. Producing properties are located in the Mid-Continent, Rocky Mountain, Gulf Coast, and Pacific Coast areas.

wells,[20] including 7692 oil wells,[21] 200 gas wells,[22] and 376 input wells,[23] and during the year participated in drilling 557 net exploratory and development wells of which 105 exploratory wells resulted in 8 gas and distillate wells, 21 oil wells, and 76 (72%) dry holes, and 452 development wells resulted in 12 gas or distillate wells, 390 oil wells, and 50 (11%) dry holes. The number of exploratory wells drilled was greater than that in any of the prior nine years, except 1951 and 1952, while the number of development wells drilled was not in any year exceeded.

Continental owns eight oil refineries,[24] varying interests in twenty gasoline processing plants, interests in natural gas field facilities,[25] a liquids pipeline, a natural gas pipeline (Louisiana), and certain interests in five producing companies, three crude oil pipeline companies, a refining company, four refined products pipelines, and two petroleum products marketing firms. It also owns or has interest in three petro-chemical plants,[26] four carbon black plants, a butadiene plant, an ammonia plant, a tanker steamship company, and a liquid methane company.

The Company reported to the Securities and Exchange Commission in October 1954 to the effect that then current reserves of natural gas exceeded 2.2 trillion cubic feet. As of the end of 1956 net proven reserves were unoffically estimated at 900,000,000 barrels of crude and 2.8 trillion of natural gas.

In the year 1955 approximately 47% of the gas sold by Continental represented jurisdictional sales of natural gas, of which 91.3% occurred in the Company's Southwestern and Southern-Onshore regions.[27]

As of December 31, 1957, capitalization totalled $513,949,587.

Records and Accounts

Continental is organized in a number of departments of which three, production, exploration and gasoline, are concerned with the production and sale of natural gas.

The production department's accounting reports are prepared on a district and regional basis[28] each department having its separate fixed asset, income and expense accounts, wherein property, plant and equipment are stated at cost. Independent audits certify that the Company's accounting system follows recognized accounting principles and methods, Staff's examination of the producing property accounts disclosed no apparent excess over cost, and its adjustments of book amounts are non-controversial.

---

[20] *I.e.*, 18,362 gross wells. Of the total of net wells 39 were on the offshore leases and were, generally, temporarily shutdown oil wells.

[21] Of which 1121 were flowing, 4290 pumping, 285 gas lifted, 437 temporarily shut down, 330 permanently shut down, and 1229 plugged.

[22] Of these 121 were flowing, 42 temporarily shut down, 17 permanently shut down, and 20 plugged.

[23] Including 64 gas input, 175 water flood input, and 137 salt water input wells.

[24] In 1957 six operating refineries had a combined capacity in excess of 150,000 bb. per day.

[25] Including fuel gas systems, gathering systems, repressure systems, gas lift systems, and compressor stations.

[26] Manufacturing a range of products derived principally from petroleum source materials.

[27] With respect to the twenty gas processing plants jurisdictional sales are made from five only.

[28] The regions are: Central (Kansas, Oklahoma and Illinois districts); Southwestern (Texas and New Mexico districts); Rocky Mountain (Colorado, New Mexico, Montana and Wyoming districts); Southern-Onshore (Texas and Louisiana districts); Southern Offshore (Offshore Louisiana districts); and Western (California districts).

Staff's Cost of Service Operating Expenses

Staff's accounting witness computes combined production and exploration expenses before return in the amount of $105,775,228, as follows:

	Central	Southwestern	Rocky Mountain	Western	Southern [1]	Total
Lease expense [2]	$4,256,083	$5,394,176	$3,349,172	$2,263,028	$4,039,593	$19,302,052
General expense [3]	1,101,951	1,580,418	941,020	586,601	994,577	5,204,567
Production taxes [4]	501,194	1,915,506	1,168,347	(3)	1,400,188	4,985,232
Ad valorem taxes	341,466	703,943	90,250	957,138	585,999	2,678,796
Depreciation, etc. [5]	4,977,457	7,563,598	6,837,876	1,554,964	6,460,295	28,394,190
Retirements, etc. [6]	55,934	109,315	1,092,681		1,192,595	2,450,525
Misc. intangible	27,193	39,545	99,194	986	18,235	185,153
Dry hole expense [7]	248,462	755,797	393,625	(408)	1,875,121	3,272,597
Exploration, etc. [8]	6,764,209	10,769,448	10,738,556	4,023,869	7,006,034	39,302,116
Total	18,273,949	28,831,746	24,710,721	10,386,175	23,572,637	105,775,228

[1] Embracing Continental's two operating regions: "Southern-Onshore" and "Southern-Offshore".
[2] Direct and district lease operating expenses combined.
[3] Headquarters and regional general, and production general, expenses—allocated.
[4] Oil and gas production taxes.
[5] Depreciation and depletion from Continental's accounts; amortization by multiplying the net balance of capitalized intangible development costs by the percent depletion occurring in the test year (1955).
[6] Retirements and abandonments, redetermined in connection with staff's proposed capitalization of a substantial portion of the intangible costs wholly reserved by Continental.
[7] That portion of Continental's expense not capitalized by Staff.
[8] Exploration and development expense per books, less minor assignments to uranium, agricultural, and foreign operations, less $6,732,543 which Staff capitalizes, plus $566,707 transferred by Staff from production operations, and $1,456,332 of allocated general expense. The resulting expense (company-wide) is allocated on the basis of lease revenues.

Continental's lifting cost statements identify direct lease and district lease operating expenses by leases, and likewise as to production and ad valorem taxes. The Company also records depreciation and depletion by leases but at Staff's request computed a lease amortization and related retirement and abandonment expense (1955) to be used by Staff in connection with the latter's proposal to capitalize some $6,732,543 of oil and gas intangible development costs. Miscellaneous intangible expense is taken directly per books,[29] while production department lease dry hole costs are developed from an annual study.

The magnitude of the allocations involved are reflected in the fact that to compute lease costs some $44,506,683 of the total ($105,775,228) are indirect costs which must be assigned[30] which in turn became a part of the $53,100,137 computed as joint product costs associated with condensate-gas and oil-gas leases.

Staff's Expense Allocations

Staff allocates company headquarters and regional general expense ($8,555,034) between 17 operating activities in the ratio of adjusted direct operating expenses, and splits the portion allocated to production ($1,683,819) among the six regions in the ratio of some 10 stated expenses regionalized by Continental.[31] It adjusts Continental's regionalized production department general expense ($3,416,259) to eliminate overriding and offset royalties in a relatively minor amount ($37,030) and adds regionalized production and drilling social security taxes ($141,519).[32] Total general expense ($5,204,567)

[29] Less $5,866 which Staff considered not to be identified with leases.
[30] Production headquarters and regional general ($1,683,819), production general ($3,520,748), exploration and development expense ($37,845,784), and $1,456,332 of headquarters and regional general expense allocable to exploration.
[31] These latter totalling $26,149,740 are from the Company's overhead and operating statement after Staff adjusts in certain limited respects.
[32] Resulting production general expenses: $3,520,748.

is allocated within regions to districts in the ratio of direct and district operating expenses to the sum of such expenses for the region.

Staff adds to exploration expenses per books ($44,237,269), less amounts applicable to non-related operations ($225,649), and capitalized intangible drilling costs ($6,732,543), amounts transferred from production operations ($566,707), and the allocated part of headquarters and regional general expense ($1,456,332). The resulting $39,302,116 is allocated to lease categories within districts in the ratio of lease revenues to total production department lease revenues without regard to the geographic areas within which such costs were actually incurred.

Lease and district costs for gas (before return), obtained by the additional allocation of lease joint costs in the ratio of the lease category gas revenues to total production revenues, summarize by regions as follows:

Gas	Central	South Western	Rocky Mountain	Western	Southern	Total
Lease operating expense	$46,272	$175,062	$35,460	$427,209	$736,177	$1,420,180
General expense	11,980	51,289	9,963	110,738	179,445	363,415
Production taxes	19,880	128,945	12,783		390,872	552,480
Ad valorem taxes	166	22,364	1,862	184,619	137,702	346,713
Depreciation, etc	94,954	311,739	107,564	508,444	1,398,914	2,421,615
Retirements, etc	1,968	4,357			165,902	172,227
Miscellaneous intangible expense	2,718	6,920	801	3,395	16,955	30,789
Dry hole expense	1,999	4,075	(119)	(119)	55,043	60,998
Exploration, etc	107,316	491,265	100,087	784,112	1,545,751	3,028,531
Total	287,253	1,196,016	268,520	2,013,398	4,626,761	[1] 8,396,948

[1] Staff's method distributes this total by lease categories, as follows: gas-leases—$956,342; condensate-gas leases—$3,201,172; oil-gas leases—$4,239,083; oil leases—$351.

Production Plant Net Investment

Staff's test year average net investment rate base is challenged by Continental on the ground that the average fails to accord with an upward trend in investment costs. With respect to the gas and combination leases Staff's result is less than that obtained by use of year-end figures by some $2,878,362.[33]

The evidence supports Continental's contentions as to increasing costs. Therefore, and in accord with the Commission's holding in its opinion in the *Phillips'* case (24 FPC at 565), a year-end rate base is found to be appropriate for the purpose of this proceeding.

Gross investment as of December 31, 1955, in lease and well equipment ($147,127,475) as computed by Staff, includes book amounts totalling ($137,963,176) plus transfers of constructed items from producing and exploration authorization accounts.[34]

Similarly the year-end gross investment in oil and gas intangibles ($255,061,098) includes the book amount of $242,830,470 and completed construction.[35]

The 1955 year-end gross investment in producing leaseholds ($39,292,928) represents lease totals per books.

[33] With respect to the gas and combination leases included in the 23 districts of the Central, Southwestern, Rocky Mountain, and Southern regions, it may be observed that in most instances the average, provides the larger total. However, in the Southern-Offshore region year-end investment ($12,833,093) exceeds the year's average ($9,762,620) by some 31.5%.

[34] Of the gross investment a substantial portion ($119,491,774) is taken directly from individual lease investment records, the remainder by assignment ($19,970,533) or allocation ($7,665,168).

[35] Of the total, $254,430,189 is obtained directly from individual lease investment records, the remainder by assignment ($477,250) or allocation ($153,709).

The depreciation reserves for lease and well equipment ($74,249,474), follows the assignment and allocation of these facilities;[36] the reserve for intangibles ($143,754,382) has been redetermined;[37] and the reserve for depletion of leaseholds ($22,798,551) is that recorded, less a minor net reduction ($46,680) representing adjustment of tabulating machine records.

The total year-end net investment by regions becomes as follows:

Region	Gross investment	Less reserves	Net investment
Central	$80,827,651	$50,086,222	$30,741,429
Southwestern	105,400,401	60,878,933	44,521,468
Rocky Mountain	88,992,906	43,233,250	45,759,656
Western	53,244,159	35,528,810	17,715,349
Southern	113,016,384	51,075,192	61,941,198
Total	441,481,501	240,802,407	200,679,094

The addition of 1955 net investment in other assets and offshore drilling tools results in a total year-end net investment in production plant by regions, as follows:

Region	Net plant	"Other assets"[1]	Net tools[2]	Total net plant
Central	$30,741,429	$1,630,963		$32,372,392
Southwestern	44,521,468	2,126,799		46,648,267
Rocky Mountain	45,759,656	1,795,721		47,555,377
Western	17,715,349	1,074,370		18,789,719
Southern	61,941,192	2,280,467	$3,244,904	67,466,563
Total	200,679,094	8,908,320	3,244,904	212,832,318

[1] A company total of $14,362,962, as of Dec. 31, 1955, allocated to functions in the ratio of yearend gross investment per books as adjusted by Staff, thence to leases (districts) in the ratio of the respective gross production investment.

[2] Drill tool items (offshore) are booked by districts. Inland investment applicable to the offshore districts and drill tool "other assets" are allocated between districts in the ratio of drill tool gross investment. District totals are allocated to lease categories in the ratio of lease intangible gross investment.

Exploration Net Investment

Staff's year-end exploration net investment consists of investment in incomplete construction, non-producing leaseholds, other exploration investments, and other assets (allocated), and totals $60,536,340.

The allocation of exploration net investment to lease categories, in proportion to production department 1955 lease revenues summarizes by regions as follows:

	Incomplete construction	Nonproducing leases	Other exploration investments	Other assets	Total
Central	$1,036,685	$9,072,027	$98,875	$211,201	$10,418,788
Southwestern	1,650,530	14,443,777	157,421	336,259	16,587,986
Rocky Mountain	1,645,796	14,402,346	156,969	335,294	16,540,405
Western	616,700	5,396,735	58,818	125,639	6,197,892
Southern:					
Onshore	963,229	8,429,213	91,869	196,236	9,680,548
Offshore	110,518	967,146	10,541	22,516	1,110,721
Total	6,023,458	52,711,244	574,493	1,227,145	[1] 60,536,340

[1] Staff's realization method results in an overall distribution of this total to lease categories, as follows: Gas leases—$522,308; condensate and gas leases—$3,054,543; oil and gas leases—$30,346,929; and oil leases—$26,612,560.

[36] Of the total, some $62,464,103 is recorded by specific leases, the remainder being assigned ($8,106,720) or allocated ($3,678,651), as in the instance of the gross investment.

[37] The book amount of the reserve ($267,630,121) reflects a reserve of 100% of gross investment. The redetermination seeks to reflect depletion in terms of the remaining productivity of the wells.

Combined Production and Exploration 1955 Year-end Net Investment

Omitting the combined production and exploration net investment of oil only leases ($117,062,940) the remaining combined year-end net investment totals by lease categories as follows:

Lease category	Central	Southwestern	Rocky Mountain
Gas	$167,298	$1,820,884	$1,272,273
Condensate	2,073,909	978,880	
Oil-gas	11,705,039	36,107,062	24,498,435
Total	13,946,246	38,906,826	22,770,708
	Western	Southern	Total
Gas	$8,578	$4,538,988	$7,808,021
Condensate		24,602,337	27,655,126
Oil-gas	24,763,589	26,768,446	120,842,571
Total	24,772,167	55,909,771	156,305,718

Applying Staff's realization ratios a production and exploration year-end net investment is obtained for gas as follows:

Central	Southwestern	Rocky Mountain	Western	Southern	Total
$945,894	$3,928,958	$1,578,672	$5,156,482	$18,534,906	$30,144,912

Working Capital — Production and Exploration

Staff computes production working capital on the basis of cash required for 45 days operations ($3,472,402),[38] average materials and supplies ($7,459,751), and average prepaid expenses (insurance, $403,096), for a total of $11,335,249.

Average materials and supplies are obtained from warehouse accounts where a portion of the investment is identified by districts ($3,490,607) and the remainder ($3,969,144) is allocated thereto in the ratio of average net investment.

Average prepaid insurance (total company, $853,027) is allocated to operating functions in the ratio of the recorded amortization thereof for the last three months of the test year, and to district lease categories on the basis of average net investment.

Exploration working capital, consisting also of a 45 day's operating cash requirement ($3,681,747),[39] and an average of materials and supplies ($75,721), totalling $3,757,468,[40] is allocated by Staff to district lease cate-

[38] By lease categories: direct lease operating expense, $15,917,425; district lease operating expense, $3,384,627; headquarters, regional and department general expense, allocated, $5,204,567; and, production dry hole costs, $3,272,597—totalling $27,779,216, of which 1/8th is $3,472,402.

[39] Offset royalty expense, $15,753; dry hole costs, $8,399,653; departmental expense, $6,577,407; dry hole payments, $431,243; lease rental expense, $5,187,060, non-producing leaseholds and other tax, expense, $57,844; lands and exploratory social security tax, $102,821; geophysical operations, $6,840,404; core drill operation, $472,251; miscellaneous (net), $322; headquarters and regional general expense, allocated, $1,369,219—total $29,453,977, of which 1/8th is $3,681,747.

[40] In this instance a small amount of prepaid expenses ($9,417) was inadvertently omitted.

gories in the ratio of lease category revenues to total district production revenues.

Adjusting as required, and so far as the evidence permits, to convert averages of materials and supplies and prepaid expenses to equivalent year-end amounts, production and exploration working capital allocated to gas summarizes as follows;[41]

Region	Production [1]	Exploration [2]	Total
Central	$33,495	$10,260	$43,755
Southwestern	128,333	46,966	175,299
Rocky Mountain	65,887	9,568	75,455
Western	217,772	74,965	292,737
Southern:			
Onshore	689,140	146,370	835,510
Offshore	188,691	1,409	190,100
Total	1,323,318	289,538	1,612,856

[1] Average material and supplies and prepayments converted to equivalent yearend quantities in the ratio of total yearend to total average net plant, and distributed to lease categories in the ratio of category yearend to total yearend net plant.

[2] Exploration average net materials and supplies, too small in amount to have practical effect, were not adjusted to equivalent yearend amounts.

The Rate Base

The gas rate base, consisting of the combined production and exploration net investment and working capital allowances, as above determined, becomes, by regions:

Gas region	Year end net investment	Working capital	Rate base
Central	$945,894	$43,755	$989,649
Southwestern	3,928,958	175,299	4,104,257
Rocky Mountain	1,578,672	75,455	1,654,127
Western	5,156,482	292,737	5,499,219
Southern:			
Onshore	15,180,880	835,510	16,016,390
Offshore	3,354,026	190,100	3,544,126
Total	30,144,912	1,612,856	31,757,768

Rate of Return

Adopting the cost of capital approach, Staff's rate of return witness testified to historical average yields on generally long-term issues of United States Treasury bonds, representative industrial, rail and public utility bonds, and grades of industrial bonds, including those of oil and gas companies; and to comparative consolidated price indices pertaining to stocks of 425 industrial and four selected producers of oil and gas, respectively.

He submitted financial data for 39 independent producers of natural gas (including Continental),[42] chosen from among those selling annually 2,000,000 or more Mcf of natural gas to pipeline companies, having common stock actively traded and quoted, and publishing earnings statements at regular intervals. These data include a general description of company operating capitalization and finances, including monthly earnings-price ratios

[41] On the aforesaid revenue basis.

[42] Classified according to operations, thus, Class A: fifteen producers of oil and gas; Class B: three producers engaged in petroleum refining; Class C: twenty integrated companies, producers of oil and gas engaged in refining and marketing petroleum products; and Class D: one company, engaged in production and marketing, but not refining.

and rates earned on book values (1949–1957),[43] and certain information as to offerings of producer debt and common stock securities.

Staff witness hypothesizes that earnings-price ratios indicate a market capitalization rate on earnings paid, and that producers finance their ventures partly on the basis of debt capital, and concludes that Staff's test year illustrative return of 9% would represent a fair return on Continental's overall net investment.[44]

While the resulting component of return applicable to the common stock (11.2%) is in excess of the 1949–1957 earnings-price ratios on Continental's common[45] the ratio of its earnings to book value of assets has varied during the period from 18.4% (1950) to 13.0% (1957).[46]

The risks which relate to Continental's integrated operations are on the whole less than those which relate to its exploration and production activities, and Staff witness substantially acknowledged that Continental is entitled to earn on the value of its property, used and useful, a return equal to that earned by enterprises which have risks similar to those which characterize its natural gas operations. However, he denies that it is possible to segregate the risks of Continental's regulated producer and non-producer business, although this premise serves to obliterate jurisdictional limits and obscure the fact that debt financing is not available for exploration and development activities.

With respect to the foregoing proposed use of earnings-price ratios it is observed that those for Staff's Class A higher risk producer group, which would be expected to be higher as a reflection of this characteristic, in fact have been substantially lower than those for the diversified, integrated, and less risky sections of the industry, viz., Class C, and relatively close to those for larger and comparatively stable utilities and even to 1955–1957 average yields on taxable United States Treasury bonds, though oil and gas reserves are becoming more difficult to find and costs related thereto have increased.

Continental rejects the ratio as a measure of the required return as failing to account for dividend and capital appreciation expectations, as evidenced by the fact that in the period 1947–1956 Continental's earnings-price ratio averaged 9.7% while the total of cash dividends and appreciation averaged 23.1% per annum.[47] On the basis of the fact that the greater the future

---

[43] Also book value of common stock, earnings per share, range of market prices, dividend payments and pay-out ratios.

[44] Or 11.2% on the common stock, after taxes. Although the earnings-price ratio is based upon the market value of the stock, Staff would apply it to net investment. Continental's capitalization at December 31, 1957, which, adjusted for refinancing, totals $513,949,587 consists of 28.0% long term debt and 72.0% capital stock and surplus. The long term debt embraces $100,000,000 of 3% sinking fund debentures, $37,800,000 in 4-1/4% notes, and $6,150,000 in a subsidiary's 3.35% notes. Common stock and surplus includes $98,137,510 of $5 par common stock, $60,724,930 of capital surplus, and $211,137,147 of earned surplus. Deferred Federal income taxes in the amount of $8,000,000 are not included.

[45] During this period Continental's average of 12 monthly earnings-price ratios ranged from 10.6% in 1950 to 4.3% in 1956, standing at 4.7% in 1957.

[46] Standing at 14.8% and 15.5% beginning 1955 and 1956, respectively. For Staff's Class A, B, and C producers, the corresponding 1956 (beginning of year) ratios of earnings to share book value were 14.1%, 15.1% and 14.2%, respectively.

[47] Similarly, for 10 well known growth companies in several different industries having a range in earnings-price ratios of from 5.4% to 10.9%, combined earnings and appreciation varied from 20.2% to 35% per annum.

expectation of investors, the higher the market price of the stock, and the lower the ratio, Continental claims that the latter becomes substantially an inverse-measure of what investors anticipate in the nature of earnings and dividend-paying capacity.

The data of record indicates that speculative elements attend investments in producer common stocks, and, in similar circumstances the Commission has held that the ratio is not controlling in determining the rate of return.[48]

It is therefore concluded that earnings-price ratios fail to justify Staff's proposed allowance of 11.2% as an appropriate return on Continental's investment in exploration and production functions.

Assuming cost of service be required as a so-called "point of departure", Continental's position is that the return should be determined, substantially, by reference to earnings on book investment; and its return witness testified, in part, that the combined 1956 return[49] on book net assets[50] of ten petroleum companies engaged in exploration and production only[51] which averaged some 15.5%,[52] as compared with 14.6% for 25 fully integrated major companies,[53] represented that level of return which directly reflected the degree of uncertainty associated with the investment in exploration and development, and would compensate investors for the risks related thereto and thus permit the industry to competitively attract the capital required for its expanding needs.

Continental's witness further testified that although the risk of finding and lifting natural gas approximated that for oil the more rapidly increasing demand for natural gas required a rate of return in the upper portion of the ranges of the foregoing Class A petroleum companies; instancing Continental's offshore (Louisiana and Texas) activities, and testifying with respect thereto that the Company's participation in the drilling of 383 wells in the area[54] involved the exposure of substantial cash outlays to risks peculiar to an unsheltered and remote location[55] over a period of some 15 to 30 years.

On the basis of its evidence, briefly summarized above, Continental claims a rate of return after actual taxes of not less than 20% or 12%-14% if allowed statutory tax benefits derived from cost depletion and the amortization of intangible drilling costs.

The Company's witness also submitted a so-called discount cash flow study which purports to demonstrate the return (discount rate) which would equate investment and revenues over an assumed future period,[56] as well as to establish that oil and gas prices must rise if Continental is to attract the capital required for new enterprise.

---

[48] *Phillips Petroleum Company* (Docket No. G–1148, etc.), 24 FPC 537, 570 (1960).

[49] Net income after interest and taxes.

[50] *I.c.*, common and preferred equities plus allowance for working capital.

[51] Basically Staff's Class A producers.

[52] The low for the period 1947–1956. This result becomes 17.75% using an utility type net income, after deductions, and the net investment rate base; with an average for the 10 years of 22.6%.

[53] Basically Staff's Class B and Class C type producers.

[54] Of which 209 were completed as oil and 86 as gas wells.

[55] As of the end of 1958 Continental was a part owner of 32 offshore oil and gas fields, representing over one-third of all offshore productive fields found to date.

[56] Called by him the "true return".

Trending by a moving average Continental's finding and development costs[57] in terms of the Btu of oil and gas reserves added over the period 1944–1958[58] he obtains an average cost for three years ended December 31, 1958 of 17¢ per million Btu[59] and an average annual rate of increase in such costs of about 12%. Assuming average finding and development costs of 17¢ per million Btu for the near-term future[60] as applied to a possible program of finding and developing a thousand trillion Btu of crude oil and natural gas, he obtains a required gross investment of $170,000,000 or a net investment cost of $107,200,000 after approximate tax savings of $62,800,000.

Further assuming the continuation of existing oil and gas prices,[61] certain rates of production,[62] the maintenance generally of the Company's past ratio of oil reserves to gas reserves found, etc.,[63] the witness obtains a life time (40 years plus) realization after lifting costs and severance and income taxes totalling $187,200,000 which, along with the assumed new costs,[64] balance on the basis of a discount rate, or so-called "true return" of 6.6% per annum. The witness thus concludes that both oil and gas prices must rise to enable Continental to obtain overall revenues approximating the recommended rate of return.

However, the assumption involved in such a discounted cash flow study yields results which, constituting little more than a speculative forecast, has no practical application in determining a fair rate of return on the basis of a test year's cost of service.

The Commission's holdings in the *Phillips* decision, *supra*., require conclusions adverse to the contentions of Continental with respect to both the allowance of tax benefits and the use of an all equity capitalization.

In *Phillips* (Opinion No. 338, *supra*) the Commission held that tax incentatives should not be included as a component of return where the return allowed exceeds the amount of tax benefits,[65] and that the cost of capital

---

[57] An aggregate of some $995,900,000 (1944–1958) composed of finding costs (lease bonuses; land; geological, and geophysical expenses; lease rentals; exploratory well costs; and allocated overheads) and development costs (well intangibles; lease and well equipment; and allocated overheads). These costs rose from a total of $30,400,000 in 1944, to $86,600,000 in 1958 ($112,500,000 in 1957) on a "current cost" basis or from $27,200,000 in 1944 to $88,300,000 in 1958 ($106,000,000 in 1957) if adjusted to reflect a so-called 5-year lag between three items of expense and actual discovery by drilling.

[58] Converting to Btu the new reserves added both by drilling and revision of earlier estimates, using U. S. Bureau of Mines values of 5,800,000 Btu/bbl of oil and 1,075 Btu/cf of natural gas. Gross additions to reserves have not increased at the same rate as expenditures for finding and development activities.

[59] Before severance taxes, lifting costs, income taxes, and return. The 17¢ represents a general average of the "Current" (18¢) and "Five Year Lag" (16.4¢) costs.

[60] The witness offsets against possible improvements in drilling techniques, discovery of large fields, and improved recovery, such things as a trend toward deeper drilling, decline of exploratory prospects, and inflation.

[61] The average price received by Continental for crude at the well-head (U.S., 1958): $2.92 bbl; the average life-of-contract price on new gas contracts negotiated in 1957 and 1958 by the gas producers generally: 17.2¢/Mcf.

[62] Oil 9% and gas 6% of declining reserve balances.

[63] "Etc": certain assumptions as to severance taxes, lifting costs, depreciation and depletion rates, and income taxes; no allowance being made, however, for a continuation of the aforesaid 12% up-trend in finding and development costs.

[64] Relating to investment but without allowance for working capital. The average rate base type of return, allowing for working capital, would fluctuate from an estimated low of 4.0% to a high of 11.5% (average 7.3%).

[65] 24 FPC, at 569; the *Phillips* tax saving amounted to 6.6% on well-mouth properties.

should be determined with respect to the Company's business as a whole.[66] With respect to the latter proposition the evidence in the immediate proceeding appears not unlike that available in the *Phillips* case as disclosed in Opinion No. 338 and, accordingly, on the basis of the *Phillips* holding the rate of return in this proceeding will also be determined for Continental as an entirety, albeit, giving some weight, as in *Phillips*, to the producer phase of Continental's integrated functions.[67]

The Commission has also held (*Phillips*) that the allowance for the producer's common should be comparable to or greater than that for a pipeline or electric company, with due consideration of the lower risk arising from high equity ratios characterizing producer capitalizations.[68] Notice is accordingly taken of returns allowed by the Commission at various times in gas and electric cases which range from 8.2% to 14.4% and the general proportion of equity comprised in the capitalization.[69]

While the Commission further holds that the relation of book earnings to book value is relevant as revealing what comparable companies are earning on book value of assets, in determining the rate of return for an integrated producer (*Phillips*) it has refused to resort to such data when it pertains to a class of companies whose operations are limited to production only.[70]

However, in this latter connection it is observed that Continental's earnings-price ratios more nearly approximate those of Staff's 15 Class A producers of gas and oil, than those of the larger group of 20 Class C integrated companies, in that for a 9-year period (1949–1957) Continental's ratios averaged 7.9% as compared with the corresponding Class A and Class C ratios of 7.0% and 11.3%, respectively, and for a five year period (1953–1957) averaged 5.6%, as compared with a corresponding 5.2% for the Class A group, and 9.1% for the Class C group.[71]

For the same periods Continental's rate earned on book value more nearly approximated that of the integrated Class C group so that the ratio of the

---

[66] *Ibid.*, as it was held impossible upon the record in the case to determine the cost of capital for a part of *Phillips'* business. So, also, *Continental Oil Company, et al.*, (Docket No. G–11024, *et al.*, 1962) 27 FPC 96, 106.

[67] *Phillips*, 24 FPC at 572.

[68] *Ibid.*, at 572, fixing the return at 12% on equity (24 FPC at 574), *Phillips'* equity constituting 88.4% of the capitalization.

[69] *El Paso Natural Gas Company*, 13 FPC 421, 444, (1954) — 14.4%, test year 1952. and *Tennessee Gas Transmission Company*, 18 FPC, 428, 441, see 430. (1957)—13.7%, test year 1954, both of which involve a low ratio of equity to total capitalization; *Panhandle Eastern Pipe Line Company*, 13 FPC 53, 100 (1954)—11.4%, test year 1952. Compare: *South Carolina Generating Company*, 16 FPC 52, 64 (1956)—10.5%, test year 1956, also with a low percentage of equity capitalization. *Michigan Wisconsin Pipe Line Company*, 13 FPC 326, 343 (1954)—10.3% test year 12 months to April 30, 1954; *Texas Illinois Natural Gas Pipe Line Company*, 13 FPC 708, 721 (1954)—10.2%, test year 12 months to October 31, 1953; *United Fuel Gas Company*, 12 FPC 251, 271, (1953)—10.1%, test year 12 months to June 30, 1952. See, *Home Gas Company*, 13 FPC 241, 247 (1954)—9.7%, test year 12 months to October 31, 1953; *Hope Natural Gas Company*, 13 FPC 685, 695 (1954)—8.2%, test year 1953; *Natural Gas Pipeline Company*, 14 FPC 212, 223 (1955)—9%, test year 1953. Also the table in *Phillips*, 24 FPC at 572.

[70] *Phillips*, 24 FPC at 571.

[71] All ratios declined over each period but Continental's declined more consistently with those of the Class A group.

price of Continental's common stock to its book value averaged some 2.3 times.[12] If the same allowance for the cost of equity financing (0.75%) and the same adjustment over "bare bones" cost (0.75%) used in the *Phillips* decision (24 FPC at 572) be applied to the Class A group's 5-year earnings-price ratio of 5.2% there is obtained an equivalent earnings value ratio of 15.4%. While subject to the objection stated in *Phillips* that such a result is statistical and mechanical, it does, however, lend support to the conclusion that the equity return in this proceeding cannot be limited to the same 12% arrived at in the former case (*Phillips*).

The 1950–1957 average rate earned by Class A producers was 15.5% and for Class C producers 13.7%. The relative position of Continental with respect to the average of the 1949–1957 and 1953–1957 averages of price to book value indicating a status for the Company in this connection between the two types, the return, or earnings on equity, would thus be somewhat in excess of 14%. However, Continental's more recent ratio has been somewhat lower (13.0%) and the long-term trend thereof has been generally downward both with respect to Continental and each of the three classes of producers.

On the basis of all of the foregoing it is therefore concluded that 14%, after actual taxes paid, represents the required return allowance on Continental's common equity. With cost of long term debt of 3.34%, and capitalization as of December 31, 1957, the overall return becomes:

	Capitalization	Cost	Return
	Percent	*Percent*	*Percent*
Debt	28	3.34	0.9352
Common	72	14.0	10.0800
Overall cost rate [1]			11.02

[1] Data contained in the rate of return exhibits in this proceeding and in Continental's 1958 Annual Report, of which latter limited notice is here taken, indicates that the 1955 overall cost rate would be at least equal to that here determined.

Return Gas

On the basis of the foregoing determination of 11.02% as the permitted rate of return in these proceedings the gas return allowance summarizes by regions as follows:

Region	Rate base	Return (11.02 percent)
Central	$989,649	$109,059
Southwestern	4,104,257	452,289
Rocky Mountain	1,654,127	182,285
Western	5,449,219	600,504
Southern:		
Onshore	16,016,390	1,765,006
Offshore	3,544,126	390,563
Total	31,757,768	3,499,706

[12] On the same basis the average of the 1949–1957 and the 1953–1957 averages for Phillips would be 1.4. See *Phillips*, 24 FPC at 572.

The cost of gas produced from gas-only, condensate-gas, and oil-gas leases, including production and exploration expenses and return, by regions becomes:

	Expenses	Return	Total
Central	$287,253	$109,059	$396,312
Southwestern	1,196,016	452,289	1,648,305
Rocky Mountain	268,520	182,285	450,805
Western	2,018,398	600,504	2,618,902
Southern:			
Onshore	4,351,933	1,765,006	6,116,939
Offshore	274,828	390,563	665,391
Total	8,396,948	3,499,706	11,896,654

Gas Cost Rate by Type of Sale

Staff obtains average gas rates by district lease categories by allocating operating expenses and return to gas sold at the lease (unprocessed) and for processing (process gas) in the ratio of revenues realized from each such type of sale.

The foregoing regional totals of gas operating expenses and return thus classify as follows:

	Unprocessed gas costs	Processing gas costs	Total
Central	$61,552	$334,760	$396,312
Southwestern	1,013,715	634,590	1,648,305
Rocky Mountain	325,697	125,108	450,805
Western [1]	1,328	2,617,574	2,618,902
Southern:			
On shore	2,350,682	3,766,257	6,116,939
Offshore	665,391		665,391
Total	4,418,365	7,478,289	11,896,654

[1] Sales in the Western Region, made in California, are nonjurisdictional.

Residue gas costs are derived by allocation of processing gas costs between residue gas sales and gas liquids in the ratio of revenue from residue gas sales to the total of revenues from such sales and sales of gas liquids.[73]

Indicated district rates are thence obtained by separately averaging unprocessed gas, residue gas, and/or processing gas costs by the respective Mcf volumes.

On the basis of such average rates, as well as an analysis of contract provisions as to both the source of gas sold (lease category) and the type of sale (viz., Exhs. 13 and 15), Staff obtains its so-called indicated rate for each jurisdictional sale. The excess or deficiency of actual revenues with respect to those obtained under the hereinabove adjusted indicated rate becomes, by regions and districts:

[73] Plant costs used in determining indicated rates for sale under six FPC gas rate schedules have not been adjusted for rate of return, the evidence indicating the addible amount to be insignificant (*e.g.*, Rincon plant: 0.048¢/Mcf., including income tax).

Region/District [1]	Excess (deficit) actual over indicated revenues	
Central Region:		
West Kansas	($16, 073)	
North Oklahoma	(31, 544)	
South Oklahoma	(2, 468)	
		($50, 085)
Southwestern Region:		
North Basin-West Texas	16, 429	
Panhandle	43, 393	
Eunice-Hobbs	64, 156	
		123, 978
Rocky Mountain Region: Montana, East and Central Wyoming	(38, 115)	
		(38, 115)
Southern-Onshore Region:		
McAllen	51, 655	
Alice	(299, 972)	
Houston	(8, 443)	
South Louisiana	(33, 187)	
North Louisiana	(453)	
East Texas	61, 536	
		(228, 864)
Southern-Offshore Region	[2]	[2]
Total, all regions		(193, 086)

[1] Eliminating the Western Region on the grounds stated in footnote 73 on the preceding page. Note that costs have not been allocated to gas returned to the lease for use in the production of liquids by maintaining pressure or providing lift as this gas is not sold.

[2] CATC Harvey and MCN Morgan City districts—no rates recommended as gas sales and revenues during test year were nominal.

In relation to these results it is observed that not only do the existing rates fail to provide overall revenues equal to computed costs by some $193,086, but also fail to provide the required revenues in all districts except those included in the Southwestern Region and two in the Southern-Onshore Region.

The three Southwestern districts are included in the Texas Railroad Commission's Districts Nos. 7–C, 8 and 10, and the Permian Basin in New Mexico. With one exception (Rate Schedule No. 16) the jurisdictional average unit revenue realized by Continental was less than the administrative rate established for the area by the Commission in its Statement of General Policy No. 61–1, issued September 28, 1960.[74]

The highest average unit revenue realized under Continental's rate schedules in the McAllen and East Texas Districts of the Southern-Onshore region, where revenues exceed the above computed cost of service rate, are less than those similarly set by the same Statement of General Policy, *supra*.[75]

[74] Several rate schedules relating to gas sold in the North Basin and West Texas Districts, as well as Rate Schedule No. 16 relating to gas sold in the Panhandle District, were among the number of those rejected by Commission's order issued November 12, 1958, as constituting, severally, a "percentage sale" within the terms of Section 154.91 of the Regulations under the Act. With respect to the remaining rate schedules the average unit revenue realized and the applicable administrative rate, *supra*, compare as follows:

Footnote continues on following page.

Unit Revenue Differences

The Act provides that with respect to jurisdictional sales no natural-gas company shall maintain unreasonable differences in rates or charges as between localities or classes of service. Aside from indicated rates based on Staff's sales realization determination of cost by area and type of service, no evidence was submitted in this proceeding going directly to the matter of individual rate differences.

The criticism of the sales realization method of cost allocation set forth in the decision in the *Phillips* case[76] necessarily imposes a limit upon the use of an indicated rate so derived in determining either the fact of an unlawful rate difference or the resulting adjustment to be applied to existing rates effective in the geographical areas proposed by Staff.

Furthermore, in a number of instances the indicated rate represents an average of at least two types of sales weighed by 1955 volumes and depends for the validity of its application as to future rates, upon whether the related test year sales are normal with reference to the combination of districts and types of sales used.[77]

Under the order of November 12, 1958, *supra*, the Commission rejected a total of some 41 rate filings by Continental on the ground that in each instance these involved a "percentage sale" which, under Section 154.91 of the Commission's Regulations,[78] must be covered by filings by the plant operator.[79]

With respect to the Central Region, nineteen of the rejected filings applied to sales totalling 1,307,706 Mcf, representing, 45.32% of 2,885,564 Mcf sold jurisdictionally. While the Regulations (Section 154.91) recognizes that even in "percentage sale" instances producer's rates are subject to the rate restrictions of the Act the evidence here does not go to the matter indicated rates for Continental's gas sold under rate schedules of another natural-gas company.

Footnote No. 74—Continued.

	Highest average unit revenue Cents	*Policy statement 61–1 rate Cents*
North Basin-West Texas Districts	3.64	--
Texas Districts 7-C and 8	-----	11
Panhandle District	9.65	--
Texas District No. 10	-----	11
Eunice-Hobbes Districts	9.98	--
Permian Basin	-----	11
[75] Thus:		
McAllen District	10.0	--
Texas District	-----	14
East Texas District	13.30	--
Texas Districts 5 and 6	-----	14

[76] 24 FPC at 558.

[77] In the Southern Region such composite sales total some 7,063,765 Mcf or 21.7% of a total of 32,562,904 Mcf sold under FPC gas rate schedules.

[78] *In the Matters of Continental Oil Company*, FPC Docket No. G–5766, *et al.*, issued November 12, 1958. Rate Schedule No. 120 was also rejected by letter dated January 29, 1958.

[79] So in the provisions of Order 174–B, issued December 17, 1954, and in the current provisions of the Regulations under the Act.

With respect to the twenty remaining rate schedules in the Central Region, eighteen provide average revenues ranging from 3.72¢ to 11¢ per Mcf, of which ten include revenues from residue gas at 6.02¢ per Mcf, five at 3.33¢, 3.98¢, 3.99¢, 5.21¢ and 5.7¢, respectively,[80] and three concern the sale of unprocessed gas from gas only or oil-gas leases in the instance of two relatively isolated fields.[81] Under the circumstances and in the light of the relatively small volumes involved, the evidence does not indicate the existence of unlawful differences or anything other than probable unfavorable opportunities of sale.[82]

In the Southwestern Region the Commission's order of November 12, 1958, *supra*, rejected 21 rate schedules covering the sale of 14,550,167 Mcf, or 68.4% of a total under filed rate schedules of 21,266,797 Mcf. The evidence which relates to two remaining schedules in Staff's North Basin and West Texas area district[83] and two in the Panhandle area district[84] provides no reliable indication of unlawful rate differences, and so in the Eunice-Hobbs area where the rate for residue gas sold from the Skaggs and Warren-McKee fields in Lea County, New Mexico, to the Warren Petroleum Company is as high as 8.79¢ per Mcf, for in the case of this buyer the overall result of the rates provided in the 17 jurisdictional contracts under which Continental sells its gas in the South Oklahoma and Eunice-Hobbs areas reflects a very small average excess (0.21¢ per Mcf) over the total costs found for these several areas and types of sale by the application of Staff's sales realization cost of service method.[85]

Too, in the instance of rate schedules covering sales to El Paso (Nos. 92 and 104, and Nos. 85 and 109), average revenues applicable to sales in the various fields on the evidence cannot be analyzed to obtain the price of gas by types of sales. In all, therefore, there is no showing of unlawful differences in rates in this region.

Of the four rates involved in the Rocky Mountain Region, comparison can be made only with respect to rates applicable to sales from the Elk Basin Field (Rate Schedules Nos. 103 and 111),[86] and, further no unlawful differences are found with respect to the jurisdictional rates in this region.

---

[80] The overall average revenue per Mcf includes revenues from gas liquids.

[81] Rate Schedules Nos. 89 and 90—South Oklahoma District, Katie Field (1953, 1952); and Rate Schedule No. 112—West Kansas District. Hugoton Field (1953)

[82] It may also be noted that the higher rates, one in the Katie Field (10¢) and one in the Hugoton Field (11.0¢), do not exceed the comparable rates contained in the Commission's Statement of General Policy No. 61-1, *supra*.

[83] One rate schedule, No. 87, involves unprocessed gas sold at the oil-gas lease (3.54¢ per Mcf), the other rate schedule, No. 88, involves such gas sold at the lease (3.64¢ per Mcf) and, additionally, unprocessed gas sold from a gas-only lease (3.64¢ per Mcf).

[84] These rate schedules (Nos. 46 and 134) involve residue gas unit revenues of 5.49¢ and 5.64¢ per Mcf, respectively, but different quantities and contract years.

[85] As adjusted for year-end net investment and rate of return, *supra*. The excess compares with Company overall average deficiency of (0.59¢) per Mcf applicable to sales to 24 companies of 58,104,199 Mcf.

[86] Rate Schedules Nos. 2 and 108 involve the sale of unprocessed gas from gas only leases. Rate Schedules Nos. 103 and 111 involve the sale of residue gas from combination oil and gas leases. The latter two schedules, dated in 1949 cover 1955 sales of like volume, have identical pressure and Btu conditions, and yielded the same unit revenue, viz., 5.60¢ per Mcf.

In the Southern Region, which includes six districts having significant diverse characteristics as to at least the geographical factors,[87] various ranges do appear with respect to unit revenues for a specific field, or group of fields in the same county or counties.[88] However, with respect to any given field or group of fields due consideration of the relative volumes of gas sold, type of sale, and implication of the date of the basic agreement necessarily leads to the conclusion that the evidence here available will not support a finding of prohibited rate differences.

Cost Trends and the Test Year

Staff introduced in evidence 1955–1958 annual averages of wellhead gas cost by regions,[89] computed as before on the basis of an average net investment, with an illustrative return of 9%,[90] but with all production and exploration costs treated as combined joint costs subject to allocation to gas on a relative value or realization basis,[91] simply by regions.[92]

While Continental questions a regional consolidation of costs, it seems generally agreed that company-wide data would provide at least a satisfactory basis for obtaining a trend of gas costs in relation to gas revenues. This latter approach indicates an increasing overall deficiency in Continental's gas revenues in the generally relative magnitude of $1,751,155 in 1958 compared with $453,050 in 1955, reflecting a significant overall increase in the computed average cost of gas produced.[93]

---

[87] The McAllen District is located in extreme southeastern Texas and the Northern Louisiana District embraces also Southern Arkansas. The four districts Alice, Houston, East Texas, and Southern Louisiana, taken together, embrace generally the intervening territory and correspond severally with the areas stated in the Commission's Policy Statement No. 61-1, *supra*, as follows: Texas Gulf Coast—District 4 (McAllen and part of Alice); District 1 and 2 (remainder of Alice); District 3 (Houston); District 5 and 6 (East Texas); and Louisiana—North and South (where Staff uses identical nomenclature). Furthermore, the testimony of Staff's supervising general engineer on the subject of the character of cost districts emphasizes, as consistently on cross as on direct, that generally the producing properties in one area are significantly dissimilar with respect to those of the others.

[88] Thus:

	Rate schedules (FPC Nos.)	Corresponding unit revenues (Cents/Mcf)
Texas—Field:		
South La Gloria	6, 76	7.63, 7.22
Meyersville, East Meyersville	84, 114	10.65, 10.71
Cabeza Creek	99, 100	6.60, 6.53
East Mayes and two others	94, 129, 130	9.23, 7.70, 6.37
Carthage	3, 81, 82, 83, 117	(12.64, 9.78, 9.82) (9.78, 10.68)
Woodlawn	107, 113	13.30, 13.11
North Louisiana—Bear Creek and two others	126, 131	9.68, 5.50

[89] The difference between 1955 total costs in this study and those given in the prior exhibit arise primarily from the later inclusion of relatively minor net balances in the automobile and aviation revenue and expense accounts.

[90] Without tax offset to working capital.

[91] Excluding the minor amounts of revenue subject to refund.

[92] As in its case in chief, Staff uses a production intangible development cost recomputed on a capitalized basis. However, here as contrasted with its case in chief it allocates dry development dry hole costs along with exploration expenses.

[93] Thus the average cost increased approximately 2.1¢ per Mcf, although production was not stabilized in the CATC Marine Region. Comparable revenues increased approximately 1.3¢ per Mcf. As volumes of gas include a substantial return free to the lease results cannot be converted to a wholly satisfactory unit cost trend.

As no radical change is indicated in the nature of Continental's production during the 4-year period (1955–1958) this leads to the conclusion that the trend in regional costs of gas production has also been upward.

Although the evidence does not validate Staff's use of 1955 as a test year for determination of future rates, and does not provide a basis for adjusting costs to a more satisfactory test base, it does serve to demonstrate the direction of cost developments and to validate conclusions reached in this decision as to the discharge of Staff's burden of proof.

Staff's Sales Realization and Relative Cost Allocations

Staff compares the result of a relative cost allocation which produces an overall production cost of 7.54¢,[94] with that found by use of a regional sales realization method (6.81¢), but the evidence is that in this instance the relative cost method rests upon such a significantly inadequate sample of regional single product leases as to lend no support, directly or indirectly, to the direct sales realization allocation results.

Section 4(e) Cases

The rates proposed by Continental in the 8 schedules subject to these Section 4(e) proceedings compare with the above sales realization results and the Commission's administrative rates (Policy Statement 61–1, amended), as follows:[95]

Region and district	Rate schedule and supplement	Proposed rate [1] (cent/Mcf)	Sales realization rate (cent/Mcf)	Administrative rate (cent/Mcf)
Central:				
North Oklahoma	[2] 147:1	11	10.2	11
South Oklahoma	[3] 89:1	11	9.1	11
Southwestern:				
North Basin-West Texas	[2] 146:3	10.6418	2.57	11
Eunice-Hobbes	[3] 109:7	[4] 10.5012	8.5	11
	[3] 85:10	[5] 10.5406	9.2	11
	[3] 92:7	[4] 10.5012	10.5	11
Southern—Onshore: East Texas	[3] 113:5	13.6296	10.48	[6] 14
	[3] 107:10	14.1344	12.0	[6] 14

[1] Including tax reimbursements where applicable.
[2] Favored nations increases, total volumes: 1955—3,722,695 Mcf; 1958—(approx.) 4,197,247 Mcf, including royalty.
[3] Periodic step increases, total volumes: 1955—1,462,733 Mcf; 1958—2,470,263 Mcf, including royalty.
[4] For deliveries below 600 psig the rate rounded to four decimals, becomes 10.0545 cents per Mcf.
[5] For deliveries below 600 psig the rate, rounded to four decimals, becomes 10.0922 cents per Mcf.
[6] There is no indication that Continental has proposed the elimination of favored-nation, price redetermination, or periodic escallation clauses of these Schedules basis for the application of rates provided in the Restatement of Mar. 27, 1963, of the Second Amendment to the Statement of general policy No. 61–1.

On the basis of anticipated 1957–1958 volumes Continental's eight above proposed rates would effect increases estimated in Exhibit 32 to range from a calculated annual amount of $20 in Docket No. G–11337 (RS No. 113:5) to some $100,700 in Docket No. G–15417 (RS No. 85:10).

Where costs of service is manifesting an upward trend a sales realization allocation will tend to produce an unduly low indicated allowable rate, however, the Commission's administrative rate, while by its nature indicating a ceiling, serves along with general cost evidence of record in this case to

[94] To which is to be added exploration and development expenses and production dry hole expense of 2.75¢ for a total cost service of 10.29¢ per Mcf as compared with the previous 10.28¢ per Mcf. Staff here allocates exploration and development dry hole expenses on the basis of the success of the total finding effort as expressed in the ratio of successful gas to total successful wells (1947–1957, 6.4%).

[95] Inclusive of taxes where applicable.

provide a useful standard by which to judge the discharge of the burden of proof.

Continental's cost of service evidence is not susceptible of direct application in determining the issue of reasonableness with respect to the above eight listed rate proposals, therefore, on the basis of all the foregoing, and considerations hereinafter indicated with respect to the other evidence in the case, the suspension proceedings with respect to the first seven of the above listed proposed rates will be terminated while the increase with respect to Rate Schedule No. 107:10 will be here limited to the Commission's administrative rate level of 14.0¢ taken as inclusive of tax.

Interveners' Cost of Service

Interveners' relative-cost allocation of production costs, and reserves-added-realization allocation of exploration costs, results in a 1957 test year jurisdictional cost of gas service, including return, of 13.44¢ per Mcf,[96] as follows:

Production—Direct Expense (Gas, $4,661,523)

Interveners' witness classifies on-leases expenses totalling $50,922,827 by lease categories,[97] and, using relative cost ratios derived from the application of direct production unit expenses of 89.14¢ per barrel for oil (760 pumping oil leases) and 2.67¢ per Mcf for gas (150 gas leases) to the production of casinghead and condensate leases, allocates joint production costs so that $4,661,523 of a three category total of $28,123,053 is assigned or allocated to gas.[98]

—Indirect Expense (Gas, $824,673)

Production department direct overhead ($4,299,740) and expenses of unassigned special facilities ($1,166,052) are allocated to gas ($500,120) in the ratio of the preceding allocation of direct production expense. Category indirect production expense exclusive of development dry hole costs ($273,707), is allocated to gas by the category's imputed production net investment ratio (infra), while special facility expense is directly developed,[99] and other indirect expense is allocated to gas in accordance with the overall allocation of indirect production net investment (20.54%, *infra*),[100] for a combined resultant cost to gas of $21,527. Gas special facility depreciation and ammortization expense in the amount of $303,026 is obtained from Continental's work papers.

— General Company Expense and Taxes (Gas, $1,204,173, and $556,749)

General company expense assigned to production ($5,862,577) is allocated to gas in the ratio of direct production net investment (20.54%, *infra*).

Exploration Expense (Gas, $5,254,318)

Exploration expense consisting of geological and geophysical expense, land department and accounting expense, and surrendered leases, as well as development dry holes ($44,013,883), and exploration general expense ($818,179), are allocated to gas ($5,158,427 and $95,891) in the ratio of a valuation of

[96] Cf., average revenues of jurisdictional gas sales: 8.27¢ per Mcf. Interveners' witness excludes all data pertaining to the non-jurisdictional Western Region.

[97] Oil-only, casinghead, condensate, and gas-only leases.

[98] Computing so-called theoretical liquids from "gas-only" leases and thus, in effect, applying allocation to this category also.

[99] Special facilities net ($48,311); oil, $15,914; gas, ($64,225).

[100] Other indirect expense: ($63,482).

the reserves of liquids and gas added and retained to those added (1953–1957, 11.72%).[101]

Gasoline Plant Expenses (Gas, $172,862)

Plant operating expenses totalling $1,193,743, and general and administrative expenses of $77,298, are allocated to gas ($162,349 and $10,513) in the ratio of functionally assigned and allocated plant and gathering system gross investment (13.6%, *infra*).

Expenses—Total

Expenses thus attributed to gas and, as indicated, to jurisdictional gas, total as follows:

	Gas	Jurisdictional gas
Production	$7,247,118	[1] $3,700,484
Exploration	5,254,318	[2] 3,052,375
Gasoline plant	172,862	[3] 128,385
Regulatory expense		[4] 200,000
Total	12,674,298	7,171,244

[1] Allocated on the basis of test year sales (52.3 percent).
[2] Allocated, exploration at 58.2 percent which reflects a CATC test year production adjustment (*infra*); and general and administrative at 52.3 percent which reflects actual volumes sold.
[3] Allocated in the ratio of plant jurisdictional to total volumes, the latter including gas used in injection and lift (74.27 percent).
[4] Continental's originally claimed amount.

The foregoing yield a unit jurisdictional gas cost, before return, of 9.94¢ per Mcf.[102]

Production—Direct Net Investment (Gas, $43,515,213)

The witness classifies on-lease net investment in producing leases, lease and well equipment, and intangible drilling costs, totalling $211,877,943, by lease categories, and allocates joint product category and "gas-only" costs in the ratio of an imputed net investment obtained from the application of the oil-only and gas-only direct production unit net investment of $2.496 per barrel,[103] and 13.17¢ per Mcf,[104] to the category's production of liquids and gas respectively. Net investment allocated to gas ($43,515,213) amounts to 20.54% of the total.

— Indirect and General Company Net Investment (Gas, $3,457,727 and $1,819,627)

Production department general net investment ($5,373,336), and general company net investment assigned to production ($8,858,944), is allocated on the basis of the above over-all relative investment ratio of 20.54% ($1,103,683 and $1,819,627); offshore drill tool net investment ($1,858,221) is allocated

[101] The valuation of reserves is based upon the average price realized by Continental in 1957 ($2.95 per bbl.) discounted at 9% for 10 years (to $1.89); and upon an escalated average price for 1958 deliveries of gas under contracts executed in 1957 by some 25 interstate pipelines, i.e., 15.31¢ per Mcf, escalated 1¢ every 4 years, discounted at 9% for 20 years (to 7.60¢ per Mcf).

[102] Exploration expense of $3,002,205 divided by a test year's normalized jurisdictional volume of 83,301,240 Mcf (3.60¢ per Mcf) and the remainder by test year actual volumes of 65,655,580 Mcf (6.34¢ per Mcf).

[103] Obtained from the 760 oil-only pumping leases used in the preceding relative-cost allocation of direct production expenses.

[104] Similarly, from the 150 gas-only leases used in the preceding relative-cost allocation of direct production expenses.

on the basis of the onshore unit investment of the preceding paragraph, as imputed to offshore test year production from CATC (West Delta) and MCN leases[105] (gas, $127,846); and net investment in gas special facilities ($2,226,198) is obtained from the papers of Continental's witness.

Exploration—Net Investment (Gas, $6,816,227)

Exploration net investment ($56,922,584), primarily in non-producing leases, consisting of both regional ($56,125,660) and non-regional ($796,924) totals, and general company net investment identified with exploration ($1,236,351), is allocated to gas ($6,671,327 and $144,900) in the same value-of-reserves ratio used in the preceding allocation of exploration expense (11.72%).

Gasoline Plant Net Investment (Gas, $69,841)

Gasoline plant gross investment[106] is assigned by functions to liquids ($2,963,587, or 93.87%) and gas ($193,484, or 6.13%), while other plant gross investment ($1,206,425) is allocated (gas, $73,954) in the resulting ratio of these functional assignments.[107] Plant gathering system gross investment is allocated (gas, $502,224) on the basis of a cost of production imputed to the volumes of gas and estimated liquids transported for processing and extraction, respectively.[108] The composite of these allocations yields an overall ratio (13.6%) by which net plant investment and general company net investment assigned to the five jurisdictional plants is allocated to gas ($53,955 and $15,886).

Return on Net Investment

The net investment allocated to gas and, as indicated, to jurisdictional gas, summarizes as follows:

	Gas	Jurisdictional gas
Production	$48,792,567	[1] $28,397,274
Exploration	6,816,227	[2] 3,967,044
Gasoline plant	69,841	[3] 51,871
Total	55,678,635	32,416,189

[1] In the aforementioned ratio of adjusted jurisdictional sales (83,301,240 Mcf) to adjusted total sales (143,129,698 Mcf), or 58.2 percent, computed on the basis of normalizing Continental's offshore production from CATC leases by adding, partly in error, 17,645,660 Mcf to test year jurisdictional and total sales of 65,655,580 Mcf and 125,484,038 Mcf, respectively.
[2] Using the ratio of the preceding footnote.
[3] In the ratio of jurisdictional sales of residue gas to total residue gas volumes, including gas used for injection and lifting, or 74.27 percent.

Application of the witness' assumed, but unsupported, 9% rate of return to jurisdictional net investment results in a return of $2,917,457 applicable to Continental's jurisdictional business.[109]

[105] *I.e.*, 1,949,925 barrels of liquids and 2,732,330 Mcf of gas.
[106] Related to the five plants making jurisdictional sales of residue gas.
[107] Liquids: extraction, compression, injection, and gas lift; gas; dehydration, residue sales, and gas treating.
[108] *I.e.*, 89.14¢ per bb. and 2.67¢ per Mcf. (above, "Production—Direct Expenses"). Liquid volumes estimated at 2 gallons per Mcf of the unput of 40,390,467 Mcf, or 1,923,000 bbl.
[109] Viz., 3.50¢ per Mcf. on the basis of the normalized volumes of $3,301,240 Mcf. but omitting provision for working capital.

Adjustments to Interveners' Allocations

Production Expense and Net Investment

Continental's proposal to include in the gas-only category the 29 Woodlawn field leases, inadvertently omitted by Interveners,[110] as well as costs related to the four offshore West Delta and MCN gas-only leases,[111] excluded because deemed too high, is appropriate.

Continental's claim that Interveners' allocation of costs to liquids produced from gas-only leases sold under a two-part rate does not give the required recognition to the fact that condensate is produced in a vapor phase, is compromised by its' witness' admission that physical separation at the lease would make the allocation appropriate. This justifies an offsetting of the adjustment against the equally questionable claim for inclusion of the Western Region in determining relative costs.[112] On this basis neither proposal is accepted.

Interveners' relative-cost method irrelevantly assumes that but for the presence of gas condensate would exist in the reservoir in the same state as non-associated oil.[113] As the low specific gravity liquid exists in the reservoir in a gas phase the hypothesis that the production of condensate entails costs comparable to those associated with the heavier crude is not supported.

Exploration Expenses and Net Investment [114]

Continental's proposal to exclude farm-out reserves, mainly oil, from the reserve valuation ratio fails to account for the fact that farm-out leases represent at least a part of the overall result of the exploratory effort. No proper basis is provided upon which to determine an appropriate cost adjustment in the premises.[115]

In determining the five year average of reserves-added Continental would eliminate 1953 as having an exceptionally low gas-oil finding ratio and add 1958 as having a ratio more consistent with that of the other years comprising the base period. No real exception is taken to this proposal.[116] In this same connection Continental would retain the Rayne field reserves sold in place in 1959. As exploration expenses are necessarily distributed over units of production and Interveners propose no test year adjustment with respect to Rayne production the value-of-reserves added allocation between liquids and gas should, consistently, include the Rayne reserves.[117]

---

[110] Involving $78,135 of expense and $747,859 of investment. The related production totalling 2,105,485 Mcf was included by Interveners.

[111] Involving $146,696 of expense and $1,102,412 of investment. Production, totaling 566,408 Mcf was at a substantially normal rate. Continental has been operating in offshore areas since 1944.

[112] The two adjustments are opposite in affect and approximately equal.

[113] Condensate consists largely of hexanes and heptanes, while oil consists largely of heptanes and heavier hydrocarbons. The specific gravity of oil is the greater.

[114] Including both general company expense and net investment assigned to exploration.

[115] The purpose, generally, is to allocate $44,013,883 of expense, including $14,407,194 of departmental and geophysical expenses and $5,415,169 of development dry hole costs. While none of the dry hole costs relate directly to farm-outs it would appear that some part of departmental and geophysical expenses would be allocable to such leases. However, the result of Interveners' treatment is not actually prejudicial to Continental.

[116] Indeed, the evidence is to the effect that an increasing incidence in the finding of gas is indicative of a trend to relatively higher gas-oil finding ratios. However, a breakdown between Western Region and other reserves is not provided.

[117] Rayne reserves were estimated at 291,900,000 Mcf, as compared with 1,009,700,000 Mcf of reserves added 1953–1957. This type of sale is unique with Continental.

In the valuation of reserves Continental also proposes use of a weighted average price of 17.27¢ per Mcf, derived from the most recent data available,[118] plus an escalation. While Interveners' witness merely assumes that an industry-wide average price would be representative of sales made by Continental, the latter's evidence fails to establish that a recent price would in fact constitute a more appropriate one for use in the premises, an omission negativing adoption of the adjustment. The further proposal to allocate exploration expense and investment on a net wellhead basis is, however, consistent with Interveners' value approach and, accordingly, there should be substituted for Interveners' valuation factors derived from the gross price (liquids $2.95, gas 15.31¢ plus escalation) discounted to $1.89 for liquids and 7.6¢ for gas, corresponding net prices of $1.53 and 8.3¢ plus escalation, discounted to valuations of 98.3¢ per barrel and 4.45¢ per Mcf.

Gathering System and Gasoline Plant Expense

Interveners' mere hypothesis that the gathering system functions as an extension of lease production facilities fails to factually justify the use of production expenses to allocate gathering system expense. Accordingly, the allocation of gasoline plant and general expense by means of Interveners' ratio, which depends upon the hypothesis, cannot be accepted.

Regulatory Expense

Continental computes test year regulatory expense to be $261,577, classified as recurring rate expense, $78,828; general rate investigations, $175,634; and certificate applications, $7,115. Accepting these computations for immediate purposes only[119] and viewing the allowance for the larger amount on the basis of an amortization period as short as 3 years as not supported in fact it appears Interveners' provisions requires no adjustment.

Miscellaneous Net Investment Production — Indirect

The allocation of offshore drill tool investment to gas involves both the application of onshore unit production net investment in oil-only ($2.496 per bb.) and gas-only (13.17¢ per Mcf) leases to offshore production, and the unsupported assumption that in the future CATC offshore production would maintain the same relative ratio of gas to liquids.[120] Interveners' allocation serves to reduce the amount of the investment properly allocable to gas and, accordingly, Continental's proposal to normalize the allocation by use of a

---

[118] As previously stated herein, Interveners' 15.31¢ per Mcf represents the weighted average price received by natural gas producers for gas sold to some 25 interstate pipelines in 1958 under contracts executed in 1957, the volumes used constituting 98% of all gas purchased by interstate pipeline companies reporting to the Commission. Continental's 17.27¢ per Mcf represents the weighted average initial base price of 735 long-term contracts dated July 1, 1958 through December 31, 1959, on file with the Commission as rate schedules, using estimated first month's deliveries for the weighting. The prices of the latter contracts relate to areas in which Continental makes jurisdictional sales. Total volumes are generally equal (Interveners' 437,889,473 Mcf, 1958; Continental 492,000,000 Mcf 1958–1959). A check of 189 rate filings indicates a close correlation between estimated and actual deliveries.

[119] However, it is to be observed that Continental's itemization does not directly answer Staff's objection that a considerable portion of the originally claimed amount of $200,000 appears to relate to expenses for various studies made by company personnel which should be charged tentatively to joint general expense.

[120] Note: 1957 actual production: gas—1,354,340 Mcf; liquids—441,979 bbl. (3.06:1); compare, 1959: gas—14,116,704 Mcf; liquids—1,802,634 bbl. (7.83:1)

combination of West Delta 1957 and CATC-Cameron 1959 actual production of gas (11,625,042 Mcf) and liquids (520,037 bbs.) should be adopted here as in the allocation of exploration costs to jurisdictional gas, *infra*.

Gasoline Plant

Continental's proposes to modify Interveners' allocation of gasoline plant net investment in compression facilities ($1,941,081) solely to liquids to effect a partial allocation to dehydration, residue sales, and gas treating functions, in part because a horsepower-hours engineering study of compressor operations indicates an assignment of 60% of this investment to gas. In the absence of specific support for Interveners' allocation of all of the investment to gas, the proposal to allocate compression as other gross plant, 16% to gas, should be adopted.

With respect to gathering facilities Interveners use a relative net investment ratio for allocating that portion of such facilities included in lease investment. Little, if any, support exists for the allocation of the off-lease portion on the basis of an imputed-cost-of-production ratio.

Allocations to Jurisdictional Gas

With respect to the allocation of exploration expense and production and exploration net investment (including general company net investment) to jurisdictional gas, Interveners' witness' normalization of offshore CATC test year deliveries rests upon the application of inoperative minimum take-or-pay provisions of the Tennessee Gas contract to estimates of initial reserves of 1,673,929,000 Mcf presented in the original CATC proceeding in Docket No. G–11024.[121] Accordingly, Continental's proposal to use the 10,270,702 Mcf actually produced from Cameron lease in 1959 should be accepted for the limited purpose of indicating the general effect of normalization, short of relying upon non-effective provisions of the Tennessee Gas contract.

Effect of Adjustments

The effect of the adjustments adopted in the foregoing is to increase the computed company-wide cost of service to approximately 20¢ per Mcf. However, in view of the defects inherent in the reserve-added-realization method of allocation of exploration expense and net investment,[122] the above result serves but to support the conclusion previously reached in relation to Staff's evidence, that in the instance of all but one rate schedule (No. 107) these consolidated proceedings should be dismissed.

Interveners' Rate Method

Denying that it is possible to pinpoint costs by individual contracts, fields, or other limited areas, Interveners propose a combined cost of service and field price approach for the determination of rates whereby the overall average cost of service would be correlated with price ranges in to-be-determined industry price area[123] after which Continental would be required to tender specific rates which, in total, would provide revenues equal to overall costs but which would not exceed, in any instance, either the median of the

---

[121] Interveners' computed additional 17,645,660 Mcf is after an incorrect allowance for the production of 1,354,340 Mcf from the unrelated West Delta Offshore area.

[122] As stated by the Commission in the *Phillips* case, 24 FPC at 557.

[123] Premised as the largest geographical district within which conditions of sale of gas would appear to be significantly different from other areas.

applicable areas' range plus 20%,[134] or the average cost of service plus 33⅓%.[135]

However, the witness concedes that at this time the proposal would achieve nothing more than "rough justice". Moreover, the development of areas and appropriate field-price-ranges lies beyond the scope of these proceedings and overlaps other current Commission proceedings concerned with the area price problem.

Continental's Cost of Service

Continental allocates production expenses and net investment related to gas condensate leases on the basis of the Btu of the gas and liquids produced, and those related to casinghead leases according to a modified relative cost method.[136] Exploration expenses and return are allocated to gas on the basis of the Btu equivalent of current production of gas, oil, and liquids. Accordingly, for 40,574,048 Mcf of jurisdictional wellhead and gathering sales volumes Continental derives a 1957 test year production cost of $10,006,612, and exploration cost of $6,583,503, for a combined total of $16,590,115, or 40.89¢ per Mcf.

Processing plant gas costs, which consist of the cost of gathering system deliveries of 25,081,532 Mcf,[137] purchases of 9,733,094 Mcf of unprocessed and 5,575,841 Mcf of processed gas for sale,[138] and gathering system and residue facilities expenses, return and tax allowances,[139] are adjusted in part for volumetric and Btu losses[140] and allocated to jurisdictional residue gas on a volumetric (Mcf) basis[141] in the amount of $6,952,140, or 26.15¢ per Mcf.

---

[134] Including only prices acted upon by the Commission. It is represented that this level would embrace some 83% of all 1957 interstate sales.

[135] The plus 20% ceiling together with a minus 20% floor would provide a zone, allegedly, which would include pricewise approximately 75% of all interstate sales, and those of all of the major producers. Interveners would accept a fixed periodic increase of 1¢ per Mcf each four or five years to meet a "seemingly inevitable, if gradual" inflation in costs.

[136] Production expenses of oil only leases and of gas condensate leases allocated to liquids are added to obtain unit expenses for oil; and of gas only leases and of gas condensate leases allocated to gas to obtain unit expenses for gas. The several units applied to oil and gas production from casinghead leases (24,788,681 bbls., and 77,080,876 Mcf), respectively, yield ratios used to allocate the six actual items of expense of such leases to oil and gas, severally. The method is applied, similarly, in deriving units of investment to obtain ratios for the allocation of the four actual items of production investment. Oil and liquid production from the oil only and condensate lease categories totals 22,245,495 bbls.; gas production from the gas only and condensate categories totals 60,034,341 Mcf. However, the production of gas from the gas only leases represents approximately but 1/7th of the total of gas produced from all leases.

[137] Production cost, $6,185,696; exploration cost, $4,069,665.

[138] Unprocessed gas, $731,652; processed gas, $221,998.

[139] Expenses, return (14%) and tax allowances, before losses:

	Expenses	*Return*	*Tax allowance*
Gathering system	$131,259	$4,928	$5,079
Residue facilities	366,193	12,717	13,106

[140] *I.e.*, gathering system deliveries, unprocessed gas purchases, and gathering system items for volumetric loss, 11.0735%; Btu loss, 11.6129%; combined, 21.4004%.

[141] *I.e.*, 26,588,421 Mcf of jurisdictional sales (74.2687%), of a total of 35,800,305 Mcf including 6,916,644 Mcf of non-jurisdictional sales and 2,295,240 Mcf for repressure, lift, and lease fuel use.

The latter cost, in combination with the foregoing production and exploration costs, and regulatory expense in the amount of $200,000, results in a computed 1957 jurisdictonal cost of service of $23,742,255 for total jurisdictional volumes of 67,162,469 Mcf, or 35.35¢ per Mcf.[133]

Continental assigns general company expenses and investment to departments on the basis of direct departmental gross assets,[133] and allocates total production department general expenses and investment to each of the four lease categories[134] on the basis of direct lease operating expenses,[135] and, further, allocates the corresponding amounts assigned to extraction plants to the three functions, gathering, extraction, and residue, on the basis of the function's portion of total direct expenses.

Special production facilities, other than drill tools, are either assigned to gas directly or allocated on a gross investment basis, while the latter (drill tools) are allocated to exploration and development on the basis of district (CATC, MCN) net footage drilled, and subsequently between liquids and gas on the basis of the Btu of the district's current production.

Lease, exploration department, geophysical, and core drilling expenses are severally adjusted for a 5% general wage increase effective January 16, 1959, and lease, retirement, depreciation, and amortization expenses, severally, to reflect an assignment of certain interests to Continental, effective December 1, 1950. Amortization has been determined after restatement of expensed intangibles on a capitalized basis.

Dry hole development costs are included in the production "indirect" expense item.[136]

Gasoline plant extraction expenses and investment are assigned to liquids.

The magnitude of the difference between Continental's computed cost of service (35.35¢ per Mcf) and the level of jurisdictional gas revenues (8.27¢ per Mcf) raises a question, which the evidence fails to satisfactorily answer, as to the practicality and acceptability of Continental's cost of service result.

However, the result obtained by application of the basis principles of the Phillips decision[137] indicates, as does the other evidence herein above considered, that average jurisdictional revenues fall short of meeting Continental's requirements.

Thus, allocation of joint production costs of casinghead and condensate leases by ratios obtained from the application of the several relative expense and investment cost units of the oil-only and gas-only lease categories to casinghead oil and condensate volumes, on the one hand, and casinghead and condensate gas volumes, on the other,[138] produces a jurisdictional cost of

---

[133] On the basis of an assumed 9% return and no provision for tax allowances the cost service reduces to 23.88% per Mcf.

[133] Production, 63.667%; extraction, 8.348%; and plants, 2.845% (other operations, 25.140%).

[134] Oil, oil and gas (casinghead), condensate and gas (condensate), and gas only categories.

[135] Production overhead expense includes certain items of so-called indirect expense, depreciation, and amortization (total, $2,741,921). Production overhead expense proper totals $10,992,976, general investment $15,242,883.

[136] These costs constitute the greatly predominant portion of indirect expense but the amount cannot here be separated by lease categories.

[137] 24 FPC 537, issued September 28, 1960.

[138] Omitting expenses and overheads classified by Continental as "indirect", because dominantly dry hole costs which latter were classified in the *Phillips* case as an exploration type cost; and also the investment in drill tools, analagously.

production of $4,636,207,[139] as compared with Continental's $10,006,612;[140] allocation of exploration expenses and return, including production "indirect" and related expenses and return on drill tools, previously excluded from production, by use of Continental's average Btu for oil and liquids as weighted in the latter instance by the *Phillips'* economic factor (*i.e.*, "4"), produces a jurisdictional exploration cost for wellhead and gathering system gas of $2,149,841, as compared with the Continental's $6,583,503;[141] and, finally, by giving effect to the changes in production and exploration cost for gathering system deliveries, as well as the hereinabove determined return (11.02%) and omission of tax allowances, there is obtained a plant jurisdictional cost of $3,399,029 as compared with Continental's $6,952,140.[142]

Jurisdictional cost of service thus becomes 15.46¢ per Mcf, as compared with Continental's 35.35¢ per Mcf, *supra*.[143]

---

[139] Return, 11.02%; production taxes included.

[140] Return 14% and tax allowances, production taxes included. The detailed comparison is as follows:

	Phillips' basis	*Continental*
Return	$8,173,736	$10,603,626
Tax allowance	----------	10,927,864
Expenses	6,937,141	11,728,163
Production taxes	556,749	556,749
Total	15,667,626	33,816,402
Jurisdictional (29.591 percent, Mcf)	4,636,207	10,006,612

Phillips, on the evidence in that case, provided a tax allowance. In this proceeding the evidence is to the effect that after statutory deductions Continental pays no Federal income tax related to its production business.

[141] In detail, as follows:

	Phillips' basis	*Continental*
Return (11.02 percent; 14.0 percent, respectively)	$905,561	$3,167,976
Tax allowances	----------	3,248,906
Expense	6,359,623	15,831,448
Total	7,265,184	22,248,330
Jurisdictional (29.591 percent, Mcf)	2,149,841	6,583,502

[142] Thus after losses (21.4004%, on items other than purchased processed and residue gas):

	Phillips' basis	*Continental*
Gathering:		
Expense	$103,169	$103,169
Return	3,049	3,873
Tax allowances	----------	3,993
Residue		
Expense	336,193	336,193
Return	10,010	12,717
Tax allowances	----------	13,106
Purchased gas	797,074	797,074
Production and exploration costs	3,297,167	8,060,669
Total	4,576,662	9,360,794
Jurisdictional (74.268 percent, Mcf)	3,399,029	6,952,140

[143] *In summary:*

Lease costs:	*Phillips' basis*	*Continental*
Production	$4,636,207	$10,006,612
Exploration	2,149,841	6,583,503
Processed gas	3,399,029	6,952,140
Regulatory expense	200,000	200,000
Total	10,385,077	23,742,255
Volume (Mcf)	67,162,469	67,162,469
Unit cost (cents/Mcf)	15.46	35.35

Although here, as in the instance of Interveners' cost of service presentation, a question exists concerning the representative character of gas-only unit costs in the development of the relative cost ratios the evidence justifies qualified acceptance of the foregoing results. The exclusion of Western Region costs is not clearly required by the evidence as, according to the testimony of one of Interveners' witnesses, exploration, and inferentially production, must be viewed in the light of total or national market requirements (T. 3759).

The foregoing results, in no instance, provide for working capital, or normalization of CATC–Cameron offshore production to adjust the allocation of exploration expense. The evidence does not provide a basis for determining a test year's allowance for materials and supplies or for effecting the expense adjustment. Suffice it to say that even so provision for cash working capital would appear to add to the unit cost of gas something less than 0.5¢ per Mcf.

Even as qualified, this portion of the evidence also supports the conclusion that the Section 5(a) proceedings herein should be dismissed.

Continental's Competitive Market Price Standard

Continental's rate witness, however, rejects cost of service, as failing to provide either a true cost, a measure of the producer's future revenue requirements, or results having a practicable relation to value,[144] and proposes instead that current market prices be used to test the reasonableness of rates.

The witness testified that discovery and production of gas no longer depends in the same degree upon the production of oil, and that with a rise in prices in the past 10 years and intensification of search in areas where probabilities favored the finding of gas, exploratory gas producing wells relative to the number of oil producers have increased;[145] and concludes in part that, as annual new supplies of gas, including revision, have increased (1947–1957) in about the same ratio as the adjusted average price paid by pipelines,[146] new supplies of natural gas in the interstate market are, and will be, substantially dependent upon price.

The witness testified that since 1945 demands for gas have increased at an average annual rate of 8.4%, that current additions are of minimal adequacy[147] and that if it be assumed future requirements increase an average of 5% per year, maintenance of a 20-year level of reserves will necessitate additions equal to twice the volume withdrawn, or as of 1965, in the amount of 29–32,000,000 Mcf per year.[148]

He testified that as pipelines purchase selectively over wide geographic areas, price tends to reflect supply available relative to demand, and, natur-

---

[144] Instancing the estimate of reserves, allocation, area of exploration, productivity or output, and complexity of ownership problems as defeating the practicability of relating cost to value or saleability; testifying that under Staff's cost of service method unit costs invertedly tend toward the high side for small volumes which have a lesser value and toward the low side for large volumes which have a higher value.

[145] During the years 1947–1948 gas discoveries averaged some 4.1 Mcf of gas for each barrel of oil discovered, while during 1957–1958, the ratio increased to 7.8 Mcf per barrel. The witness also observes that a price of 20¢ per Mcf gas in South Louisiana has a prospective realization as great as that of oil.

[146] Adjusted by use of the Wholesale Price Index.

[147] Known reserves as of December 1958 declined to 21.2 times the year's net production.

[148] As disclosed in the following text, the witness' opinion is that market prices constitute an indispensable element in determining what will be required as an incentive to future exploration.

ally rising in times of short supply, functions to stimulate the incurrence of the added costs of providing the market with additional supplies;[149] due to lack of concentration of ownership of production[150] large producers are unable to control supplies and effect price leadership,[151] and, on the contrary, pipelines, able to plan or defer purchases over a period of 2 to 3 years or more, have long maintained fixed rates over wide areas for reserves varying in value,[152] and may still do so if the new reserve is not of substantial size.[153]

He testified that the proportion of natural gas to total energy requirements is rising, having increased from about 12% during the war to 31% in 1958; industry consumes some 66% of the natural gas used, and as, in that area as well as in that of commercial and residential uses, gas, oil, coal, electricity, and other fuels may be substituted one for the other, the relationship between the price and use of natural gas is elastic, or self adjusting.[154]

However, it appears that between geographical areas preference for gas supports a considerable variation in the relation of the price of gas to that of other fuels,[155] and that consumer's response to the relative price of fuels is retarded by investment in gas appliances.

He also testified that following the low field prices of 1940,[156] the increase in average prices paid by pipelines under all contracts (107%)[157] have not kept pace with the increase in average wages of petroleum workers (196%), the wholesale price for finished steel (161%), or drilling costs which, due sub-

---

[149] The witness explains the fact that supply has consistently lagged behind demand by adverting to the time required to explore for, develop, and market a new supply.

[150] In 1957 the 4 largest Southwest sellers under contracts of all ages accounted for approximately 23% of deliveries to interstate pipelines, as compared with 40% of sales in the anthracite and 18% in the regional bituminous coal industries. The concentration is no greater with respect to large volume sales, now tending to decline in relative importance, than that of buyers, in-as-much-as the first 4 interstate pipeline buyers accounted for 33% of all Southwest gas purchases. The gas industry as estimated 12,000 producers.

[151] Omitting reference to vintage, the witness adds that in the Southwest prices received for deliveries by the 4 largest producers (11.4¢ per Mcf) average less than payments received by all other independent producers.

[152] The variation in value reflecting differences in location or size of reserve or both. At the time of bargaining for initial supplies the pipeline buyer has freedom to locate its line advantageously with respect to both known and prospective supplies of natural gas. However, this latter factor is not fully developed.

[153] In the Southwestern area the greater majority of some 2,500 sellers filing rate schedules with the Commission have small operations limited to a local area. Volumes are not stated.

[154] In the New England generally, New York and New Jersey, the average price paid for industrial gas ranges from 50¢ to $1.00 Mcf and consumption from some 3 to 8 Mcf per capita (urban), while in the Southwest and adjacent markets the average price ranges from 15¢ to 25¢ per Mcf and consumption 100 to 325 Mcf per capita (urban). The pattern is generally the same for the commercial market and the witness is of the opinion that residential consumers also weigh the comparable advantage of fuels price-wise.

[155] Coal and No. 6 oil are considerably cheaper than gas in the Northeastern area. Gas is nearing parity with oil in the South Atlantic area and is the cheaper fuel in the Southwestern area.

[156] Lowest of those annually reported by the Bureau of Mines.

[157] Average prices paid by residential customers for natural gas increased some 29%. Comparable increases in the retail price of natural gas (all customers), fuel oil, bituminous coal, and Pennsylvania anthracite were 55%, 134%, 127%, and 146%, respectively. Increases in general average at points of production were—gas, 150%; crude oil, 201%, bituminous coal, 167%, and Pensylvania anthracite, 125%. In terms of a stable dollar the average price per Mcf to the pipelines actually declined from 5.99% to 5.38%. However, the increase in the initial base price of gas in 7 Southwestern states, in terms of simple averages, came to 312%. Average unit revenues for natural gas increased 1939–1954, 130% as compared with 170% in the case of crude oil.

sequentially to the advent of deeper exploratory and development drilling, have increased (1939–1954) some 202%.[158] For all of the foregoing and on the ground that it is not possible to obtain a satisfactory base price to which to apply a cost index, or to derive from simple economic data a measure of the incentive price needed to assure future new supplies, the witness would test rates by reference to a range of current competitive market prices,[159] price patterns, and the character of contract terms and conditions. Accordingly, employing principally data obtained from formal rate filings,[160] and also that obtained from sales contracts entered as exhibits in certificate proceedings[161] and various non-jurisdictional or intrastate contracts,[162] he obtains for each of 13 selected geographic areas various ranges of the average base and initial base prices[163] and concludes, after allowance for differences in contract terms and conditions, that all but one of Continental's jurisdictional prices are within the given area's range of average base prices,[164] and all but 4 are within the range of initial base prices.[165]

The witness assumes the adequacy of industry cost and cost trend data, testifying that it is desirable to supplement the current market price standard with appropriate considerations of cost.

However, as the industry generally treats cost and results of exploration data as confidential, studies relating to post-war costs are necessarily inconclusive and limited, and will remain so until substantial effort by industry and agencies supplies the deficiency.

The foregoing limitations circumscribe the use to be made of the witness' price ranges and market price standard.

Accordingly, and except as indicated in the paragraph which next follows, Continental's rate evidence can be said to do no more than lend support to the conclusion already stated in relation to Staff's and Interveners' evidence that generally the proceedings herein should be dismissed.

However, it is observed that with respect to Rate Schedule No. 107, relating to the sale from the Woodlawn field, *supra*, the witness obtains for the North Louisiana-East Texas Area a range of initial base prices of 8.5¢ to 18.04¢

---

[158] In the last decade the new supply of all gas per foot of drilling appears to have so declined as to of itself require an increase in drilling effort by possibly as much as 43%. Continental's unit labor costs have increased somewhat more rapidly than the industry's general average, its costs of casing somewhat less rapidly.

[159] In the form of the initial price effective during the first price period of the contract; and in the form of the average base price as an average of the contractual price steps weighted by time. The former would be the same as the initial effective price less tax reimbursement and other adjustments.

[160] Embracing contracts dated during a period of 18 to 24 months through December 31, 1958, depending upon whether area contracts were available in number sufficient to provide statistical stability.

[161] Due to delays, particularly where construction is involved, contracts filed as rate schedules would understate current prices in a rising market, while contracts entered as exhibits in certificate proceedings, affected by shorter periods of lag, are more current. Except where filed as rate schedules, he includes contracts entered by producers as exhibits during the period November 1, 1957, through February 28, 1959, and by pipelines from the middle of 1956 through February 28, 1959.

[162] Dated since January 1, 1955, as submitted to the witness through April 1, 1959, a 60% sample. However, due to the smaller volumes involved these contracts are not strictly comparable to the interstate transactions.

[163] For sales not for processing, except in the West Texas-Southwest in New Mexico and Four Corners Areas where all sales are included.

[164] Viz., Goliad (Texas) Area, Rate Schedule No. 123, which is higher.

[165] Viz., Goliad (Texas) Area, Rate Schedule No. 123; Houston (Texas) Area, Rate Schedule No. 78: and South Louisiana Area, Rate Schedules Nos. 152 and 158, which are higher.

per Mcf, with a median of 13.3¢.[166] This result is insufficient to support in full the increase proposed (14.13¢ per Mcf).

Rate Schedule No. 107

Rate Schedule No. 107, which under date of April 3, 1951, committed Continental's interest in the Woodlawn Field, Harrison County, Texas to Mississippi River Fuel Corporation,[167] in the amount of some 1,853.000 Mcf per year (1957), in its provision as to heat (1000 Btu/cf), hydrogen sulphide (1.5 gr./100cf) and sulphur (30 gr./100cf) content, and minimum delivery pressure (100psig), affords no basis for accepting a price that is out-of-line in comparison with other contracts in the Area,[168] particularly in the apparent absence of other factors which would indicate to the contrary.[169]

With respect to some 56 of the 66 long-term interstate pipeline contracts upon which Continental relies in the formulation of the Area's price ranges, 53 impose a hydrogen sulphide limit as low as 1.0 gr./100cf, 51 a sulphur content limit as low as 20 gr./100cf or less, 41 dehydration down to 7 lbs. per MMcf,[170] and only one a delivery pressure limit as low as 400 psig.

Even though price data of the nature offered by Continental be accepted as appropriate for consideration in testing rates, it is obvious, nevertheless, that the range of initial base and average base prices [171] cannot be applied exclusively to resolve the issue. Indeed, complexities involved in the formulation of the average base price and generally inconsistent volume-price relationships seriously qualify the use of either in the derivation of ranges.

With respect to the 59 Area contracts identified with volumes,[172] it is observed that an overall weighted average price of 14.24¢ per Mcf, which is higher than the median,[173] is counterbalanced by a corresponding average for the constituent 19 East Texas contracts of but 13.11¢ per Mcf.[174]

Therefore, despite the indicated deficiency in Continental's jurisdictional revenues, the conclusion upon the whole evidence is that a price in excess of

---

[166] On the basis of 66 contracts on file as rate schedules and dated July 1, 1957 or later, including in East Texas eight contracts with Texas Eastern Transmission having initial prices of 13.3¢, 13.5¢ (3), 14.2¢ (3), and 14.4¢ per Mcf, and two with Mississippi River Fuel of 11.5¢ and 13.0¢ per Mcf, respectively.

full the increased proposed (14.13¢ per Mcf).

[167] The contracting parties were not affiliated.

[168] *I.e.*, North Louisiana and East Texas.

[169] Generally field delivery points, Continental's being at the well or separator.

[170] If dehydration is required the immediate schedule would provide Continental with additional compensation.

[171] The range is stated on the basis of the lowest and the highest prices, as well as on the basis of the lowest and highest 10% and the median both with respect to the number of contracts and estimated volumes to be delivered. With reference to contracts filed as rate schedules, medians are:

	Number of contracts (cents/Mcf)	*Volumes (cents/Mcf)*
Initial base prices	13.3	14.2
Average base prices	15.3	16.3

Data from contracts offered as exhibits in certificate proceedings and from intrastate or non-jurisdictional contracts are not sufficiently complete to use in the same manner as those from contracts filed as rate schedules.

[172] Estimated first month's deliveries; not given for seven other contracts.

[173] Viz., 13.3¢ Mcf and 14.2¢ Mcf, respectively.

[174] Of the total estimated first month's deliveries of 2,448.4 Mcf some 32.8% (802.7 MMcf) pertains to the East Texas contracts, of which 10 were filed in the 1957 portion of the period. Because of the deficiency in overall jurisdictional revenues, reference to an average in the case of Continental may be of no direct significance but it may be observed, nevertheless, that the corresponding weighted average for deliveries under Continental's 10 Area rate schedules amounts to 12.2¢ per Mcf.

the Commission's present administrative rate in the premises (14.0¢ per Mcf) is not justified.[178]

Accordingly, the 14.13¢ rate herein proposed is approved only as to that portion not in excess of 14.0¢ per Mcf.[179]

FURTHER FINDINGS AND CONCLUSIONS

Continental is a natural-gas company subject to the provisions of the Natural Gas Act, and the sales of natural gas for resale which are the subject of the order, hereinafter included as a part of this decision, are sales of natural gas in interstate commerce subject to the jurisdiction of the Commission.

The proposed increased rates and charges filed by Continental in Docket Nos. G–11337, G–14264, G–14599, G–15236, G–15409, and G–15417 are just and reasonable and the proceedings in these dockets should be terminated.

The proposed increased rate and charge filed by Continental in Docket No. G–13608, insofar as it exceeds the rate of 14.0¢ per Mcf, is unjust and unreasonable and should, to that extent, be disallowed and ordered refunded as hereinafter provided.

On motion of Continental, and upon the findings and conclusions hereinabove set forth, the proceedings in Docket No. G–16966 should be terminated and dismissed.

ORDER

Upon consideration of the record herein, the contentions set forth in the proposed findings and in the briefs of respective counsel, and for the reasons and upon the findings and conclusions set forth in the foregoing portions of this decision, of which this order is a part,

IT IS BY THESE PRESENTS ORDERED, subject to review by the Commission on appeal, or on its own motion, as provided by its Rules of Practice and Procedure, that:

(A) The Section 5(a) proceedings in Docket G–16966 be and the same are hereby terminated and dismissed.

(B) The Section 4(e) proceedings in Docket Nos. G–11337, G–14264, G–14599, G–15236, G–15409, and G–15417 be and the same are hereby terminated.

(C) With respect to the proceedings in Docket No. G–13608, involving Continental's Rate Schedule No. 107, Supplement No. 10, that portion of the proposed rate which became effective pursuant to the terms and conditions of the Commission's order herein issued June 10, 1958, in excess of 14.0¢ per Mcf, is hereby disallowed.

(D) Continental shall, within forty-five days from the date this order becomes effective, refund to Mississippi River Fuel Corporation, with interest at the rate of 6 percent per annum, the difference between the amounts collected under Rate Schedule No. 107, Supplement No. 10, and what it would have collected at the rate of 14.0¢ per Mcf.

(E) Continental shall, within sixty (60) days of the date upon which this order becomes effective, report to the Commission in writing and under oath the details of its calculations resulting in refunds ordered pursuant to the preceding Paragraph (D), together with a copy of release from Mississippi River Fuel Corporation with respect to such refund.

---

[178] See, General Statement of Policy 61–1, *supra*.

[179] Both rates inclusive of tax reimbursement.

(F) Upon satisfactory compliance by Continental with the refund requirement of this order, the proceeding in Docket No. G–13608 shall be terminated, and its agreement and undertaking with respect thereto, as previously herein filed, shall be discharged.

EWING G. SIMPSON,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. G–12372

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 1, 1963)

On July 23, 1963, El Paso Natural Gas Company (Applicant) filed a petition to amend the Commission's order issuing a certificate of public convenience and necessity, issued on September 23, 1958, in Docket No. G–12372, as hereinafter described, all as more fully described in the petition.

Applicant seeks to increase its maximum daily delivery to Apache Powder Company to 4,000 Mcf per day. The presently authorized maximum is 3,136 Mcf per day. It appears that the Apache Powder Company's estimated future requirements will make the increase necessary.

Due to notice of the subject petition to amend was published in the Federal Register on August 29, 1963 (28 F.R. 9486). No protests to the granting of the petition have been received.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued on September 23, 1958, in Docket No. G–12372 be amended as hereinafter ordered.

The Commission orders:

(A) The order of the Commission issued September 23, 1958, in Docket No. G–12372 be and the same is hereby amended so as to authorize El Paso Natural Gas Company to increase the maximum daily delivery of natural gas to Apache Powder Company to 4,000 Mcf per day.

(B) In all other respects, the said order issued September 23, 1958, in Docket No. G–12372 shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP63–297

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 1, 1963)

On May 6, 1963, as supplemented on July 8, 1963, El Paso Natural Gas Company (Applicant) filed in Docket No. CP63–297 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the operation of certain existing facilities located

in the Aneth Field Area, San Juan County, Utah; the sale and delivery of natural gas to the Navajo Tribe for resale and distribution; and the transportation of natural gas for Texas-New Mexico Pipe Line Company (TNM), Texaco Inc. (Texaco) and Shell Oil Company (Shell), all as more fully set forth in the application.

The application states that Applicant has heretofore constructed a combination 2⅞-inch O.D. and 6⅝-inch O.D. pipeline and related facilities, extending from its Aneth Gasoline Plant a distance of 1.51 miles to the Montezuma School for the purpose of making Aneth residue gas available to the school. In the absence of an available distributor, Applicant initiated deliveries to the Montezuma School, without charge. At the time of initiation of such deliveries, this activity and the facilities used were of intrastate character. Subsequent to the initiation of said deliveries, Colorado-produced gas was for the first time introduced into Applicant's Aneth gathering system, transforming the character of the gas stream emanating from the Aneth Gasoline Plant from intrastate to interstate. The aforementioned facilities are therefore now utilized for the transportation of natural gas in interstate commerce. Applicant has now entered into a service agreement with the Navajo Tribe whereby the Navajo Tribe will provide natural gas service to the San Juan County, Utah, School Board for the Montezuma School.

Applicant proposes to transport, sell and deliver up to 1,000 Mcf of residue gas per day to Texaco for delivery to TNM for use as fuel in the operation of TNM's Aneth Pumping Station; up to 1,000 Mcf of residue gas per day to Texaco for its own use in the development and operation of its Aneth Area production properties; and up to 40 Mcf of residue gas per day to Shell for use by Four Corners Pipe Line Company (Four Corners) as fuel in the operation of Four Corners' Aneth Pumping Station.

In order to enable the transportation of Aneth residue gas for TNM, Texaco and Shell, Applicant constructed a 0.33-mile, 2⅞-inch O.D. pipeline extending from a point of connection with the above-described Aneth-Montezuma School pipeline to the Aneth Pumping Station of TNM, together with three measuring and regulating stations located at or near the terminus thereof. Due to the introduction of Colorado-produced gas into the Aneth gathering system, these facilities are likewise now utilized for the transportation of natural gas in interstate commerce.

The total cost of the above-described facilities, including a packaged dehydration unit located on the pipeline extending to the Montezuma School, is stated to have been $42,794.81, of which amount TNM contributed $4,106.20. Although the incremental cost of service will exceed revenues by about $5,000 in the third year, it is insignificant in relation to Applicant's overall cost of service.

Applicant filed a revised service agreement with the Navajo Tribe, the proposed distributor to the Montezuma School, on July 29, 1963. El Paso requests that the said service agreement be allowed to become effective as soon as possible. Applicant also filed revised tariff sheets which include First Revised Tariff Sheet Nos. 7, 61, and 62; Second Revised Tariff Sheet Nos. 38, 39, 40, 52, 60, and 64; Third Revised Tariff Sheet Nos. 58 and 63; Sixth Revised Tariff Sheet No. 11–A; Ninth Revised Tariff Sheet No. 6; Tenth Revised Tariff Sheet No. 19, in El Paso's FPC Gas Tariff, Original Volume No. 1.

Applicant proposes to provide resale natural gas service to the Navajo Tribe at rates contained in Applicant's Rate Schedule B–3, FPC Gas Tariff, Original Volume No. 1, as appropriately amended to make the availability

thereof applicable to San Juan County, Utah, and to provide transportation service for TNM, Texaco and Shell at rates contained in proposed special Rate Schedules T–1, T–2, and T–3 (formerly designated X–14, X–15, and X–16) respectively.

Pursuant to due notice, a public hearing was held in Washington, D.C., on September 16, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware Corporation with its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce for resale, subject to the jurisdiction of the Commission, and the operation thereof by Applicant is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The operation of the facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(3), and (e) of Section 157.20 of such Regulations.

(6) Public convenience and necessity require that the service agreement between Applicant and the Navajo Tribe filed July 29, 1963, should become effective on the date on which this order issues.

(7) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, El Paso Natural Gas Company, to operate facilities and to sell natural gas in interstate commerce for resale as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(3), and (e) of Section 157.20 of such Regulations.

(C) The service agreement between Applicant and the Navajo Tribe, filed July 29, 1963, and the revised tariff sheets hereinbefore described, shall become effective as of the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

LONE STAR GAS COMPANY, DOCKET NO. CP64–25

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 1, 1963)

On July 24, 1963, Lone Star Gas Company (Applicant) filed in Docket No. CP64–25 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities to extend Applicant's existing transmission system to provide for the transportation of natural gas to the city gate of the City of Colleyville in Tarrant County, Texas, as hereinafter described, all as more fully described in the application.

The proposed transportation facilities include approximately 2.92 miles of 4-inch transmission Line C–10–5 extending from 4-inch Line C–10 in an easterly direction to a city gate measuring station to be installed near the City of Colleyville.

The said community does not now have the benefit of natural gas service. Applicant proposes to construct and operate a natural gas distribution system in the City of Colleyville. A franchise has been granted by said City authorizing Applicant to distribute natural gas to customers within the area. The requirements for the proposed natural gas distribution system (Mcf at 14.73 psia) are estimated to be as follows:

Year	Peak day	Annual
1	475	26,240
2	673	37,410
3	750	41,840

Applicant estimates the cost of natural gas pipeline transmission facilities at $28,300.00, the city gate measuring station at $4,600, and the local distribution system at $185,397.95, all of which will be financed from working capital.

Pursuant to due notice, a hearing was held on September 19, 1963, respecting the matters involved in and the issues presented by the application herein. No protest or petition to intervene has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Lone Star Gas Company, a Texas corporation having its principal place of business in Dallas, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The transportation facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed transportation facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by Staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Lone Star Gas Company, to construct and operate facilities for the transportation of natural gas in interstate commerce, as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission Regulations, within 6 months from the date on which this order issues.

LYNCHBURG GAS COMPANY, v. ATLANTIC SEABOARD CORPORATION, DOCKET NO. RP63-5

ORDER ADOPTING EXAMINER'S DECISION

(Issued October 1, 1963)*

Syllabus

1. Pipeline's limiting availability of AOS rate schedule to "unforeseen contingencies or emergencies" is an additional limitation to those set forth in filed tariff, constituting a change in service. PP. 935; 938.
2. Pipeline found in violation of section 4(d) of the Natural Gas Act in failing to give public notice of change. P. 938.

*Initial decision appears on p. 935.

3. In proceeding arising under section 5(a) of the Natural Gas Act, Commission *orders* pipeline to refrain from withholding consent for authorized overruns of gas. PP. 935; 942.

Phebe Eppes Gordon and ***Michael E. Shea*** for Lynchburg Gas Company.

Herbert W. Bryan, *Giles D. Snyder* and *William C. Hart* for Atlantic Seaboard Corporation.

W. E. Herron and *Julian de Bruyn Kops* for The Dayton Power and Light Company.

C. Oscar Berry and ***Karl Michelet*** for Washington Gas Light Company.

W. A. Dickinson for Roanoke Gas Company.

Milton J. Grossman for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

This proceeding involves the question whether the announced policy of Atlantic Seaboard Corporation (Seaboard) on rendering overrun service constitutes a departure from the terms of the filed overrun (AOS) tariff.

Initially, we commend all the parties and the examiner for their expedition in trying this case. The order setting this matter for hearing was issued May 3, 1963. The pre-hearing conference was held on the date specified by the Commission, and a stipulation of relevant facts permitted a one day hearing and transcript comprising only 117 pages. While this proceeding is obviously not as complex as some, it is nevertheless noteworthy that we were able to issue a final order in a contested case within about five months from the date it was instituted.

Only a narrow issue is involved in this case. That issue is whether Seaboard made a change in the practice of providing overrun service, which change is at variance with the terms of its filed tariff. There is no issue, and we are making no decision, regarding the propriety of Seaboard's amended overrun policy. This issue could arise only when embodied in a tariff supplement filed in accordance with the provisions of the Natural Gas Act and the applicable regulations of the Commission.

The presiding examiner concluded that Seaboard's current policy on overrun service constitutes a departure from the terms of its filed tariff. Seaboard and Dayton Power and Light were the only parties filing exceptions to his decision. We have carefully reviewed the record herein, the briefs before the examiner, the examiner's decision, the exceptions, and replies to exceptions. We conclude that the examiner reached the correct result based upon reasoning with which we agree. We find nothing in the exceptions which is not adequately answered in the examiner's decision and we will therefore adopt it as the Commission decision in this proceeding.

The Commission orders:

(A) The presiding examiner's decision issued herein on July 24, 1963 is hereby adopted as the decision of the Commission.

(B) The exceptions to the examiner's decision are hereby denied.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON COMPLAINT RESPECTING OPERATIONS OF PIPELINE COMPANY UNDER SERVICE TARIFF

(Issued July 24, 1963)

PURDUE, *Presiding Examiner:* This proceeding involves a complaint of Lynchburg Gas Co., a distributing company, against Atlantic Seaboard Corp.,

one of its two pipeline suppliers, regarding Seaboard's operations under the latter company's Rate Schedule AOS–1 for "Authorized Overrun Service (Maryland-Virginia)." Lynchburg alleges (1) that Seaboard has effected a change in the service which it renders under such rate schedule without having given the notice thereof to the Commisson and the public required by Section 4(d) of the Natural Gas Act; and (2) that Seaboard's present position regarding the rate schedule is an "unreasonable" "practice," in violation of Section 5(a). Seaboard denies these allegations.

The Commission directed that a prehearing conference be held. The matter came on for the prehearing conference on May 24 and part of May 25, 1963, the undersigned Examiner presiding at such portion of the conference as was transcribed.

At the conference, the Examiner prescribed the following procedure respecting the conduct of the proceeding:

> Initially the hearing shall be limited to the single issue whether the present policy of Seaboard respecting its Authorized Overrun Service schedule is a change in service within the meaning of Section 4(d) of the Act, without Seaboard having given notice thereof by filing a new schedule and keeping a new schedule open for public inspection as required by said section. In the event, after the conclusion of the initial hearing and the filing of briefs, the Examiner decides in favor of Seaboard on such issue, the Examiner shall reopen the hearing for the receipt of evidence respecting the second issue presented by the complaint, and shall determine that issue after the conclusion of the reopened hearing and the submission of briefs respecting such issue.

The participants arrived at a stipulation of facts respecting the single question thus presented initially.

Immediately following the conclusion of the conference, the hearing convened before the undersigned Examiner. At the hearing, the reported part of the prehearing conference, including the aforementioned stipulation, was made a part of the record; and certain documentary evidence was introduced pursuant to the stipulation. The hearing concluded the same day, May 25, 1963.

The following companies intervened in the proceeding: Washington Gas Light Co., Roanoke Gas Co., and The Dayton Power and Light Co. Washington and Roanoke are customer companies of Lynchburg. Dayton is a customer company of The Ohio Fuel Gas Co., an affiliate of Seaboard, which has an authorized overrun service tariff that is the same as Seaboard's Rate Schedule AOS–1, except for the rate.

The complainant, the defendant, each of said intervenors, and the Commission Staff filed briefs after the conclusion of the hearing; and the proceeding was submitted for consideration and decision.

Position of Staff and Intervenors

The Staff, Washington and Roanoke take the position that the adoption by Seaboard of its present policy regarding the Authorized Overrun Service schedule is a change in service thereunder, within the purview of Section 4(d).

It is not clear to the Examiner what Dayton's position is respecting such question. Dayton avers, "This would appear to be a case to determine what service Seaboard should render under its filed tariff," and bases an argument upon such premise. The question which Dayton poses is not within the single issue to which the Examiner limited the hearing initially.

Violation by Seaboard of Section 4(d)

The complaint of Lynchburg on the issue presented is justified. Seaboard's Rate Schedule AOS–1, "Authorized Overrun Service," provides as follows:

1. *Availability*

This Rate Schedule is available to any buyer (hereinafter called Buyer) for the purchase from Atlantic Seaboard Corporation (hereinafter called Seller) of natural gas for resale, including gas used by Buyer in its utility operations, when Buyer is purchasing gas under Seller's Rate Schedule CDS–1 or CDS–PR–1.[1]

This Rate Schedule is not available for the purchase from Seller of gas which, together with gas purchased under Seller's Rate Schedule CDS–1 or CDS–PR–1, is:

(a) to be used by Buyer as boiler fuel in an amount exceeding two thousand (2,000) Mcf on any one day, or

(b) for resale for consumption as boiler fuel in an amount exceeding two thousand (2,000) Mcf on any one day, by any one ultimate consumer.

2. *Applicability and Character of Service*

Gas delivered by Seller to Buyer under this Rate Schedule shall be the volume delivered on any day in excess of the then effective Contract Demand under Seller's Rate Schedule CDS–1 or CDS–PR–1, but not greater than the specified volume for which Seller (through its Load Dispatcher) shall have first given its express consent. Such consent of Seller is limited to one day, and separate consents shall be required with respect to each and every day in which gas is so taken.

If Seller shall receive requests from more than one Buyer for deliveries under this Rate Schedule on the same day and if in Seller's judgment the aggregate of such requests exceeds the gas available under this Rate Schedule, then if any consent is given, Seller shall consent to all such Buyers taking hereunder volumes in excess of their respective then effective Contract Demands proportionate there to, to the extent that Seller has adequate facilities available for delivering such additional volumes. If, however, a request for gas under this Rate Schedule results from an emergency it shall be given priority over other requests for gas hereunder. * * *

On September 26, 1962, Seaboard's management notified Lynchburg's management by telephone that, as a matter of "policy," AOS service would not be available during the winter of 1962–63 except under emergency conditions. On the same day and the day following, Seaboard gave the same notification, in the same manner, to Roanoke and to the following other customers of Seaboard: Commonwealth Natural Gas Corp., The City of Charlottesville, and Baltimore Gas and Electric Co.

Prior thereto, on August 3, 1962, Seaboard had adopted an "operational guide" respecting deliveries under the AOS rate schedule whereby it provided that "AOS gas is available for unforseen contingencies or emergencies, but not as a substitute for regular planned sources"; that "There must be real evidence of unforeseen contingency or emergency before a request for AOS gas is granted."

---

[1] Rate Schedule CDS–1—Contract Demand Service (Maryland-Virginia); Rate Schedule CDS–PR–1—Contract Demand Service—Partial Requirements (Maryland-Virginia).

Seaboard took these actions despite the fact that during the period commencing with the winter season 1958–59 and continuing through the winter season 1961–62, Seaboard had granted overrun gas service under such schedule to Lynchburg on numerous occasions, none of which involved an unforeseen contingency or emergency; and despite the further fact that during such winter seasons, or some of them, Seaboard had granted overrun gas service on numerous occasions to Roanoke, Commonwealth and Charlottesville; and to others of its customer companies; *viz.*, Virginia Gas Distribution Corp., Shenandoah Gas Co., Manufacturers Light and Heat Co., Cumberland and Allegheny Gas Co., and Amere Gas Utilities Co.—without there having been, so far as appears from the record, unforeseen contingency or emergency situations.

Seaboard's limiting the availability of its AOS rate schedule to "unforeseen contingencies or emergencies" is a limitation in addition to those set out in paragraphs (a) and (b) of the "Availability" section of the tariff; and therefore constitutes a change in service rendered under the tariff.

Concededly, before making such change Seaboard did not give and has never given the thirty days' notice to the Commission and the public required by Section 4(d) of the Natural Gas Act. Nor has the Commission, by order under Section 4(d), allowed the change to take effect without requiring the thirty days' notice.

It necessarily follows, and the Examiner finds and concludes, that Seaboard violated, and has continued to violate, the provisions of Section 4(d). *Michigan Wisconsin Pipe Line Co.*, 13 FPC 326, 348, and cases cited.

Question Raised by Examiner

It will be noted that under the subhead of the AOS rate schedule, "Applicability and Character of Service," the schedule provides that "Gas delivered by Seller to Buyer" under the rate schedule shall be "not greater than the specified volume for which Seller (through its Load Dispatcher) shall have first given its express consent." At the hearing, the Examiner raised the question whether, in view of this language, Seaboard has the option to withhold consent for the delivery of any AOS gas whatever, and therefore is empowered by the terms of the rate schedule to deliver gas only upon such conditions and for such purposes as it may specify—including limiting the availability of the gas to unforeseen contingencies and emergencies.

Some of the participants have treated this question in their briefs, and the Examiner is satisfied that the rate schedule is not open to such construction. The reasons for this conclusion are two. In the first place, the tariff can be so construed only if the clause which calls for the "express consent" of Seaboard to be given can be said to vest unfettered discretion in Seaboard to give or withhold consent to deliveries of gas. The clause should not be so interpreted, for the tariff would then violate the proscriptions of Section 4(b) of the Act against unduly preferential and prejudicial differences in services. As Seaboard, itself, points out, a tariff should be given such construction, if consistent with the terms thereof, as to prevent discriminatory practices.

In the second place, a public utility cannot "arbitrarily give or refuse to give service in accordance with [its] own judgment, whim or caprice." *Speaker* v. *Larkin Rural Tel. Co.* (Mich. Pub. Util. Comm.), 27 P.U.R.(N.S.), 185, 186; *cf. Filger* v. *Public Water Supply Dist.* (Kansas City Ct. App. Mo), 346 S.W. 2d 567, 573–74. In its brief, Seaboard "agrees . . . that its actions can never be arbitrary"; and that "The words 'express consent' contained in the AOS Schedule are naturally subject to this limitation."

Contentions of Seaboard

Seaboard urges that its operational guide constitutes no change in service for the reason that "it merely conforms AOS deliveries to those always intended by the tariff." We do not agree. We search the tariff in vain for any language either expressly or impliedly to the effect that AOS gas is available only for unforeseen contingencies or emergencies. The absence of any such language in the rate schedule compels the conclusion that when Seaboard filed the schedule it intended and contemplated that deliveries thereunder should be for purposes other than unforeseen contingencies and emergencies. Two other circumstances reinforce this conclusion; *viz.*, (1) the recital in the last sentence of the tariff that a request for gas resulting from an emergency is to be given priority over other requests for gas under the schedule; and (2) the fact, already noted, that Seaboard has for years made deliveries under the tariff to Lynchburg, and apparently to others of its customers also, for uses besides unforeseen contingencies and emergencies.

The participants have stipulated, and the Examiner finds, that

> Lynchburg, in carrying out its load development program, has relied and has developed a real dependence upon the availability of Seaboard's authorized overrun service as such service has been rendered in the past.

Seaboard contends that the AOS rate schedule cannot thus be used as a planned source of supply, and cites an order in *United Fuel Gas Co.*, 19 FPC 300. There the Commission, treating of a rate schedule of United Fuel like that here involved, said at page 303:

> . . . the AOS rate schedule cannot be construed to be applicable to sales of gas for summer storage in substantial volumes well in excess of contract demands, for at least the approximate quantities of such deliveries would necessarily be planned in advance. The AOS schedule is designed for emergencies that may occur suddenly and may be met on a day by day basis; it is not intended for a large seasonal movement of gas.

The Commission, at page 305, ordered that the United Fuel AOS rate schedule should apply to customers of United Fuel "only where Rate Schedule AOS is applicable to such deliveries within the meaning of this order."

That language and ruling are not binding here. In the first place, " . . . general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used, . . ." *Wright* v. *United States*, 302 U.S. 583, 593. In the *United Fuel* proceeding, the situation presented was quite different from that here involved. There, United Fuel, the seller, entered into agreements with two of its affiliates, Ohio Fuel and Manufacturers, whereby the contract demands of the affiliates were reduced by 31,000 Mcf per day and 55,550 Mcf per day. The affiliates obtained the difference in volume—indeed, much more than the difference in volume—by United Fuel, in the summertime, making deliveries of quantities of gas above the new contract demands for deposit in their underground storage fields; United Fuel billing the affiliates at the lower rates of the AOS schedule. The Commission held that United Fuel's use of the AOS schedule in this manner was unlawful. The Commission was not there treating of the question whether a non-affiliated customer is entitled under such a schedule, not to "a large seasonal movement of gas," but to gas with which to meet a portion of its planned deliveries, on a day-to-day basis, if, as and when available.

In the second place, the language in the *United Fuel* order about the AOS schedule being "designed for emergencies" is dictum.

Finally, in any event, the *United Fuel* proceeding is of no avail to Seaboard because the order there issued did not effect a change limiting the applicability of Seaboard's AOS tariff to unforeseen contingencies or emergencies. The rate provisions of the Natural Gas Act were taken from the Interstate Commerce Act. *El Paso Natural Gas Co.*, 19 FPC 154, 158. It is settled law that "where provisions of one statute have been adopted by another, the interpretation which has been authoritatively placed upon the former applies to the latter also." *Hope Natural Gas Co.* v. *Federal Power Commission* (C.A. 4), 196 F. 2d 803, 807. In *American Sugar Refining Co.* v. *Delaware, L. & W. R. Co.* (C.C.A. 3), 207 Fed. 733, decided long prior to the adoption of the Natural Gas Act, the court held that the Interstate Commerce Commission has no power to change a rates established by a railroad company by its filed schedules, except by a formal order. There a tariff of the railroad company covering shipments of sugar provided for a specified reduction for the transfer of sugar by the shipper to the railroad station. The Interstate Commerce Commission, following an investigation, made a report in which it found that the reduction was an unlawful rebate, but entered no formal order annuling the allowance. The court held that the filed tariff continued to be binding, stating at page 741:

> The mere opinion of the Commission, as to the character of the deduction or allowance mentioned in the schedule, could not, ipso facto affect the validity of the same, in face of the positive rates which have been filed and published by a common carrier.

So here, the Federal Power Commission does not possess the power to change Seaboard's AOS tariff except by a formal order applicable to such tariff.

The Examiner has considered other arguments of Seaboard in its briefs, but none of them militates against the conclusion hereinbefore reached that Seaboard, by limiting the availability of its AOS schedule to unforeseen contingencies and emergencies, made a change in the service rendered thereunder.

One other point which Seaboard makes should, perhaps, be discussed. It will be considered under the subhead next following, inasmuch as Dayton makes an argument of similar nature.

Question of Discrimination

Seaboard argues that its contract demand rate form, to which the AOS schedule is an adjunct, can operate without undue discrimination only if the customers nominate contract quantities consonant with their peak-day requirements; ergo that the AOS schedule is unduly discriminatory unless its applicability be limited to unforeseen contingency and emergency situations. As proof of its contention, it points to the fact, shown by the evidence, that Seaboard's two largest customers, Washington Gas Light Co. and Baltimore Gas and Electric Co., have taken no AOS gas whatever during the winter season.

In similar vein, Dayton argues that "to permit the use of AOS gas as a planned supply discriminates against those customers who determine their contract demand requirements without reference to AOS gas." Dayton urges, however, that the schedule should permit the purchase of AOS gas, when available, for use in lieu of operating a buyer's peak-shaving equipment or curtailing interruptible customers.

Lynchburg and the Staff take the position that deliveries under the tariff made in the same manner as during the winter of 1958–59 through the winter of 1961-62, are not discriminatory. In relying on AOS gas, Lynchburg is tak-

ing a chance that such gas will not be available when it needs it. All of Seaboard's other contract demand customers have the same right as does Lynchburg to AOS gas; and if they choose, can take the same chance. The Staff recognize, however, that "the purpose of the CD form of rate schedule would be defeated to some extent if all the customers, relying on the probable availability of overrun gas, signed up for contract demands which totaled considerably less than the existing capacity of the pipeline."

Washington takes no position on the question of undue discrimination (possibly because the question is presented only to a limited extent, as hereinafter pointed out), but does say that AOS deliveries

> contribute to more intensive utilization of Seaboard's facilities to the ultimate benefit of the consuming public. Any unwarranted restriction of AOS deliveries would result in uneconomic idleness of the available capacity and would be contrary to the public interest.

The evidence is insufficient for the Examiner to make a determination upon the question of undue discrimination. Whether unjust discrimination exists in a particular case depends upon questions of fact. *Railroad Commission of Louisiana* v. *Aransas Harbor Terminal R. R. Co.*, 48 I.C.C. 312, 364 and cases cited. Without undertaking to specify the showing that should be made, it occurs to the Examiner that evidence concerning the following matters and questions, *inter alia*, may be pertinent in arriving at a conclusion respecting undue discrimination: (1) A specific showing as to the nature and character of the loads which Lynchburg has met, and plans to meet, with overrun gas service under the AOS schedule. (Lynchburg alleges in its complaint, and Seaboard in its answer does not deny, that as a result of Seaboard's "policy" adopted in 1962, Lynchburg has been caused to make "excessive curtailments in its industrial sales"; and that if the "policy" continues "Lynchburg will be required to produce large amounts of high cost peak shaving gas.") (2) Similar showings respecting the loads which Roanoke, Commonwealth, Charlottesville, Virginia Gas Distribution Corp., Shenandoah Gas Co., Manufacturers Light and Heat Co., Cumberland and Allegheny Gas Co., and Amere Gas Utilities Co. have met, and plan to meet, with AOS gas. (3) Why have not Washington and Baltimore (Seaboard's two largest customers) availed themselves of AOS gas during past winter seasons; and do they plan to make use of such gas in winter seasons in the near future? (4) What are the positions of Washington and Baltimore upon the question whether deliveries under the AOS schedule, as made from 1958 through the winter of 1961–62, result in undue discrimination; and the reasons for their positions? Certainly in order to determine whether undue discrimination exists more of a factual basis is needed than the record contains.

It is unnecessary, however, for the Examiner to call for further evidence. For even if the Examiner were to find that deliveries under the AOS schedule as heretofore made are unduly discriminatory, Seaboard's present policy respecting such schedule would still be a change in service.

The consideration of possible undue discrimination is relevant only as bearing on the interpretation to be accorded the rate schedule. Seaboard cites a rule to the effect that a tariff should be so construed as to prevent discrimination, if such construction be "consistent with the terms of the tariff." Here, consistently with the terms of the tariff, the instrument cannot be so construed as to limit its applicability to unforeseen contingencies and emergencies; hence whether the schedule, absent such limitation, is unduly discriminatory, makes no difference in what the holding in this case should be. *American Sugar Refining Co.* v. *Delaware, L. & W. R. Co.*, *supra*.

Request of Washington

Washington Gas Light Co. requests that the Examiner recommend that the Commission institute an investigation under Section 5(a) of the AOS schedules and practices thereunder of Seaboard and its affiliate, *United Fuel Gas Co.* In our opinion, there is no adequate basis or justification in the record for the Examiner's making such recommendation. Section 5(a), of course, authorizes a gas distributing company to file a complaint with the Commission looking to an investigation under such section.

Improper Arguments

In arguments in their briefs, Lynchburg and Seaboard both go outside the record. Lynchburg cites several exhibits in other proceedings, which have not been received in evidence in this proceeding. Lynchburg erroneously says that the Commission should "take judicial notice" of this material. Similarly, Seaboard refers to certain datum not received in evidence, but which purportedly is in "the Commission's files"; and erroneously says that the Examiner may "take official notice" of it. "Nothing can be treated as evidence which is not introduced as such." *United States* v. *Abilene & Southern Railway Co.*, 265 U.S. 274, 286–90; *Morgan* v. *United States*, 298 U.S. 468, 480. In several decisions the Examiner has pointed out that arguments such as those above adverted to are futile and improper. *St. Lawrence Gas Co.*, 26 FPC 265, 278–79 (adopted as part of the Commission's opinion therein); *El Paso Natural Gas Co.*, Docket No. G–16235 (decision issued December 18, 1962), p. 13; *Tennessee Gas Transmission Co.*, Docket No. CP61–106 (decision issued April 1, 1963), p. 11.

ORDER

WHEREFORE, IT IS ORDERED, subject to review by the Commission on appeal, or review by the Commission on its own motion, as provided in its Rules of Practice and Procedure,

That Atlantic Seaboard Corp. refrain from withholding its consent to deliveries of gas under its Rate Schedule AOS–1, Authorized Overrun Service, on either of the following grounds: (1) that such deliveries are not for unforeseen contingencies and/or emergencies; and (2) that such deliveries are a substitute for regular planned gas supplies—until and unless a change is effected in such tariff, in accordance with the Natural Gas Act and the Regulations under the Natural Gas Act, which permits Seaboard to withhold its consent on such grounds.

HOWELL PURDUE,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

SOUTHERN CALIFORNIA EDISON COMPANY AND CALIFORNIA ELECTRIC POWER COMPANY, DOCKET NO. E–7106

ORDER AUTHORIZING MERGER OR CONSOLIDATION OF FACILITIES

(Issued October 1, 1963)

Southern California Edison Company (Edison) incorporated under the laws of the State of California, qualified to do business in the States of California, Arizona, and Nevada, with its principal place of business in Los Angeles,

California and California Electric Power Company (California Electric) incorporated under the laws of the State of Delaware, qualified to do business in the States of California, Nevada and Arizona, with its principal place of business in San Bernardino, California, filed a joint application on June 11, 1963, for an order authorizing California Electric to merge with Edison as the "Surviving Corporation". The merger would be accomplished by an exchange of shares of stock.

Edison is a public utility primarily engaged in the business of furnishing electric service in portions of Central and Southern California, including the counties of Fresno, Inyo, Kern, Kings, Los Angeles, Madera, Orange, Riverside, San Bernardino, Santa Barbara, Tulare and Ventura. The principal service area covers approximately 15,000 square miles and extends from the Pacific Coast near Los Angeles northward about 260 miles along the eastern part of the San Joaquin Valley. As of March 31, 1963, it had a net plant of $1,440,000,000, and its total operating revenue for the year ending March 31, 1963, was $366,000,000. The Company holds 39 project licenses under Part I of the Federal Power Act.

California Electric is a public utility principally engaged in the business of furnishing electric service in the counties of Mono, Inyo, Kern, San Bernardino, Riverside and Imperial in southern California, and in the counties of Nye and Esmeralda in Nevada, The Company holds 22 project licenses under Part I of the Federal Power Act. As of March 31, 1963, the Company had a net plant of $166,220,000, and the total operating revenues for the year ending March 31, 1963 was $39,000,000.

The proposed merger is to be carried out in accordance with the terms and conditions of an Agreement of Merger dated May 16, 1963, and a Collateral Agreement, also dated May 16, 1963, which supplements the Merger Agreement. Under that agreement, when the Merger Agreement becomes effective, the separate existence of California Electric will cease and, as provided by law, Edison will succeed to all rights, properties, and be responsible for all debts, liabilities and obligations of California Electric, including the latter company's outstanding First Mortgage Bonds and all short-term notes then outstanding.

As of March 31, 1963, the following is a statement of California Electric capitalization:

Proprietary capital:	
Common stock, $1 par, 3,800,000 shares	$3, 800, 000
Premium on common stock	33, 770, 757
Cumulative preferred stock, $50 par:	
$3.00 Series, 98,923 shares (noncallable)	4, 946, 150
$2.50 Series, 60,000 shares	[1] 3, 000, 000
6 percent Series, 140,000 shares	[1] 7, 000, 000
5.75 percent Series, 115,200 shares	[1] 5, 760, 000
Miscellaneous paid-in capital	51, 498
Unappropriated earned surplus	10, 992, 558
Total proprietary capital	69, 320, 963
First mortgage bonds	87, 500, 000
Short-term notes	8, 000, 000
Total	164, 820, 963

[1] To be redeemed prior to merger.

Among other things, the Merger Agreement provides that prior to the record date to be selected for determining the shareholders of California Electric who will be entitled to vote upon the adoption of the Merger Agreement, California Electric will have redeemed all of its outstanding shares of $2.50 Cumulative Preferred Stock. 6% Cumulative Preferred Stock and 5.75% Cumulative Preferred Stock, leaving the non-callable $3.00 Cumulative Preferred Stock as the only series of such stock outstanding.

Edison's Articles of Incorporation and By-Laws in effect just prior to the merger will also become the Articles and By-Laws of Southern California after the merger, except that the Articles will be amended as provided in the Merger Agreement to increase the authorized number of shares of Edison's Cumulative Preferred Stock, 4.78% Series from 1,00,000 to 1,296,769.

The Merger Agreement provides that Edison's shares of capital stock outstanding on the effective date of the merger shall not be changed as a result of the merger but shall continue to remain outstanding.

The Agreement provides for the following treatment for the $3.00 Cumulative Preferred Stock (non-callable) and for the Common Stock of California Electric:

(1) Each share of the $3.00 Cumulative Preferred Stock of the par value of $50 per share of California Electric Power which shall be issued and outstanding on the effective date of the merger shall be converted on such date into 3 shares of Cumulative Preferred Stock, 4.78% Series of the par value of $25 per share of Edison.

(2) Each share of Common Stock of the par value of $1 per share of California Electric which shall be issued and outstanding on the effective date of the merger shall be converted on such date into ninety-five one hundreths (.95) share of Common Stock of the par value of $8⅓ per share of Edison.

As set forth in the Merger Agreement, Edison will not issue any certificates for fractions of shares of its Common Stock as a result of the merger, but arrangements will be made pursuant to which each holder of California Electric's Common Stock who becomes entitled to a fraction of a share will be enabled either to sell his fraction or to purchase the additional fraction required to make one whole share.

According to the application, the bases upon which shares of the Preferred and Common Stock of California Electric are to be converted into shares of the Preferred and Common Stock of the Surviving Corporation, including the ratios of exchange, were arrived at as a result of arms-length negotiations between the managements of the respective companies.

Among the factors indicated in the application which were considered in determining an exchange ratio for California-Electric's non-callable Preferred Stock was the need to provide these shareholders with a fair equivalent for non-callable shares in shares of the surviving corporation which would be callable and which would not enjoy voting rights in arrears to the same degree as do the non-callable shares.

The following statement shows Edison's and California Electric's Proprietary Capital before the proposed merger and Edison's Proprietary Capital after the proposed merger:

	As of March 31, 1963			
	Before merger		Adjustments	After merger—Edison
	Edison	California Electric [1]		
Common stock, $8⅓ par	$268,130,655		(a) $30,083,333	$298,222,988
Common stock, $1 par		$3,800,000	(a) (3,800,000)	
Original preferred stock	4,000,000			4,000,000
Cumulative preferred stock:				
4.08 percent series, $25 par	25,000,000			25,000,000
4.24 percent series, $25 par	30,000,000			30,000,000
4.52 percent series, $25 par	41,335,725			41,335,725
4.78 percent series, $25 par	25,000,000		(b) 7,419,225	32,419,225
$3.00 series, $50 par		4,946,150	(b) (4,946,150)	
Premium on capital stock and miscellaneous paid-in capital	117,567,234	[2] 33,822,255	(a) (26,283,333) (b) (2,473,075)	122,633,081
Capital stock expense	(3,577,156)			(3,577,156)
Unappropriated earned surplus	128,507,344	9,706,558		138,213,902
Total	635,972,802	52,274,963		688,247,765

Adjustments: (a) for common stock and (b) for preferred stock.

[1] After adjustments for redemptions of California Electric's $2.50 series, 6 percent series and 5.75 percent series preferred stocks.

[2] On books of California Electric: Premium on capital stock, $33,770,757; and Miscellaneous Paid-in capital, $51,498.

As indicated in the above statement, California Electric's Earned Surplus, $9,706,558 as of March 31, 1963, will be added to Edison's Earned Surplus.

California Electric has 3,800,000 shares of Common Stock, $1 par. In the recording of this stock, $3,800,000 has been credited to Common Stock account and $33,770,757 has been credited to Premium on Capital Stock account. In the exchange of Common Stock, Edison will issue 3,610,000 shares (95% of California Electric's 3,800,000 shares), $8⅓ par, and record the issuance by a credit of $30,083,333 to Common Stock account. The difference, $26,283,333, between the par value of Edison's additional shares of Common Stock and the par value of California Electric's Common Stock will be debited to Premium on Capital Stock and Miscellaneous Paid-in Capital.

California Electric has 98,923 shares of $3.00 Series Preferred Stock, $50 par. In the recording of this stock, $4,946,150 has been credited to Cumulative Preferred Stock account. In the exchange of Preferred Stocks, Edison will issue 296,769 shares (3 for 1 basis), $25 par, and record the issuance by a credit of $7,419,225 to Cumulative Preferred Stock, $25 par, 4.78% Series, the difference. $2,473,075 between the par value of Edison's additional shares of Preferred Stock and the par value of California Electric's Preferred Stock will be debited to Premium on Capital Stock and Miscellaneous Paid-in Capital.

As set forth in the preceding statement of Proprietary Capital, California Electric has Premium on Capital Stock and Miscellaneous Paid-in Capital of $33,822,255. As may be noted above, in the exchange of Edison's Common Stock for California Electric's Common Stock, $26,283,333 will be debited to Premium on Capital Stock and Miscellaneous Paid-in Capital; and in the exchange of Edison's 4.78% Preferred Stock for California Edison's $3.00 Preferred Stock, $2,473,075 will be debited to Premium on Capital Stock and Miscellaneous Paid-in Capital. Therefore, it may be said that of California

Electric's Premium on Capital Stock and Miscellaneous Paid-in Capital of $33,822,255, the total amount of $28,756,408 ($26,283,333 + $2,473,075) will be used in connection with the exchanges of Common and Preferred Stock, and the balance, $5,065,847, will be added to Edison's Premium on Capital Stock and Miscellaneous Paid-in Capital.

The merger of California Electric into Edison will not result in the creation of an acquisition adjustment.

We note that the Public Utilities Code of California grants to the California Commission authority to issue certificates of public convenience and necessity, as well as broad powers with respect to construction and extension, interference between utilities and the exercise of franchise rights. In this connection it may make such orders and prescribe such terms and conditions for the location of lines, plants or systems affected, as it may seem just and reasonable.

We are informed by the Applicants that the California Commission has interpreted its mandate as prohibiting competitive service to customers and, to this end, it has established service territory boundaries for many years. It has been the policy of the California Commission to establish or confirm boundary lines in those cases where the systems of two utilities subject to its jurisdiction are in proximity of each other, and such action is necessary to avoid confusion or misunderstanding. In those cases where it may be neither feasible nor desirable to establish boundary lines, the California Commission has either conditioned the authority to exercise franchise rights so as to preclude a utility from supplying electricity within those portions of the certificated area being served with electricity by any other public utility, or has reserved the right to pass upon each application for authority to construct new facilities as the need for service develops.

Edison and California Electric have operated in this statutory framework. Thus the applicants are not in competition for the same customers or territory and competition would not be affected by the proposed merger.

Applicants state that the proposed merger would provide many benefits and economies: Integration of the operations of the two systems will eventually make possible the installation of larger generating units with reduced costs and improved efficiency. The diversity between the loads of the two systems will improve the utilization of existing and future generating plants. Elimination of some reserve generating capacity would also result from the merger. Consolidation of six separated service areas of the two systems into one continuous service area could result in better placement of service personnel and better service to the public in time of emergency. In the regions where the service areas now interlace, costly duplications of facilities and personnel can be eliminated. System expansion necessary to meet the needs of the rapidly expanding population in much of California Electric's territory can be more adequately handled by a larger utility system.

Applicants have prepared estimates of annual savings which would result from the merger. Net savings in 1967, after allowances for equipment costs to integrate the systems' operations, will range from $4,658,000 to $5,123,000 depending on the handling of depreciation expense. The year 1967 was chosen as it appears that all details resulting from the merger would not be settled until the end of 1966. The major reduction in expense would result from the smaller number of personnel required to operate the merged systems. Estimates by Applicants indicate that as of May 1963, reduction in number of employees would be about 417 out of a total of 9,414 required to operate the two systems separately. This indicated reduction is expected to carry

forward in the future even though personnel requirements would increase through system growth. The merger agreement objectives are to continue in Edison's service all California Electric employees upon the same basis as Edison employees. The normal annual employee attrition rate is large enough to rapidly absorb the surplus of employees resulting from the merger. Availability of trained employees to fill vacancies caused by attrition would benefit the surviving corporation. The annual reduction in expense resulting from lessened personnel requirements is estimated by Applicants at $4,146,000.

Applicants estimate that savings in reduced fuel expense would range from $451,000 in 1964 to $676,000 by 1967. This saving would result primarily from the use of Edison's larger, more efficient, generating plants to carry the California Electric load except perhaps at peak load times. Operating expenses other than fuel would also be reduced. The major reduction would be in elimination of duplicate offices and costs.

The facilities needed to completely integrate the two systems by 1967 have been estimated to cost $5,012,046. With this integration, generating capacity to be installed by Edison would replace a 150,000 kw unit expected to be needed on the California Electric system in 1967. Savings from the capacity substitution are estimated to be $35 per kw for a total of $5,250,000.

Applicants have set forth an impressive estimate of savings which would result over a 4-year period after the merger is completed. The public interest requires that the merged company shall reflect those savings in the wholesale rate schedules subject to the jurisdiction of this Commission, as well as in its retail rates. In order that the savings and economies that are expected to result from the merger be passed on to consumers at the earliest possible date. Edison represents that it will take the following action on the assumption that the schedule for the merger proceeding is met. First, within six months after the effective date of the merger a preliminary study of all rates and possible rate revisions is expected to be presented to the California Commission. Such a study shall also be filed with this Commission and shall set forth the company's plans to bring the wholesale rates of the two companies into line. Secondly, after the first full year of combined operations which would be the calendar year 1964, a cost of service study relating to both retail and wholesale rates is expected to be completed in the Spring of 1965. As a condition to this order we are requiring that such a study be filed with this Commission on or before May 1, 1965.

California Electric presently owns and operates 22 license projects. Two of these projects are licensed jointly to California Electric and the Imperial Water District. In a separate order issued concurrently herewith, the transfer of the licenses of California Electric (and its interest in the licenses of the two projects jointly licensed) to Edison, is approved.

Written notice of the application has been given to the California Public Utilities Commission, the Nevada Public Service Commission, and to the Governor of these States. Notice of the application was also published in the Federal Register on June 26, 1963 (28 F.R. 6604), stating that any person desiring to be heard or to make any protest with reference to said application should on or before the 15th day of July, 1963, file with the Federal Power Commission, Washington 25, D.C., petitions or protests. No petition or protest or request to be heard in opposition to the granting of the application has been received.

The California Public Utilities Commission, by order issued August 6, 1963, and the Nevada Public Service Commission on August 30, 1963 approved the proposed merger.

The Commission finds:

(1) Applicants, Southern California Edison Company and California Electric Company, corporations, are public utilities within the meaning of Section 203 of the Federal Power Act, subject to the jurisdiction of the Federal Power Commission as heretofore described and set forth in the Commission's order issued July 31, 1961, entitled *City of Colton, California* v. *Southern California Edison Company*, Docket No. E–6821, 26 FPC 223, and in the Commission's order issued August 30, 1957, *California Electric Power Company*, Docket No. E–6770 (18 FPC 239).

(2) By the proposed transaction, as described above, Edison will acquire and merge or consolidate with its facilities, subject to the jurisdiction of the Federal Power Commission all of the facilities of California Electric, another person, within the meaning and subject to the requirements of Section 203 of the Federal Power Act, and California Electric will dispose of all of its facilities to Edison, another person, within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed acquisition of California Electric's facilities by Edison, as described above, upon the terms and conditions specified in the application and subject to the provisions of this order, will be consistent with the public interest, as expressed in Section 203 of the Act, for the reasons set forth in the recital above.

The Commission orders:

(A) The proposed acquisition and merger or consolidation of the facilities of California Electric by Edison, and the proposed disposition of all of its facilities by California Electric to Edison, referred to above and as described in the application, is hereby authorized and approved upon the terms and conditions set forth in the application, subject to the provisions of this order.

(B) Edison shall record the transaction herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) Edison shall file, on or before May 1, 1965, cost and revenue data showing Company's costs of rendering service to each of its wholesale for resale customers the rates to which are subject to this Commission's jurisdiction, calculated in accordance with applicable Commission rulings and utilizing, among other things, as the test period the calendar year 1964 showing both historical revenues and *pro forma* adjustments thereto, a prudent net investment rate base and a fair rate of return thereon.

(D) This authorization shall expire unless the transaction herein authorized is consummated within 90 days from the date of issuance of this order.

(E) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuations, estimates or determinations of cost, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP63-353

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 1, 1963)

On June 24, 1963, United Gas Pipe Line Company (Applicant) filed in Docket No. CP63-353 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and the sale of natural gas for resale. The proposed facilities consisting of less than 100 feet of 2-inch pipeline, a sales meter and appurtenant facilities will be used to sell natural gas from Applicant's transmission system to the town of Bullard, Smith County, Texas.

The estimated sales volume is 22,681 Mcf of gas for the third year.

The estimated third year peak-day requirements are 314 Mcf (@ 14.73 psia).

The estimated cost of the proposed construction by Applicant is $10,294, which is to be financed from current working capital.

The estimated cost of construction of the proposed distribution system of the town of Bullard is $325,000. Adequate financial arrangements for installing the facilities have been made.

Pursuant to due notice, a public hearing was held in Washington, D.C., on September 16, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene and oppose or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c) (1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, is a natural-gas company within the meaning of the Natural Gas Act as found by the Commission in its order of November 10, 1942, in Docket No. G-232 (3 FPC 863).

(2) The facilities hereinbefore described are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant and the proposed transportation, sale for resale of natural gas by Applicant to Bullard are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and sale of natural gas by Applicant to the town of Bullard, Smith County, Texas, for distribution and sale to the inhabitants thereof are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's

compliance with all applicable Commission regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having denied by the Commission, is granted pursuant to Section 1.30(c) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and is hereby issued authorizing Applicant to construct and operate the proposed facilities and to transport and sell natural gas to the town of Bullard for resale and distribution, as hereinbefore described, all as more fully described in the application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the transportation and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within 12 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

ROBERT R. ESTES AND EDWARD R. ESTES, DOING BUSINESS AS ESTES BROTHERS, INC., PROJECT NO. 1196

ORDER ISSUING NEW LICENSE (MINOR)

(Issued October 2, 1963)

Application was filed on February 18, 1963 by Robert R. Estes and Edward R. Estes, doing business as Estes Brothers, Inc., of Moose Pass, Alaska (Applicants), for a new license under the Federal Power Act (Act) for constructed minor Project No. 1196, located on an unnamed creek, tributary to Upper Trail Lake, in Seward Recording District, Third Judicial Division, Alaska, and affecting lands of the United States.

The third and last license for the project was issued to Applicants for a period of 10 years, effective as of October 13, 1952, and expired on October 12, 1962.

The Department of the Interior has advised that the project does not affect fishery problems and offers no objection to renewal of a license for the project.

The Department of Health, Education, and Welfare has advised that the project will not have any adverse effect on matters affecting the Department.

The Department of Fish and Game of the State of Alaska has advised that no wildlife or fishery resources are involved or endangered by the project.

The Commission finds:

(1) Applicants are citizens of the United States and have submitted satisfactory evidence of compliance with the requirements of all applicable State

laws insofar as necessary to effect the purposes of a new license for the project.

(2) No conflicting application is before the Commission.

(3) The project does not affect any Government dam, nor will the issuance of a new license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(4) The issuance of a new license for the project as hereinafter provided will not interfere or be inconsistent with any reservation or withdrawal of public lands.

(5) The installed capacity of the project is 28 horsepower and the energy generated thereby is used in Applicants' store and for domestic purposes.

(6) The amount of annual charges to be paid by the licensees under the new license for the purpose of reimbursing the United States for the costs of administration of Part I of the Act, and for recompensing it for the use, occupancy, and enjoyment of its lands is reasonable as hereinafter fixed and specified.

(7) The exhibit described in paragraph (B) below conforms to the Commission's rules and regulations and should be approved as part of the new license for the project.

(8) It will be in the public interest to waive the terms and conditions contained in the following sections of Part I of the Act:

Sections 4(b), except the second sentence thereof; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions the Act which are hereinafter waived; 10(a); 10(c), insofar as it relates to depreciation reserves; 10(d), 10(f); 11; 12; 14 except insofar as the power of condemnation is reserved; 15; 18, except insofar as it relates to fishways; 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

The Commission orders:

(A) This new license is hereby issued to Robert R. and Edward R. Estes, doing business as Estes Brothers, Inc., of Moose Pass, Alaska, under Sections 4(e) and 15 of the Federal Power Act, for a period of 10 years, effective as of October 13, 1962, for the operation and maintenance of minor Project No. 1196, located on lands of the United States in Seward Recording District, Third Judicial Division, Alaska, subject to the terms and conditions of the Act insofar as not expressly waived herein, which Act is hereby incorporated by reference as a part of this new license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) The project consists of:

(i) All lands constituting the project area, the limits of which are 50 feet outside the highwater line of the reservoir and 50 feet on each side of pipeline and tailrace.

(ii) Project structures comprising a diversion dam, a reservoir about 250 feet wide and 350 feet long, a steel pipeline about 330 feet long, a powerhouse having an installed capacity of 28 horsepower, and a tailrace.

(iii) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project

area, and all rights and interests, the possession of which is necessary or appropriate in the maintenance and operation of the project:
the lands and project works being more specifically shown and described by a certain exhibit forming part by reference of the application for new license and which is designated and described as follows:

Exhibit D: (FPC No. 1196–1) entitled:
"Leora Roycroft Power Project, Alaska, Chugach National Forest," signed on August 6, 1931, by Leora Roycroft, revised by the Commission on January 11, 1954; and redesignated as Exhibit K (FPC No. 1196–1).

(C) This new license is also subject to the terms and conditions set forth in Form L–7, December 15, 1953, 17 FPC 486, entitled "Terms and Conditions of License for Minor Project Affecting Lands of the United States", which terms and conditions are attached hereto and made a part hereof; and subject to the following special condition set forth herein as an additional article:

Article 15. The Licensees shall pay to the United States the following annual charges:

(i) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, $5.00; and

(ii) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands, $5.00.

(D) The terms and conditions contained in the sections of Part I of the Act set forth in finding (8) above are hereby waived.

(E) The exhibit described in paragraph (B) above is hereby approved as part of this new license.

(F) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensees and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

H. R. GOODRICH, DOCKET NO. G–15086; R. H. GOODRICH, DOCKET NOS. G–15069 AND G–15085

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING THE FILING OF NOTICES OF CHANGE, AND TERMINATING PROCEEDINGS

(Issued October 2, 1963)

H. R. Goodrich and Mrs. Ester F. Goodrich, Executrix of the Estate of R. H. Goodrich (hereinafter collectively referred to as Goodrich) on August 7, 1963, as amended on August 9, 1963, submitted an offer of settlement, pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure, in the above-entitled suspension proceedings covering four jurisdictional sales to Texas Eastern Corporation (Texas Eastern) from Victoria and Dewitt

Counties in Texas Railroad Commission District No. 2. The details pertinent to the sales are as follows:

Rate schedule and supplement No.	Docket No.	Suspended rate cents/ Mcf [2]	Effective date	Proposed rate	Settlement rate
H. R. Goodrich:				*Cents*	*Cents*
1-9	G-15086	[1] 13.8733	10-29-58	[1] 14.3733	[1] 14.1
R. H. Goodrich:					
2-8	G-15069	[1] 13.8733	10-27-58	[1] 14.3733	[1] 14.1
3-9	G-15085	[1] 13.8733	10-22-58	[1] 14.3733	[1] 14.1
4-9	G-15085	[1] 13.8733	10-22-58	[1] 14.3733	[1] 14.1

[1] Plus 0.5 cents for gathering and dehydration.
[2] At 14.65 psia pressure base.

Goodrich submitted with the offer of settlement executed contract amendments eliminating the favored nation and price redetermination provisions from the contracts comprising the rate schedules involved here and substituting a revised schedule of prices escalating 0.5¢ per Mcf each five years from a base of 13.8733¢ per Mcf (plus 0.5¢ per Mcf allowance for gathering and dehydration).[1] The first periodic increase to 14.3733¢ per Mcf (plus 0.5¢ per Mcf allowance for gathering and dehydration), contractually due on February 5, 1963, constituted the basis for the original proposed settlement rate of 14.3733¢ per Mcf (plus 0.5¢ per Mcf allowance for gathering and dehydration). With respect thereto, Goodrich also tendered notices of change providing for the 14.8733¢ per Mcf rate. In the alternative, as set forth in their amendment to the offer of settlement filed on August 9, 1963, Goodrich indicated that they would be willing to settle at a total rate of 14.6¢ per Mcf, inclusive of the 0.5¢ per Mcf gathering and dehydration allowance. In connection therewith, Goodrich also submitted a letter waiving their right to file for a rate increase above the settlement rate of 14.6¢, inclusive of the 0.5¢ gathering and dehydration allowance, under the periodic escalations until February 5, 1968, the next escalation date. No refunds would be required under either of the above proposals. The buyer has concurred in Goodrich's offer.

The originally proposed settlement rate of 14.8733 per Mcf (14.3733¢ plus 0.5¢ per Mcf allowance for gathering and dehydration) is unacceptable because such rate is in excess of the applicable 14.6¢ per Mcf rate ceiling under the provisions of the Second Amendment to the Commission's Statement of General Policy No. 61-1, 24 FPC 1107, as amended by Commission Order No. 264, issued March 27, 1963 in Docket No. R-234. Accordingly, we shall reject the notices of change tendered with the offer proposing to make the 14.8733¢ per Mcf rates effective. However, the alternate proposed settlement rate of 14.6¢ per Mcf (14.1¢ per Mcf plus 0.5¢ per Mcf allowance for gathering and dehydration) is acceptable under the provisions of the Second Amendment. The *public* interest will therefore best be served by accepting the alternate proposal in Goodrich's offer of settlement.

[1] The contract amendments are designated os Supplement No. 10 to H.R. Goodrich's FPC Gas Rate Schedule No. 1 and Supplement Nos. 9, 10 and 10 to R.H. Goodrich's FPC Gas Rate Schedule Nos. 2, 3, and 4, respectively.

However, we desire to make it clear that acceptance of this Offer of Settlement shall not be construed as approval of any future increased rates proposed by Goodrich.

The Commission finds:

The proposed settlement of the above-designated proceedings, on the basis described herein, as more fully set forth in the Offer of Settlement filed by Goodrich with the Commission, as amended, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The Offer of Settlement filed by Goodrich with the Commission as amended, is hereby approved in accordance with the provisions of this order.

(B) Goodrich shall file, within 30 days from the date of issuance of this order, notices of change in H. R. Goodrich's FPC Gas Rate Schedule No. 1 and R. H. Goodrich's FPC Gas Rate Schedule Nos. 2, 3, and 4, respectively providing for the 14.6¢ per Mcf rate, inclusive of the 0.5¢ per Mcf allowance for dehydration and gathering and including present tax reimbursement, specified in its Offer of Settlement as amended. The notices of change shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) The notices of change tendered with Goodrich's offer of settlement proposing 14.8733¢ per Mcf (14.3733¢ per Mcf plus 0.5¢ per Mcf allowance for gathering and dehydration) are hereby rejected.

(D) Upon notification by the Secretary of the Commission that Goodrich has complied with the terms and conditions of this order, the rates and charges of 14.6¢ per Mcf, inclusive of the 0.5¢ per Mcf allowance for gathering and dehydration and including present tax reimbursement, specified in the Offer of Settlement, as amended, shall be effective as of the date of issuance of this order, the contract amendments, designated herein as Supplement No. 10 to H. R. Goodrich's FPC Gas Rate Schedule No. 1 and Supplement Nos. 9, 10, and 10 to R. H. Goodrich's FPC Gas Rate Schedule Nos. 2, 3, and 4, respectively, shall be effective as of the date of issuance of this order, the proceedings in Docket Nos. G–15086, G–15069, and G–15085 shall be deemed terminated, and Goodrich's refund obligation with respect to these proceedings shall be deemed to be discharged.

(E) The acceptance of this Offer of Settlement is without prejudice to any findings or determinations that may be made in any proceedings which are presently being heard, or in any proceedings now pending, or hereafter instituted by or against Goodrich.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

HARPER OIL COMPANY (OPERATOR), ET AL., DOCKET NO. RI62–111

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING REFUNDS, AND TERMINATING PROCEEDING

(Issued October 2, 1963)

On May 10, 1963, Harper Oil Company (Operator), *et al.* (Harper) submitted, pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure, an offer of settlement in the above-designated rate suspension

proceeding, which relates to the jurisdictional sale of natural gas by Harper under its FPC Gas Rate Schedule No. 1 to Cities Service Gas Company (Cities Service) in Oklahoma County, Oklahoma (Oklahoma—Other Area).

The original contract negotiated in 1953 covered sales of residue gas at the outlet of Harper's gasoline extraction plant, and gas produced in the immediate vicinity but not processed through the plant. The contract dedicated merchantable gas in its "natural state of production" but reserved to Harper the right to use gas from the dedicated leases for the development and operation of such leases.

The term of the contract expired on January 1, 1958. Harper requested permission under Section 7(b) of the Natural Gas Act to abandon the sale on the grounds that the contract had expired and that Harper had entered into contract with another purchaser. The Commission's denial of permission to abandon was upheld by the Tenth Circuit Court of Appeals.[1] Harper then tendered for filing a proposal unilateral rate increase from 10.0¢ per Mcf to 15.0¢ per Mcf, at 14.65 psia. The proposed increased rate, protested by Cities Service, was suspended and became effective subject to refund on March 22, 1962, in Docket No. RI62–111.

On July 5, 1961, Harper commenced a suit in the District Court of Oklahoma County, Oklahoma, to settle its dispute as to whether, as claimed by Cities Service, re-injected gas in connection with Harper's field operations was included under the sales contract with Cities Service. The District Court held[2] on February 13, 1963, that the re-injected gas was not subject to any sales contract between Harper and Cities Service and further that the gas produced subsequent to the Court decision, up to 12,492,537 Mcf at 16.4 psia is deemed "not native gas," that it is owned by Harper, and that it is not covered under any contract. On the basis of the District Court's decision, and at the rate Harper sold gas to Cities Service in 1962, it would take almost twenty years to produce this volume of gas, and the remaining recoverable reserves in the field would be practically exhausted.

In an effort to settle their controversy, Harper and Cities Service entered into a new contract providing for a 12¢ per Mcf rate which supersedes and terminates the earlier contract. Without making a distinction as to "native natural gas", new gas or re-injected gas, the new contract simply dedicates at least one-half of all gas produced as residue gas at the plant outlet and one-half of all gas produced from dedicated leases not processed at the plant. The balance of the daily production is reserved for Harper's use for its plant operation and as lease fuel. By letter order issued September 5, 1963, in Docket No. G–6124, Harper was granted temporary authorization to make sales to Cities Service under the renegotiated contract.

In the offer of settlement, Harper proposes a settlement rate of 12.0¢ per Mcf and a schedule of 1.0¢ per Mcf escalations at five-year intervals. In addition, Harper agrees to make appropriate refund of all amounts collected in excess of 12.0¢ per Mcf in Docket No. RI62–111. The total amount of refund will be approximately $26,268, with interest, for the period up to August 22, 1963, plus the refund for the period subsequent thereto. It is also estimated that the settlement rate will result in a future annual reduction approximately $27,000.

The settlement rate is 1.0¢ per Mcf in excess of the increased rate ceiling but 2.0¢ per Mcf below the level for initial sales announced in the Commis-

---

[1] *Harper Oil Co.* v. *F.P.C.*, 284 F. 2d 137.

[2] *Harper Oil Co.* v. *Cities Service Gas Co.*, District Court of Oklahoma County, Oklahoma, No. 153,708, February 13, 1963.

sion's Statement of General Policy No. 61–1[3] for jurisdictional sales of natural gas in the applicable area. However, neither of the area ceilings is applicable to all of the gas sold under the new contract, since that contract covers both old and new gas.

Under the special circumstances involved here, we believe that the public interest will best be served by accepting Harper's offer of settlement as hereinafter set forth. However, we desire to make it clear that acceptance of the offer of settlement shall not be construed as approval of any future increased rates proposed by Harper.

The Commission finds:

The proposed settlement of the above-designated proceeding, on the basis described herein, as more fully set forth in the offer of settlement filed by Harper with the Commission on May 10, 1963, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of settlement filed by Harper with the Commission on May 10, 1963, is hereby approved in accordance with the provisions of this order.

(B) Within 30 days from the date of issuance of this order, Harper shall refund to Cities Service all amounts collected in Docket No. RI62–111 in excess of the settlement rate of 12.0¢ per Mcf at 14.65 psia, together with simple interest at the rate of 7% per annum, from March 22, 1962, to the date of refund. Harper shall bear all costs incidental to the making of such refunds.

(C) Within 45 days from the date of issuance of this order, Harper shall report to the Commission in writing the details of its calculations resulting in refunds ordered pursuant to paragraph (B) above, together with a copy of a release from Cities Service with respect to such refunds.

(D) Upon notification by the Secretary of the Commission that Harper has complied with the terms and conditions of this order, the settlement rate of 12.0¢ per Mcf at 14.65 psia, shall be effective as of the date of issuance of this order, the above-designated proceeding shall be deemed terminated, and Harper's refund obligations with respect to the above-designated proceeding shall be deemed terminated.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

KANSAS-NEBRASKA NATURAL GAS COMPANY, INC., DOCKET NO. CP62–215

ORDER AMENDING OPINION NO. 389.

(Issued October 2, 1963)

On July 5, 1963 Kansas-Nebraska Natural Gas Company, Inc. (Kansas-Nebraska), filed a "Motion to Amend Opinion And Order" requesting amendment to Opinion No. 389, *Kansas-Nebraska Natural Gas Co., Inc.*, Docket No. CP62–215, issued May 27, 1963, 29 FPC 1058. Kansas-Nebraska requests permission (1) to connect to its system two new alfalfa dehydration plants to be located at Winside, Nebraska and Sargent, Nebraska and (2) to construct 10.0 miles

[3] Issued September 28, 1960, 24 FPC 818 (18 CFR, Chapter I, Part 2, Section 2.56).

of 3-inch pipeline and 2.0 miles of 2-inch pipeline to serve Winside rather than the 12.0 miles of 2-inch pipeline authorized by Opinion No. 389. Further, Kansas-Nebraska asks us to provide that the revenues to be derived from the alfalfa plant sales are to be excluded from the calculation of the investment to be made by Kansas-Nebraska for lateral construction.

In Opinion No. 389 we granted a certificate of public convenience and necessity under Section 7(c) of the Natural Gas Act to Kansas-Nebraska to construct and operate transportation facilities to provide natural gas service at retail to the Nebraska towns of Polk, Winside, Sargent and Comstock and at wholesale to the Natural Gas Distributing Company of Nebraska which will operate a distribution system in Grant, Nebraska. In that Opinion we required Kansas-Nebraska, for each community to be served, "to construct a lateral at a cost which bears the same proportion to estimated revenues from sales in the third year of operation of the lateral as does the pipeline's existing system net plant in the most recent year to its existing system revenues for that year." (29 FPC 1063). Kansas-Nebraska is to receive contributions in aid of construction from customers for the additional expense necessary to extend the laterals to the city gates.

After we granted the certificate of public convenience and necessity to Kansas-Nebraska, that company received inquiries concerning the conditions under which it would be willing to provide service to the two new alfalfa dehydration plants proposed to be constructed. Kansas-Nebraska indicates a willingness to provide service to these plants if that service can be provided on the same terms as it serves other such plants in Nebraska. These terms include payment to Kansas-Nebraska by the plants of the cost of any transmission lateral line required to serve it and sales on an interruptible basis at the standard rate of 28 cents per Mcf.

Kansas-Nebraska points out that, under Opinion No. 389, the sales to the dehydration plants apparently are to be treated the same as industrial sales to power plants which are included as sales in the formula for calculating the investment in lateral construction required of Kansas-Nebraska. Kansas-Nebraska argues that, if service is required on this basis, it would be unwise financially to provide service to the alfalfa plants because of the differences in character of the demand by alfalfa plants and the demand of power plants.

As Kansas-Nebraska points out, the possibility of service to alfalfa dehydration plants was not brought out in the record in the proceeding and the only type of industrial service we contemplated in our calculations of investment required by the pipeline was the power plant sales discussed in our opinion. We agree with Kansas-Nebraska that the different character of the two types of industrial demand warrants different treatment in calculating pipeline investment and contributions in aid of construction. Alfalfa dehydration plants provide good loads for pipelines during favorable hay-growing seasons but have undependable loads during periods of adverse weather. Also, dehydration plant equipment is constructed so that it can be moved easily and this allows plants to seek new locations if they have experienced adverse weather conditions. On the other hand, the likelihood of making power plant sales was not questioned and this was a determinative factor in our decision to include those sales in our calculation. Moreover, the power plant customers had agreed that, if their use of gas terminated or was substantially diminished, they would continue contributions in aid of construction until Kansas-Nebraska was made whole for the facilities proposed in the proceeding.

Consequently, these differences outlined above warrant different treatment of these industrial sales and we will permit Kansas-Nebraska to receive from

sion's Statement of General Policy No. 61–1[3] for jurisdictional sales of natural gas in the applicable area. However, neither of the area ceilings is applicable to all of the gas sold under the new contract, since that contract covers both old and new gas.

Under the special circumstances involved here, we believe that the public interest will best be served by accepting Harper's offer of settlement as hereinafter set forth. However, we desire to make it clear that acceptance of the offer of settlement shall not be construed as approval of any future increased rates proposed by Harper.

The Commission finds:

The proposed settlement of the above-designated proceeding, on the basis described herein, as more fully set forth in the offer of settlement filed by Harper with the Commission on May 10, 1963, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of settlement filed by Harper with the Commission on May 10, 1963, is hereby approved in accordance with the provisions of this order.

(B) Within 30 days from the date of issuance of this order, Harper shall refund to Cities Service all amounts collected in Docket No. RI62–111 in excess of the settlement rate of 12.0¢ per Mcf at 14.65 psia, together with simple interest at the rate of 7% per annum, from March 22, 1962, to the date of refund. Harper shall bear all costs incidental to the making of such refunds.

(C) Within 45 days from the date of issuance of this order, Harper shall report to the Commission in writing the details of its calculations resulting in refunds ordered pursuant to paragraph (B) above, together with a copy of a release from Cities Service with respect to such refunds.

(D) Upon notification by the Secretary of the Commission that Harper has complied with the terms and conditions of this order, the settlement rate of 12.0¢ per Mcf at 14.65 psia, shall be effective as of the date of issuance of this order, the above-designated proceeding shall be deemed terminated, and Harper's refund obligations with respect to the above-designated proceeding shall be deemed terminated.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

KANSAS-NEBRASKA NATURAL GAS COMPANY, INC., DOCKET NO. CP62–215

ORDER AMENDING OPINION NO. 389.

(Issued October 2, 1963)

On July 5, 1963 Kansas-Nebraska Natural Gas Company, Inc. (Kansas-Nebraska), filed a "Motion to Amend Opinion And Order" requesting amendment to Opinion No. 389, *Kansas-Nebraska Natural Gas Co., Inc.*, Docket No. CP62–215, issued May 27, 1963, 29 FPC 1058. Kansas-Nebraska requests permission (1) to connect to its system two new alfalfa dehydration plants to be located at Winside, Nebraska and Sargent, Nebraska and (2) to construct 10.0 miles

[3] Issued September 28, 1960, 24 FPC 818 (18 CFR, Chapter I, Part 2, Section 2.56).

of 3-inch pipeline and 2.0 miles of 2-inch pipeline to serve Winside rather than the 12.0 miles of 2-inch pipeline authorized by Opinion No. 389. Further, Kansas-Nebraska asks us to provide that the revenues to be derived from the alfalfa plant sales are to be excluded from the calculation of the investment to be made by Kansas-Nebraska for lateral construction.

In Opinion No. 389 we granted a certificate of public convenience and necessity under Section 7(c) of the Natural Gas Act to Kansas-Nebraska to construct and operate transportation facilities to provide natural gas service at retail to the Nebraska towns of Polk, Winside, Sargent and Comstock and at wholesale to the Natural Gas Distributing Company of Nebraska which will operate a distribution system in Grant, Nebraska. In that Opinion we required Kansas-Nebraska, for each community to be served, "to construct a lateral at a cost which bears the same proportion to estimated revenues from sales in the third year of operation of the lateral as does the pipeline's existing system net plant in the most recent year to its existing system revenues for that year." (29 FPC 1063). Kansas-Nebraska is to receive contributions in aid of construction from customers for the additional expense necessary to extend the laterals to the city gates.

After we granted the certificate of public convenience and necessity to Kansas-Nebraska, that company received inquiries concerning the conditions under which it would be willing to provide service to the two new alfalfa dehydration plants proposed to be constructed. Kansas-Nebraska indicates a willingness to provide service to these plants if that service can be provided on the same terms as it serves other such plants in Nebraska. These terms include payment to Kansas-Nebraska by the plants of the cost of any transmission lateral line required to serve it and sales on an interruptible basis at the standard rate of 28 cents per Mcf.

Kansas-Nebraska points out that, under Opinion No. 389, the sales to the dehydration plants apparently are to be treated the same as industrial sales to power plants which are included as sales in the formula for calculating the investment in lateral construction required of Kansas-Nebraska. Kansas-Nebraska argues that, if service is required on this basis, it would be unwise financially to provide service to the alfalfa plants because of the differences in character of the demand by alfalfa plants and the demand of power plants.

As Kansas-Nebraska points out, the possibility of service to alfalfa dehydration plants was not brought out in the record in the proceeding and the only type of industrial service we contemplated in our calculations of investment required by the pipeline was the power plant sales discussed in our opinion. We agree with Kansas-Nebraska that the different character of the two types of industrial demand warrants different treatment in calculating pipeline investment and contributions in aid of construction. Alfalfa dehydration plants provide good loads for pipelines during favorable hay-growing seasons but have undependable loads during periods of adverse weather. Also, dehydration plant equipment is constructed so that it can be moved easily and this allows plants to seek new locations if they have experienced adverse weather conditions. On the other hand, the likelihood of making power plant sales was not questioned and this was a determinative factor in our decision to include those sales in our calculation. Moreover, the power plant customers had agreed that, if their use of gas terminated or was substantially diminished, they would continue contributions in aid of construction until Kansas-Nebraska was made whole for the facilities proposed in the proceeding.

Consequently, these differences outlined above warrant different treatment of these industrial sales and we will permit Kansas-Nebraska to receive from

the alfalfa dehydration plants the contributions in aid of construction provided for contractually. In order to serve 60,000 Mcf of interruptible natural gas per year to the dehydration plant to be built in Winside, the lateral serving that town will be increased in size to 10.0 miles of 3-inch pipe and 2.0 miles of 2-inch pipe. The owners of that proposed plant have agreed to pay the increase in cost associated with the increased size which is estimated to be approximately $20,000. No additional investment, other than meters and regulators, is needed to serve interruptible natural gas to the dehydration plant to be built in Sargent. That customer has agreed to make a contribution in aid of construction of $10,000. This contribution in aid of construction will be deducted from the amount of contribution to be collected by Kansas-Nebraska from the other customers in Sargent and Comstock.

If natural gas service is available to these proposed alfalfa dehydration plants, the owners will be induced to locate in the towns of Winside and Sargent to which they will bring new industry and job opportunities and provide a ready market for local agricultural products. Public convenience and necessity requires that we permit these sales to be made on the basis of contributions in aid of construction as provided above.

Due notice of the filing of the subject motion to amend has been given by the publication thereof in the Federal Register on September 5, 1963 (28 F.R. 9707). No protests or petitions to intervene have been received in this docket with regard to the subject motion.

The Commission orders:

(A) The authorization granted in Opinion No. 389 to construct a 12.0 mile 2-inch lateral to serve Winside, is amended to permit the construction of a lateral consisting of 10.0 miles of 3-inch pipe and 2.0 miles of 2-inch pipe at an additional cost of $20,000.

(B) Ordering paragraph (B)(i) of Opinion No. 389 is amended to provide as follows:

(i) Applicant shall receive, as contributions in aid of construction, $15,655 from the customers in Polk, $33,897 from the customers in Winside, $81,736 from the customers in Sargent and Comstock, $58,494 from the Natural Gas Distributing Company of Nebraska, $20,000 from the owner of the alfalfa dehydration plant to be built in Winside, and $10,000 from the owner of the alfalfa dehydration plant to be built in Sargent.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

LONE STAR GAS COMPANY, DOCKET NO. CP63-355

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 2, 1963)

On June 28, 1963, Lone Star Gas Company (Applicant) filed in Docket No. CP63-355 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities for the transportation of natural gas in order to extend Applicant's existing transmission system to the city gate of the City of Tom Bean, Grayson County, Texas, all as more fully set forth in the application.

Applicant proposes the construction and operation of the following transportation facilities:

(1) Approximately 11.29 miles of 4-inch Line 2nd E–10 to loop that 4-inch portion of existing Line E-10 between approximately station 552 + 29 at the Whitewrigth tap, and station 1147 + 93 at the Howe tap;

(2) Approximately 4.06 miles of 3-inch transmission Line E–10–8 extending from Line E–10 and proposed Line 2nd E–10 in a northwesterly direction to a city gate measuring station to be installed near the City of Tom Bean.

The City does not now have the benefit of natural gas service.

The proposed looping is stated to be necessary to meet the continued growth requirements of Applicant's existing customers and to initiate service to the City of Tom Bean at this time.

Applicant also proposes to construct and operate a non-jurisdictional natural gas distribution system in the City of Tom Bean. A franchise for that purpose has been granted to Applicant by the City of Tom Bean. The requirements for the proposed natural gas distribution system (at 14.73 psia) are estimated to be as follows:

Year	Peak day	Annual
1	266	12,430
2	275	12,940
3	285	13,530

Applicant estimates the cost of the proposed facilities at $141,100, to be financed from working capital.

Pursuant to due notice, a hearing was held on September 16, 1963, respecting the matters involved in and the issues presented by the application herein. No protest or petition to intervene has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Lone Star Gas Company, a Texas corporation having its principal place of business in Dallas, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The transportation facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed transportation facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon Applicant's compliance with all applicable Commission Regulations under

the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Lone Star Gas Company, to construct and operate the transportation facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificated issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission Regulations, within six months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

YADKIN, INC., PROJECT NO. 2197

ORDER FURTHER AMENDING LICENSE (MAJOR)

(Issued October 3, 1963)

Application was filed on December 3, 1962 by Yadkin, Inc., licensee for major Project No. 2197, for further amendment of its license for the project located on the Lower Yadkin stretch of the Yadkin-Pee Dee River in Stanly, Montgomery, Davidson and Rowan Counties, North Carolina.

The application seeks Commission authorization to replace the turbines and generators of Units Nos. 1 and 2, the last 36-cycle units in the Narrows Development, and to install therein new circuit breakers, generator voltage regulators and other modern equipment. The application proposes also abandonment and removal of a 2,300-volt distribution line between Narrows Powerhouse and the Badin Water Filter Plant, as no longer useful or necessary for the project.

The present 27,000-horsepower turbines would be replaced by 36,000-horsepower turbines and the present 17,100-kilowatt generators by 24,750 kilowatt generators. The new generators will be 60-cycle, thereby eliminating the last 36-cycle equipment in the project, since modernization of the Baldwin Smelting Works has eliminated the need for 36-cycle generating equipment.

The proposed replacement of Units Nos. 1 and 2 with new and larger units will improve the water balance between the Narrows Development and the reconstructed Falls Development. The change to 60-cycle generation would result in increased flexibility of operation of the licensee's power system and the possibility of a more complete coordination of the power system operations

with the operations of the systems of connecting utilities. Two auxiliary transformers will be provided at Narrows thereby eliminating the necessity of maintaining the afore-mentioned 2,300-volt line to the Badin Water Filter Plant which is to be removed, as recited above. The distribution line was used occasionally as an auxiliary power supply to the Narrows Development. The line is among the appurtenant project facilities included in the license and is not otherwise specifically described in the license.

The Narrows Development is one of four under license to Yadkin, Inc. as Project No. 2197 which together develop the first 39 miles of the Yadkin River above the mouth of the Uwharie River. Downstream from Project No. 2197 are two additional hydroelectric developments under license to the Carolina Power & Light Company as Project No. 2206. The two licenses were issued simultaneously in a joint order dated May 19, 1958 (19 FPC 704). The installed generating capacity of the currently authorized units at the six developments totals 294,300 kilowatts.

The High Rock Development of Yadkin, Inc. is the furthest upstream of the six developments and is their primary storage reservoir. In length it covers about 19 river miles but its shore line is greatly extended by four long arms, each with several miles of shore line. Approximately 1500 houses have been built around the reservoir and a large number of the owners of these properties recently have communicated with the Commission regarding the water level of reservoir, with particular regard to the summer recreational season. Some have expressed concern that, if the Commission authorizes an increase in the installed capacity of the units at the Narrows Development, the company will increase its drawdowns of High Rock Lake to utilize the new capacity. Others simply ask that the company be required to limit its drawdown of the reservoir to a maximum of 3 to 5 feet.

A very large number of individuals have also communicated with the Commission requesting that it approve the amendment of license for the Narrows Development and permit drawdown of the High Rock Reservoir as required for economic operation of the project. These communications were received from people employed by Yadkin, Inc., from citizens in the vicinity, from officials of towns in the area, and others.

Issues concerning the comprehensive development of this section of the Yadkin and Pee Dee Rivers for all purposes were explored by the presiding examiner in a proceeding in which he issued his initial decision on February 11, 1958, recommending the issuance of licenses. A formal hearing had been held and reports by interested State and Federal agencies had been received prior to his decision. Use of the water resources involved for recreation, sanitation, fish and wildlife, water quality control, consumptive use, and navigation were all considered by him in addition to coordinated operation of the developments for maximum power production and the projects' additional importance to the economy of the area in that it would support reconstruction of the Badin Aluminum Works twice in the ensuing 50 years. Balancing all of the proposed uses, the presiding examiner ruled, in pertinent part that (1) High Rock Lake as the primary reservoir for the power developments should be operated for power purposes with only the general direction in Article 28 that the licensee:

> make every reasonable effort to maintain the water surface of High Rock Reservoir at the highest level practicable from June 1 to September 1 of each year, *as is consistent with the primary purpose of the reservoir to provide a large reservoir which may be drawn down as necessary to main-*

tain continuity of operation of the Badin smelting works at the highest possible minimum level.

(2) that Tuckerton Reservoir, which was to be constructed below High Rock, be limited to a three-foot drawdown in the interests of recreation, and (3) that minimum discharges be maintained at the Tillery Development, where he authorized increased generating capacity, and Blewett Falls Development for stream sanitation and fish and wildlife conservation, with a possible future increase in the minimum for water quality control.

The examiner had been requested to limit the drawdown of High Rock Lake in the interests of recreation. A ten-foot limit was specifically mentioned. His analysis of the facts then available indicated that "Such a limitation would largely defeat the purpose of Aluminum in constructing the reservoir and would greatly reduce the benefits to downstream plants resulting from the operation as it has been conducted in the past." In addition it is apparent from his decision that such a limit would have affected the construction of the Tuckertown Reservoir and the installation of new generating capacity at the Tillery Development which he recommended be authorized. The Commission adopted the examiner's decision.

Because the optimum method of operation for power purposes of a hydroelectric project is not a static matter and because it can affect reservoir water levels, the Commission has re-examined the past and proposed operations of Project Nos. 2197 and 2206 and their coordination with the operations of neighboring utility systems. Both licenses contain a reservation of authority to the Commission to order changes in coordination of operations "* * * as it finds to be economically feasible and in the public interest * * *." Article 24 in the license for Project No. 2197 contains the added proviso:

> provided that such coordination of operations or changes therein shall not impair the Licensee's ability to supply the necessary power for operation of its Badin smelting facilities * * *

We understand the proviso to apply to the economics of the power supply for the Badin smelting facilities and not to suggest that the licensee must be able at all times to supply all of such power needs directly from Project No. 2197.

The 1958 decision of the presiding examiner summarizes the existing coordination of Project No. 2197 and neighboring systems at 17 FPC 716. The licensee at that time was able to exchange some peaking power for off-peak energy usually on a one-for-two basis. Operations between January 1, 1943, and May 18, 1958, when the license was issued, resulted in a drawdown of High Rock Rerservoir more than 10 feet on 17 occasions in the months of June, July, August and September. Such drawdowns coincided with periods of below average rainfall. Since the issuance of the license for the project, it has been similarly drawn down in September of 1958 and 1961, while operating under similar coordination.

Operation of the High Rock Reservoir solely for peaking power in the neighboring utility loads might possibly result in the licensee being able to maintain a higher water level in the reservoir. It would, of course, require similar operation of the five downstream developments, all of which have considerably less storage capacity. Consequently, a study was made by the staff of area needs for peaking capacity which would result in operating Yadkin plants at the lower load factor and with a higher water level of High Rock Reservoir. It was determined that as presently forecast the need for such peaking capacity in the area will not be required at least until 1967. Such

operation currently would result in a large financial loss to Yadkin. For this reason we find we cannot justify currently imposing the capacity limit on the drawdown of High Rock Reservoir which the recreational interests request.

By letter of September 24, 1963, the licensee supplied the Commission with "Preliminary Operating Guides For Operation of Badin Works" to take effect upon completion of the construction for which authorization is requested at the Narrows Development. These guides are more detailed and confirm the proposed "System Reservoirs Operating Guide, GP 4/17/63." We had caused studies to be made on the earlier guides simulating the operation of Yadkin, Inc. resources, coordinated with the neighboring utilities, assuming a repetition of the historical stream flows which occurred between January 1, 1919, and December 31, 1960. These studies indicate that under the new rule curve the drawdown will be somewhat decreased throughout the recreation season over that of present operations. They show, however, that under adverse water conditions the reservoir will continue to be draw down more than 3–5 foot maximum now requested by the recreation interests and under certain conditions more than 10 feet.

By special condition, therefore, we are requiring the licensee to operate Project No. 2197 in accordance with its "Preliminary Operating Guides For Operation of Badin Works." We are extending the specified length of the season in Article 28 of the license to May 15 to September 15 of each year. In addition we are making it clear that the Commission has continuing authority to order changes in methods of operation in the interests of recreation as well as power at any time, after notice and hearing, that it finds conditions permit such changes without adversely affecting the economics of the project upon which the licensee has based its construction of the Tuckertown Development, replacement of units No. 2 and 3 in the Falls Development and indeed is reconstructing the Badin Smelting Works. Further, upon complaint supporting a claim that the operation of High Rock Reservoir under the new operating guides is unreasonable, we shall hold a full hearing to determine the matter.

We can find no factual justification at the present time to change materially the balance between recreation and power created by the Commission when the license for Project 2197 was initially issued in 1958. The operation of the project which we are now requiring for the benefit of recreation interests is an improvement over the situation as it existed when the license was issued, and our continuing jurisdiction will enable us to order further improvements which may be possible. Toward that end, we are directing our staff to prepare a detailed study of possible future coordinated operation of Project No. 2197 with the utility systems in the area.

We are hereinafter fixing the completion date of the replacement of project works at the Narrows Development at not later than April 1, 1965.

The Commission further finds:

(1) The license, further amended as hereinafter ordered, is in the public interest.

(2) Public notice has been given of the filing of the application.

(3) The authorized installed horsepower capacity of the project for the purpose of computing the capacity component of the administrative annual charge is 268,000 horsepower and the annual charge for reimbursing the United States for the costs of administration of Part I of the Federal Power Act, based on such capacity, as hereinafter provided, is reasonable.

(4) The following described revised exhibits filed as part of the application conform to the Commission's rules and regulations and should be approved

as part of the license, and the exhibits described herein as being superseded and which are now part of the license should be eliminated therefrom:

Exhibit J (Third Revision) (FPC No. 2197–81) superseding Exhibit J (Second Revision) (FPC No. 2197–77);

Exhibit K, Sheet 4 (Second Revision) (FPC No. 2197–82) superseding Exhibit K, (First Revision) (FPC No. 2197–79);

Exhibit L–4 (Revised) (FPC No. 2197–83) superseding Exhibit L (FPC No. 2197–5); and

Exhibit M, Page 6, filed in the Commission December 3, 1962, superseding Exhibit M, Page 6, filed in the Commission February 6, 1956.

The Commission orders:

(A) The revised exhibits described in finding (4) above as conforming to the Commission's rules and regulations are hereby approved as part of the license for the project and the superseded exhibits specified therein are hereby eliminated from the license for the project.

(B) The license for Project No. 2197, is hereby further amended, effective as of September 1, 1963, as follows:

Paragraph I. Subparagraph (b)(3) of the license, insofar as it describes the Narrows Development, is hereby revised to read as follows:

(3) The constructed Narrows Development located about 2 miles from Badin, North Carolina. A concrete dam composed of a gated spillway section, a non-overflow section and an intake section; a concrete by-pass spillway section separate from the main dam composed of a gated section and a non-overflow section; a concrete by-pass spillway channel about 1,300 feet long on the left bank around the powerhouse; a reservoir, about 7-1/2 miles long extending to the proposed Tuckertown dam, with normal pool elevation 541.1 feet, an area of 5,355 acres and a usable storage of 128,937 acre-feet at a drawdown of 31.1 feet; four steel penstocks about 340 feet long; a separate powerhouse containing two 27,000-horsepower turbines and two 36,000-horsepower turbines direct-connected to generators having a total capacity of 96,500 kilowatts (Units 1 and 2, 24,750 kw; Unit 3, 25,000 kw and Unit 4, 22,000 kw); four transmission circuits operating at generator voltage (13,200 volts) connecting with the Badin substation; and appurtenant electrical and mechanical equipment; and

Paragraph II. Article 30 of the license is hereby amended to read as follows:

Article 30. The Licensee shall pay to the United States the following annual charge:

For the purpose of reimbursing the United States for the cost of administration of Part I of the Federal Power Act, one (1) cent per horsepower on the authorized installed capacity (268,000 HP) plus two and one-half (2-1/2) cents per 1,000 kilowatt-hours of gross energy generated by the project during the calendar year for which the charge is made.

Paragraph III. Article 28 of the license is hereby amended to read as follows:

Article 28. The License shall, in order to secure maximum recreational benefits, make every reasonable effort to maintain the water surface of High Rock Reservoir at the highest level practicable from May 15 to September 15 of each year, as is consistent with the primary purpose of the reservoir to provide a large reservoir which may be drawn as necessary to maintain continuity of operation of the Badin smelting works at the highest possible minimum level.

Paragraph IV. The license for the project is hereby amended to include therein the following additional articles, designated as Articles 32 and 33, respectively:

Article 32. The Licensee shall complete replacements of Units 1 and 2 in the Narrows powerhouse with associated facilities on or before April 1, 1965.

Article 33. Until further order of the Commission, the Licensee shall, in the interests of power development, recreation and other beneficial purposes, operate the High Rock Reservoir generally in accordance with the rule curve designated "Preliminary Operating Guides For Operation of Badin Works". Upon complaint or upon its own motion, after notice and opportunity for hearing, the Commission may order the Licensee to operate the project works of Project No. 2197 in such other manner as the Commission may find to be necessary and desirable for power, recreational and other purposes and consistent with the primary purpose and economics of the project.

(C) This amendment in the manner set out above shall not operate to alter or amend the license in any other respect, and shall not in any way constitute a waiver of any other part, provision or condition of the license.

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313 (a) of the Act and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgement of the acceptance of this license amendment, it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

Commissioner Ross *concurs* in the grant of the subject license amendment but, in view of the numerous complaints to the application, would immediately *initiate* a hearing to adduce evidence with respect to the power, recreational and other public beneficial uses incident to this project. Only in this way would the Commission have a basis for determining, with assurance, the proper operation of this project, having due regard to those public uses we are bound to protect and to promote.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

GULF STATES UTILITIES COMPANY, DOCKET NO. E-7124

ORDER AUTHORIZING THE ISSUANCE OF PREFERRED STOCK

(Issued October 4, 1963)

Gulf States Utilities Company (Applicant), incorporated under the laws of the State of Texas and qualified to do business in the State of Louisianna, with its principal place of business at Beaumont, Texas, filed an application on August 27, 1963, as amended on September 18, 1963, for authorization, pursuant to Section 204 of the Federal Power Act, to issue and sell at competitive bidding 100,000 shares of Preferred Stock, par value $100 per share.

Applicant proposes, on or about October 8, 1963, to invite sealed, written bids for the purchase of the 100,000 shares of $— Dividend Preferred Stock, by newspaper publication and by distribution of a Public Invitation containing a statement of terms and conditions relating to bids for the proposed issuance, together with an individual Form of Bid and purchase contract for the issuance here proposed.

Each bid, whether from a single bidder or a group of bidders, must be in duplicate on the appropriate Form of Bid provided by Applicant, with each counterpart signed by the bidder, or by the Representative, in the case of a group of bidders; and all bids must be for the purchase of all the Preferred Stock. No bidder may participate in more than one bid. Each bid shall specify; (1) the fixed dividend rate of Preferred Stock, which rate shall be a multiple of $0.04; and (2) the price per share, exclusive of accrued dividends, to be paid to the Applicant for the Preferred Stock, which price shall not be less than $100 per share and not more than $101.50 per share, and that accrued dividends from September 15, 1963, to the date of payment therefor and delivery thereof will be paid to the Applicant by the purchaser or purchasers.

Unless postponed, all bids for the purchase of the proposed issuance of Preferred Stock must be presented before 12:00 Noon, New York Time, on October 21, 1963, to Applicant at Irving Trust Company, One Wall Street, 47th Floor, New York, N.Y. Each bid must be accompanied by a certified or official bank check or checks in the aggregate amount of $300,000. Unless the Applicant shall reject all bids or exclude a bid or bids for reasons set forth in the Invitation, it will accept the bid which provides for the lowest cost of money.

The Applicant will use the net proceeds from the new Preferred Stock together with cash on hand if required, to discharge short-term notes due December 31, 1963, of which it is estimated $10,000,000 will be outstanding immediately prior to the sale of the new Preferred Stock. The short-term notes have been used in providing funds for the interim financing of part of Applicant's construction program covering facilities constructed in 1963.[1] The construction program for the year 1963 is estimated to amount to $32,000,000, of which, approximately $15,757,000 will be expended toward completion of projects begun prior to 1963. During the first six months of 1963, $16,468,000 was expended on this program. The principle items of expenditure in 1963 are: $752,000 for the completion of two 230 mw generating units in the Sabine Station, $11,141,000 toward the construction of the 220 mw generating unit #2 in the Willow Glen Station, $8,140,000 for electric transmission lines and substations and $9,700,000 for extension and improvement of electric distribution facilities.

Written notice of the application has been given to the Louisiana Public Service Commission and the Texas Railroad Commission, and to the Governor of each of those States. Notice has also been given by publication in the Federal Register on September 10, 1963 (28 F.R. 9851), stating that any person desiring to be heard or to make any protest with reference to the application should file a petition or protest on or before September 25, 1963, with the Federal Power Commission, Washington 25, D.C. No protest, petition or request to be heard in opposition to the granting to the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission, as heretofore described and set forth in the Commission's order is-

[1] The Commission, in an order issued on December 20, 1962, (Docket No. E-7074, 28 FPC 1077), authorized the Applicant to issue up to $20,000,000 short-term notes. The notes were to be issued between December 31, 1962, and December 31, 1963, they were to mature on December 31, 1963, and bear interest at the prime rate.

sued December 20, 1962, *Gulf States Utilities Company*, Docket No. E-7074 (28 FPC 1077).

(2) The proposed issuance and sale of Preferred Stock, as described above, will constitute an issuance of a security within the purview of Section 204 of the Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issue here involved is regulated by a State commission within the meaning of Section 204(f) of the Act; and the proposed issuance of Preferred Stock is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(4) The proposed issuance and sale of Preferred Stock as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by Applicant of service as a public utility and which will not impair its ability to perform that service and is reasonably appropriate for such purposes.

The Commission orders:

(A) The proposed issuance and sale of Preferred Stock, as described above, upon the terms and conditions, and for the purposes specified in the application, is authorized, subject to the provisions of this order.

(B) The proposed issuance and sale of Preferred Stock at competitive bidding shall not be consummated until:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive biding requirements, and Section 34.2(h) of those Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.

(ii) The Commission, by further orders, shall have approved the price to be received by Applicant for the proposed issuance of Preferred Stock and the dividend rate thereon.

(C) This authorization shall expire unless the transaction hereby authorized is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission.

(E) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect of any securities to which this order relates.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

INDIANA & MICHIGAN ELECTRIC COMPANY, DOCKET NO. E-7089

ORDER OVERRULING EXAMINER'S DENIAL OF TWO STAFF MOTIONS FOR PRODUCTION OF RELEVANT AND MATERIAL DATA, AND ORDERING SUBPOENAS TO ISSUE FORTHWITH

(Issued October 4, 1963)

On September 27, 1963, the Presiding Examiner certified to the Commission an appeal by the staff from the Examiner's rulings of September 4, 1963,

denying two Staff motions which requested the Examiner to order and direct the production of certain relevant and material data from Indiana & Michigan Electric company (I&M), American Electric Power, Inc. (AEP) and Ohio Valley Electric Corporation (OVEC) which Staff stated it needs for preparation of its presentation in this proceeding.

The data sought are of the same general type and character as the engineering and system operations data which the Commission heretofore ordered to be made available.[1] The only differences are that the earlier data covered different time periods in the years 1962 and 1963 and did not include operations data of OVEC, which is interconnected with the AEP system. Staff had examined OVEC data during its field examination of August 4 through 16, 1963.

In denying the Staff's motions, the Examiner was of the opinion that only the Commission could order the data to be produced from persons who were not parties, such as AEP and OVEC, and that the Commission's order of July 23, 1963 somehow limited his right to subpoena or order additional information to be made available. The Examiner erred in this view.

The Commission's authority under the Federal Power Act to obtain data is plenary.[2] It may require that data be produced by order of the Commission (Sections 301 (b) and (c)), by Commission rule, regulation or order (Section 304 (a)), and by direction of any member of the Commission or designated officer (Section 307(b)). Subpoenas are but one of the legal processes through which the Commission and its designated officers may act. Under § 1.27 of the Commission's Rules of Practice and Procedure the Examiner exercises delegated authority of the Commission. Considering the determination which we make herein as to the relevance and materiality of the documentary data which the staff seeks, the Examiner possesses all necessary authority to compel the production thereof whether by order or ruling of the Examiner or pursuant to subpeona issued by him.

This proceeding commenced on April 16, 1963, by the issuance of an "Order to Show Cause and Providing for Hearing". The hearing was to determine in part whether I&M was violating the provisions of Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations thereunder. The order contemplated that the Staff, pursuant to Section 307(a) of the Act, would make a full investigation of all facts, conditions, practices, or matters which it might find necessary or proper in order (1) to determine whether I&M has been violating or was continuing to violate the provisions of the Act and the Regulations, or (2) to aid in the enforcement of the Act. That order further contemplated that Staff would have full access to and the right, pursuant to Section 301 (b), to inspect, examine and obtain or make copies of all necessary accounts, records, memoranda, maps, contracts, engineering reports, and other data and papers.

The facts which will determine the issues in this case are by their very nature in the possession or knowledge of the respondent or of any person who controls the respondent or of any other company controlled by such person. In addition, facts may be in the possession of other, interconnected public utilities or persons and companies outside the Commission. A full knowledge

[1] By orders of July 23, 1963, and August 7, 1963. Counsel for Indiana & Michigan Electric Company, also Counsel for OVEC and AEP, agreed that the data requested was similar to the earlier data, which the Commission had found relevant and material.

[2] Section 301(b) makes it the *duty* of licensees and public utilities to furnish required data. Section 304(b) makes it unlawful for any person to willfully hinder, delay or obstruct the filing of required data. And Section 307(g) removes the defense of self-incrimination by reason of furnishing required data.

of all of the facts is essential to intelligent decision making by the Examiner and the Commission. To that end the Presiding Examiner shall issue all subpoenas or orders as are necessary to enable Staff to make a thorough and complete investigation and obtain all necessary data.

Once a hearing has commenced, the Presiding Examiner has full authority to issue necessary subpoenas for data and witnesses and to issue orders for the production of data. Orderly procedure requires that parties should not have to seek these orders or subpoenas from the Commission once the hearing has commenced. Hereafter the Examiner, pursuant to the Rules and Regulations of this Commission and the Federal Power Act, should issue such subpoenas or orders.

In El Paso Natural Gas Company, 27 FPC 321–322 (1962), we said:

> Although we have passed upon the application for a subpoena upon the Examiner's reference, we note that it is our opinion that the power to issue subpoenas is within the authority of the Examiner. See Section 7 (b) of the Administrative Procedure Act (60 Stat. 241; 5 U.S.C. 1006); Federal Power Commission Rules of Practice and Procedure, Sections 1.23(a) and 1.27(b); *Lee* v. *F.M.B.*, 284 F. 2d 577 (CA 9, 1960); *Penfield Co.* v. *S.E.C.* 143 F. 2d 746 (CA 9), cert. denied 323 U.S. 768 (1944). Cf. *N.L.R.B.* v. *Gunaca*, 135 F. Supp. 790 (E.D. Wisc.), aff'd 230 F. 2d 542 (CA 7, 1956).

We note that there was no opposition to the production of the data requested by Staff in its motions, upon issuance of subpoenas, by any party to the proceeding or by counsel for AEP and OVEC. In view of the tentative schedule for the presentation of evidence in this case, proposed by staff on October 2, 1963, the requested subpoenas shall be issued forthwith by the Commission's Secretary for the prompt production of the requested data. This is not to say that the Examiner could not have issued these subpoenas in the first instance, but, since the matter is before us, we will dispose of it.

The Commission finds:

(1) The data requested in Staff's two motions relate to transactions with and the business of I & M and are subject to examination, inspection and copying by Staff under the provisions of the Federal Power Act either upon the issuance of an order or subpoena by the Commission or by the Presiding Examiner. The data is within the custody of American Electric Power Inc., and Ohio Valley Electric Corporation.

(2) The data requested in Staff's two motions is relevant and material to the issues herein raised.

(3) It is appropriate to carry out the provisions of the Federal Power Act, particularly Sections 201, 205, 206, 301, 307, and 309 thereof that American Electric Power, Inc., its President, Donald C. Cook; and Ohio Valley Electric Corporation, and its President Philip Sporn, be required, pursuant to subpoena duces tecum issued by the Commission Secretary, to produce copies of the aforesaid data before the Presiding Examiner and supply Staff with said copies on Monday, October 14, 1963, at 10:00 a.m.

The Commission orders:

(A) The Presiding Examiner's denial of Staff's motions is hereby overruled and said motions are hereby granted.

(B) The Secretary of this Commission shall issue forthwith to American Electric Power Company, Inc. and to Donald C. Cook, its President, a subpoena duces tecum requiring the production before the Presiding Examiner

at 441 G. St., Washington D.C., on Monday, October 14, 1963 at 10:00 a.m. of the data (or copies thereof) set forth at page 155 of the transcript (which page is attached hereto as Exhibit A).* At that time, Staff shall have full opportunity to inspect and make copies of any or all of such data.

(C) The Secretary of this Commission shall issue forthwith to Ohio Valley Electric Corporation and to Philip Sporn, its President, a subpoena duces tecum requiring the production before the Presiding Examiner at 441 G. St., Washington D.C., on Monday October 14, 1963 at 10:00 a.m. of the data (or copies thereof) set forth at page 159 of the transcript (which page is attached hereto as Exhibit B).* At that time, Staff shall have full opportunity to inspect and make copies of any or all of such data as Staff deems necessary.

(D) This order is without prejudice to the issuance of any further orders or subpoenas by the Presiding Examiner for the production of other data or for the testimony of any witnesses in this proceeding.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

OTTER TAIL POWER COMPANY, DOCKET NO. E-7126

ORDER AUTHORIZING ISSUANCE OF FIRST MORTGAGE BONDS

(Issued October 4, 1963)

Otter Tail Power Company (Applicant), incorporated under the laws of the State of Minnesota, and doing business as a qualified foreign corporation in the States of North Dakota and South Dakota, with its principal place of business at Fergus Falls, Minnesota, filed an application on September 3, 1963, for authorization pursuant ot Section 204 of the Federal Power Act to issue and sell at competitive bidding $7,000,000 principal amount First Mortgage Bonds, —% Series due 1993.

The proposed Bonds will be issued under Applicant's Indenture of Mortgage dated July 1, 1936, to First Trust Company of Saint Paul and Louis S. Headley, Trustees, (Russell M. Collins successor Individual Trustee) as heretofore supplemented and as to be further supplemented by a proposed Twenty-sixth Supplemental Indenture to be dated as of October 23, 1963.

Applicant proposes on or about October 11, 1963, to invite sealed written bids for the purchase of the proposed issuance of Bonds.

All bids, whether from a single bidder or group of bidders, must be for the purchase of all of the proposed issuance of Bonds. Each bid must specify (1) the price to be received by Applicant for the Bonds, exclusive of accrued interest, which price shall be not less than 99% of principal amount if a public offering is to be made and not less than 100% of principal amount if no such public offering is to be made by the purchaser; (2) the interest rate to be borne by the proposed Bonds, which rate shall be expressed as a multiple of ⅛ of 1%; (3) that the accrued interest on the Bonds from November 1, 1963 to the date of payment and delivery shall be paid to Applicant. In addition, each bid must be accompanied by a certified or bank cashier's check or checks in the aggregate amount of $175,000.

All bids must be presented to Applicant at 11 South LaSalle Street (20th Floor), Chicago, Illinois, at or before 10:00 a.m. Chicago Time, on October

* Omitted in printing.

23, 1963, unless postponed. Unless Applicant shall reject all bids, which it reserves the privilege to do, or shall exclude a bid or bids for reasons specified in the statement of terms and conditions relating to the form of bid for the proposed Bonds, it will accept the bid for the Bonds which provides the lowest annual cost of money to it.

The proceeds to be obtained from the proposed Bonds will be applied to Applicant's current construction program, directly or through the discharge of interim financing heretofore undertaken by Applicant.[1] Total estimated expenditure for 1963 is $12,470,000.

Major items include a 66,000 kw generating unit as an addition to the Company's Hoot Lake Plant, the extension of the Company's 115 kv transmission grid by the addition of 25 miles of transmission line from Donaldson, Minnesota to Warsaw, N. D., conversion of a portion of its 41.6 kv system to 115 kv operation, construction of 48 miles of 115 kv transmission lines to tie with Montana-Dakota Utilities, and other short extensions of its 115 kv system and the extension and rebuilding of distribution plant, all to meet the expanding load requirements of its system.

Written notice of the application has been given to the Railroad and Warehouse Commission of Minnesota, the Public Service Commission of North Dakota, the Public Utilities Commission of South Dakota, and to the Governor of each of those States. Notice of the application has also been given by publication in the Federal Register on September 14, 1963 (28 F.R. 10005), stating that any person desiring to be heard or to make any protest with reference to the application should on or before September 25, 1963, file a petition or protest with the Federal Power Commission, Washington 25, D.C. No petition or protest or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued October 25, 1957, *Otter Tail Power Company* Docket No. E-6776 (18 FPC 538).

(2) The proposed issuance and sale of Bonds, as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) Applicant is not organized and operating in a state under the laws of which the security issue here involved is regulated by a State commission within the meaning of Section 204(f) of the Act, and the proposed issuance of securities is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(4) The proposed issuance and sale of Bonds, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

[1] By order issued December 20, 1962, *Otter Tail Power Company,* Docket No. 7076 (28 FPC 1087), applicant was authorized to issue up to a maximum of $10,000,000 principal amount of short term, unsecured promissory notes outstanding at any one time; the notes to be issued in varying principal amounts from time to time prior to December 31, 1965, as interim financing for Applicant's construction program. As of August 28, 1963 $4,162,250 was outstanding.

The Commission orders:

(A) The proposed issuance and sale of Bonds, upon the terms and conditions and for the purpose specified in the application, as described above, are authorized, subject to the provisions of this order.

(B) The proposed issuance and sale of Bonds at competitive bidding shall not be consummated until:

(i) Applicant shall have amended its application pursuant to the requirements of Secton 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements and Section 34.3(h) of those Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.

(ii) The Commission, by a further order, shall have approved the price to be received by Applicant for the proposed issuance of Bonds and the interest rate thereof.

(C) This authorization shall expire unless the transaction hereby authorized is consummated within 90 days from the issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission.

(E) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States with respect to any securities to which this order relates.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

SOCONY MOBIL OIL COMPANY, INC., DOCKET NO. G–17625; CONTINENTAL OIL COMPANY, DOCKET NO. G–17649; NEWMONT OIL COMPANY, DOCKET NO. G–17765; TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. RP64–4.

ORDER GRANTING REHEARING FOR THE PURPOSE OF RECONSIDERATION

(Issued October 4, 1963)

On September 5, 1963, Tennessee Gas Transmission Company (Tennessee) filed an application for rehearing of our order of August 7, 1963, conditionally approving proposed settlement, conditionally issuing certificates of public convenience and necessity and imposing reporting requirements in the above-captioned proceedings.

The settlement agreement and the Commission's order provide in part that the price to be paid to the MCN producers is 19¢ per Mcf at 15.025 psia; and in addition, Tennessee shall pay 1.5¢ per Mcf to an escrow agent as tax reimbursement to provide for the contingency of the producing acreage being finally adjudicated as lying within the taxing jurisdiction of the State of Louisiana. The order further requires Tennessee to make special reports to the Commission in Docket No. RP64–4, concerning the status of the escrow account.

Tennessee states in its application for rehearing that recent investigation by Tennessee disclosed that the Block 62 Field which contains the acreage covered by the certificate applications in these proceedings is not within

the area which is the subject of dispute between the State of Louisiana and the United States and further, that this acreage is approximately 22 miles from the shoreline of the State of Louisiana and is unquestionably all Federally owned lands.

Tennessee therefore requests that the Commission:

(1) Eliminate the requirement by Tennessee to place 1.5¢ per Mcf in an escrow account.

(2) Amend said order to provide that the 1.5¢ per Mcf collected by MCN on the 160 acre tract to be paid to Tennessee from initial delivery to date of said order be refunded to Tennessee without any requirement that it be placed in an escrow account.

(3) Amend ordering Paragraph (I) to eliminate the requirement by Tennessee of filing an escrow agreement and special report of Block 62 Field, East Cameron Area, offshore Louisiana.

The Commission finds:

In order to afford further time for consideration of these matters, it is appropriate and proper in the administration of the Natural Gas Act that rehearing be granted for the purpose specified herein.

The Commission orders:

The application for rehearing filed by Tennesee in the above-captioned matters on September 5, 1963, is granted for the purpose of further consideration of the issues raised therein.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

HUGOTON PLAINS GAS AND OIL COMPANY, DOCKET NO. RI60-102

ORDER APPROVING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICE OF CHANGE, REQUIRING REFUNDS, AND TERMINATING PROCEEDING

(Issued October 8, 1963)

Hugoton Plains Gas and Oil Company (Hugoton Plains) on September 25, 1963, submitted an Offer of Settlement in the above-designated proceeding pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure. The proceeding concerns the lawfulness of an increased rate of 20.1626¢ per Mcf at 14.65 psia, designated as Supplement No. 12 to Hugoton Plains' FPC Gas Rate Schedule No. 1, for the sale of gas by Hugoton Plains to Northern Natural Gas Company (Northern) from the Hugoton gas field in the States of Kansas and Oklahoma. The proposed rate was suspended by Commission order issued February 4, 1960, and became effective subject to refund as of April 7, 1960. Upon completion of hearings in this matter, the presiding examiner on March 12, 1962, issued his initial decision disallowing Hugoton Plains' increased rate. The matter is now pending before the Commission on exceptions filed by Hugoton Plains and Northern.

Under the terms of the offer, Hugoton Plains proposes, *inter alia*, a 15.75¢ per Mcf settlement rate at 14.65 psia, and agrees to refund, with applicable interest, any revenues collected in Docket No. RI60-102 in excess of the settlement rate for the period from April 7, 1960, through August 31, 1963. The agreed upon settlement rate is to be effective from September 1, 1963 through Dcember 31, 1965. The refund, according to Hugoton Plains, will

consist of principal in the amount of $2,310,805, plus interest in the amount of $107,555.

In support of its proposal, Hugoton Plains states, *inter alia*, that (1) the proposal will fix the rate for the subject sale, thereby terminating the pending proceeding; (2) the proposal gives certainty and predictability to the cost of purchased gas by Northern; (3) the proposal provides for substantial refunds to Northern, which, in turn, will be passed on to its jurisdictional customers in accordance with the Commission's order issued December 21, 1961 in Docket No. G–19040 *et al.;* and (4) the proposal will result in a reduction in Northern's rates to its jurisdictional customers in accordance with the December 21, 1961, order.

All of the parties involved in this proceeding, with the exception of Minnesota Valley Natural Gas Company (Minnesota Valley) have agreed to the proposed settlement. Minnesota Valley has stated it interposes no objection to the settlement agreement.

At the hearing cost evidence was the sole evidence adduced. Staff contended on the basis of evidence presented by it that the just and reasonable rate was 15.06¢ per Mcf. Minnesota Valley contended that the suspended rate had not been justified and that the record did not establish definitive sales volumes to Northern for the future. The Northern Distribution Group[1] took the position that the traditional cost of service method is inappropriate in this case, and advocated as a just and reasonable rate a sliding-scale rate ranging from 11¢ to 20¢ per Mcf depending upon the annual volumes sold to Northern. Hugoton Plains contended on the basis of its evidence that the increased rate of 20.1626¢ per Mcf was justified.

Determination of the appropriate test year sales volumes to be utilized here is the most important issue in this case. It is, moreover, the primary cause of the wide divergence in the parties' contentions, as set forth above. Hugoton Plains does not have a minimum take-or-pay clause in its contract with Northern and Hugoton Plains' sales volumes dropped from 30.9 Mmmcf in 1951 to 13.7 Mmmcf in 1959, and then upward to 17.2 Mmmcf in 1960. Because of the foregoing situation, it is difficult to estimate with any reasonable degree of accuracy Hugoton Plains' sales volumes for the future. This, in turn, makes it difficult to determine the just and reasonable rate for Hugoton's sales.

In view of the problem mentioned above, and upon review of the cost evidence in the record, the proposed settlement rate appears to us to be reasonable and to strike a fair balance between the conflicting views of the various parties. We therefore conclude that the settlement proposal is in the public interest and should be approved as hereinafter provided.

However, we desire to make it clear that acceptance of the offer of settlement shall not be construed as approval of any future increased rate proposed by Hugoton Plains, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate proceedings, involving Hugoton Plains' rate and rate schedule.

The Commission finds:

The proposed settlement of the above-designated proceeding, on the basis described herein, as more fully set forth in the Offer of Settlement filed by Hugoton Plains with the Commission on September 25, 1963, is in the public

---

[1] The group consists of Minneapolis Gas Company, Iowa Power and Light Company, Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin), and North Central Public Service Company.

interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of Settlement filed by Hugoton Plains with the Commission on September 25, 1963, is hereby approved in accordance with the provisions of this order.

(B) Hugoton Plains shall file, within 30 days from the date of issuance of this order, a notice of change to its FPC Gas Rate Schedule No. 1 providing for the 15.75¢ per Mcf rate at 14.65 psai, specified in its offer of settlement. The notice of change shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Within 30 days from the date of issuance of this order, Hugoton Plains shall refund to Northern all amounts collected under its rate schedule in Docket No. RI60–102 in excess of the settlement rate of 15.75¢ per Mcf, together with applicable interest, with respect to gas sales made during the period from April 7, 1960, to August 31, 1963. Hugoton Plains shall bear all costs incidental to the making of such refunds.

(D) Within 45 days from the date of issuance of this order, Hugoton Plains shall report to the Commission in writing the details of their calculations resulting in refunds ordered pursuant to paragraph (C) above, together with a copy of a release from Northern with respect to such refunds.

(E) Upon notification by the Secretary of the Commission that Hugoton Plains has complied wth the terms and conditions of this order, the rate and charge of 15.75¢ per Mcf at 14.65 psia, specified in the Offer of Settlement, shall be effective as of September 1, 1963, Docket No. RI60–102 shall be deemed terminated, and the refund obligation of Hugoton Plains with respect to Docket No. RI60–102 shall be deemed discharged.

(F) The oral argument in this proceeding heretofore scheduled for October 28, 1963, is cancelled.

(G) This order is without prejudice to any findings or orders which have been or may be made hereafter by the Commission, and is without prejudice to claims or contentions which may be made by Hugoton Plains, the Commission Staff, or any affected party hereto, in any proceedings now pending, or hereafter instituted by or against Hugoton Plains or any other companies, persons or parties affected by this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

LATERAL GAS PIPELINE COMPANY, DOCKET NO. CP63–338

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 8, 1963)

On June 7, 1963, Lateral Gas Pipeline Company (Applicant) filed in Docket No. CP63–338 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain pipeline and appurtenant facilities, all as more fully represented in the application.

The facilities proposed to be constructed consist of approximately 6.0 miles of 2-inch natural gas transmission line and appurtenant facilities located in Adair County, Iowa, extending from a point on Applicant's existing

line near Greenfield, Iowa, in a westerly direction to the Town of Fontanelle, Iowa. These facilities will be employed to transport, for the account of Iowa Electric Light and Power Company (Iowa Electric), natural gas purchased by it from Natural Gas Pipeline Company of America (Natural) for distribution in the Town of Fontanelle. The gas requirements of Fontanelle will be met from the volumes of gas Natural is authorized to deliver to Iowa Electric and will cause no present increase in contract demand.

The estimated peak-day requirements for the first year of operation will be 205 Mcf of natural gas increasing to 422 Mcf during the third year. The construction cost of the proposed facilities is estimated at $56,191, including engineering expenses. Applicant proposes to finance the project from funds on hand, sales of common stock to its parent, Iowa Electric, or through temporary advances.

Applicant was granted temporary authorization on September 5, 1963, to construct and operate the subject facilities as applied for herein.

Pursuant to due notice, a public hearing was held in Washington, D.C., on September 17, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Lateral Gas Pipeline Company, an Iowa corporation having its principal place of business in Cedar Rapids, Iowa, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Lateral Gas Pipeline Company, to construct and operate the proposed facilities as hereinbefore described, all as

more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 90 days from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP64-30

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 8, 1963)

On July 9, 1963, Natural Gas Pipeline Company of America (Applicant) filed in Docket No. CP64-30 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of natural gas to Iowa Electric Light and Power Company (Iowa Electric) of additional 1,000 Mcf per day at 14.65 psia over and above the present contract demand of 29,776 Mcf per day.

The Applicant states that Iowa Electric has requested an additional daily contract quantity of 1,000 Mcf of gas commencing on November 1, 1963 for for resale by Iowa Electric to Monsanto Chemical Company. Monsanto now uses natural gas and will use the increased quantity as a raw material in the manufacture of agricultural fertilizers. The additional sale to Iowa Electric shall be made at rates set in Applicant's effective CD-1 rate schedule.

Applicant states that no new facilities will be necessary to render the proposed additional service.

Pursuant to due notice, a public hearing was held in Washington, D.C., on September 25, 1963, respecting the matters involved in and the issues presented by the application herein. No petitions to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commissoin render a decision herein pursuant to Section 1.30(c)(1) of the Rules of Practice and Procedure.

The Commission finds:

(1) Applicant is a natural gas company within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 13, 1942 in Docket No. G-235 (3 FPC 830).

(2) The sale and delivery of natural gas hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, will be made in interstate commerce subject to the jurisdiction of the Commission, and said sale and delivery are subject to the jurisdiction of the Commission,

and said sale and delivery are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The sale and delivery of natural gas proposed by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(3), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, to sell and deliver natural gas as hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (a), (c)(3), and (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. G–2067

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 9, 1963)

On July 25, 1963, Texas Gas Transmission Corporation (Applicant) filed in Docket No. G–2067 an application to amend the Commission's order effective May 1, 1953,[1] by extending the period of the certificate authorization for an additional 15 years commencing October 7, 1963, and ending October 6, 1978, all as more fully set forth in the application to amend.

The order effective May 1, 1953, authorized Applicant to construct and operate certain facilities and to transport and deliver, on an interruptible basis, maximum daily and annual volumes of natural gas of 30,000 Mcf and 6,959,000 Mcf, respectively, to Mississippi Power & Light Company (Mississippi Power) for use by the latter in its Delta Steam Electric Generating

[1] By notice of May 4, 1953, the Presiding Examiner's decision in Docket No. G–2067 was adopted by the Commission as its final decision and order to be effective May 1, 1953.

Plant near Cleveland, Mississippi. Such authorization was for a period of ten years from the date of first delivery to Mississippi Power (October 7, 1953) unless such period shall have subsequently been extended by order of the Commission.

Mississippi Power and Applicant have entered into an amendatory agreement dated June 12, 1963, providing for the proposed extended term and for a price of 26.2 cents per Mcf for natural gas sold during said extended term. The amendatory agreement makes no change in the maximum daily and annual volumes of natural gas to be sold to Mississippi Power.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on September 7, 1963 (28 F.R. 9831). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order effective May 1, 1953, in Docket No. G–2067 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order effective May 1, 1953, in Docket No. G–2067 be and the same is hereby amended to extend the period of the certificate authorization for an additional 15 years commencing October 7, 1963, and ending October 6, 1978, as hereinbefore described and as set forth in the subject application to amend.

(B) Applicant shall report to the Commission as of June 1 of each year the number of days on which the subject service was curtailed or interrupted during the preceding 12 months, together with the date and the amount of each such curtailment or interruption. This report shall be filed by June 30 of each year.

(C) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G–13221, ET AL., GULF OIL CORPORATION, DOCKET NOS. G–19062, G–19467, CI60–54, CI60–440, CI60–824, CI61–716, CI61–1562, CI61–1630, CI62–62, CI62–411, CI62–412, CI62–859, AND CI62–965; SOCONY MOBIL OIL COMPANY, INC., DOCKET NOS. CI60–310, CI60–311, CI60–392, CI61–290, CI61–659, CI61–674, CI61–1128, AND CI61–1640

ORDER SEVERING PROCEEDINGS, CONDITIONALLY APPROVING SETTLEMENT AGREEMENTS AND CONDITIONALLY ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 9, 1963)

Gulf Oil Corporation (Gulf) on July 15, 1963, and Socony Mobil Oil Company (Socony) on July 18, 1963, filed settlement proposals and motions for severance of their respective dockets from the proceedings in Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*, (hereinafter referred to as the Union Texas Proceeding) for approval of their respective settlement proposals and for the issuance of certificates of public convenience and necessity.

The settlement proposals generally provide for the onshore sales involved herein (subject to the taxing jurisdiction of the State of Louisiana), the total amount to be paid to Gulf and Socony by the respective pipeline purchasers for gas delivered (or paid for but not taken)[1] shall be 20.625¢ per Mcf,[2] during the "moratorium period" of July 1, 1963, through June 30, 1968. Throughout the same period, the total amount to be paid to Gulf and Socony by the respective pipeline purchasers for gas delivered (or paid for but not taken) under offshore (in the Federal domain) contracts shall be 19.0¢ per Mcf.[3]

The proposals provide that rate increase filings may be made (1) prior to the end of moratorium periods to the extent that the maximum suspension period under Section 4(e) of the Natural Gas Act may be extended beyond 5 months or the Commission may hereafter be authorized to lengthen such suspension period, and (2) at any time for reimbursement of one-half the amount of increased State and Federal taxes or payments in lieu of taxes, provided that such increase does not exceed the reimbursement to which the applicant is entitled by contract.

Full refunds of amounts collected above the settlement rates will be made by Gulf in Docket Nos. CI61–1562[4] and CI62–62[5] and by Socony in Docket Nos. CI61–674[6] and CI61–659.[7] Interest at a rate of 7% per annum will be paid on the amounts to be refunded. The temporary certificates heretofore issued in these four dockets contained refund conditions.

In Docket Nos. CI60–311 and CI61–1128, Socony proposed that certificates be issued in accordance with the applications at initial rates of 20.375¢ per Mcf and 20.25¢ per Mcf, respectively. The increased rate now in effect subject to refund and Commission determination in Docket No. RI61–441[8] may continue to be collected and the rate increase filed for but under suspension in Docket No. RI63–42[9] may be made effective, subject to the Commission's suspension order in that Docket and further proceedings in accordance therewith. The general terms of the settlement proposal shall otherwise apply to these sales.

Gulf and Socony propose to extend the make-up period for take-or-pay gas to four years in all cases where the contract provides for a lesser make-up period.

Generally, the terms of these proposals are similar to the provisions of the *Humble settlement* approved by the Commission recently.[10] The present proposals do differ from *Humble* in some respects, however.

The effective date of the rate reductions in the Humble settlement was April 1, 1963, while Socony and Gulf propose July 1, 1963, as the effective

---

[1] The term "delivered" is used in the proposals as in other proposals approved by us. In the context of the proposals we have interpreted the term to include gas required to be taken during the moratorium periods but paid for and not taken. Our approval of these settlements is also conditioned upon such interpretation.

[2] All rates expressed inclusive of applicable tax reimbursement and all volumes expressed at 15.025 psia.

[3] See Appendix for details as to rate schedules, rates and purchasers.

[4] Gulf F.P.C. Gas Rate Schedule No. 219.

[5] Gulf F.P.C. Gas Rate Schedule No. 224.

[6] Socony F.P.C. Gas Rate Schedule No. 269.

[7] Socony F.P.C. Gas Rate Schedule No. 302.

[8] Relates to Docket No. CI61–1128 and Rate Schedule No. 258.

[9] Relates to Docket No. CI60–311 and Rate Sechedule No. 229.

[10] See "Order Severing Proceedings, Conditionally Approving Proposal Settlement and Conditionally Issuing Certificates of Public Convenience and Necessity," *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, issued August 7, 1963, 30 FPC 456.

date of the reduction in rates. The Humble moratorium on rate increase filings ends on March 31, 1968; Socony and Gulf propose June 30, 1968, as the end of the moratorium. As we noted in our recent order conditionally approving other settlement proposals in these proceedings[11], those applicants with later effective dates would stand to gain an advantage over those producers who have, in good faith, filed earlier, because Area Rate Proceeding, Docket No. AR61–2 certainly will be completed before the five year moratoria proposed herein expire. Accordingly, we shall approve of these settlements upon condition that the effective dates for the rate reductions be April 1, 1963, and that the moratoria extend through March 31, 1968.

By our order approving Gulf's company-wide rate settlement we required Gulf to reduce its rates under its Rate Schedule Nos. 170, 175, 184, 199 and 208 to 21.25¢ per Mcf.[12] That order further provided that monies collected by Gulf for deliveries on and after April 25, 1963, under the aforementioned rate schedules and Rate Schedule No. 188 be collected subject to refund of all amounts over the rate determined to be required by the public convenience and necessity in the Union Texas Proceeding. Gulf therefore proposes to make refunds in accordance therewith for amounts collected above the settlement rates for deliveries made since April 25, 1963. However, since we shall require that April 1, 1963, be the effective date of the rate reductions herein proposed, this aspect of Gulf's offer has lost its effectiveness.

Transcontinental Gas Pipeline Corporation (Transco) filed letters with the Secretary on August 7, 1963, with respect to Gulf's settlement and on August 9, 1963, with respect to Socony's settlement. Transco points out that on July 25, 1963, it made prepayments of $1,413,493.77 to Gulf under the terms of its Rate Schedule No. 220 (Docket No. CI61–1630) and a like amount to Socony under the terms of its Rate Schedule No. 268 (Docket No. CI61–1640). Transco suggests that an adjustment in Transco's prepaid gas accounts with Gulf and Socony would be appropriate since it made its prepayments at the rate of 19.5¢ per Mcf and the settlement rates are 19¢ per Mcf. Transco advises that it would have no objection to receiving the adjustment in kind, i.e. gas over the life of the contract, as it has done in other settlements.[13] Transco states that it did not take part in the negotiations leading up to either settlement proposal. Hence, neither proposal specifically provides a solution to the prepayments problem. In previous settlement agreements in which refunds were paid for deliveries prior to the effective date of the reduced rates, the parties have agreed to refund the difference between the amounts paid under take-or-pay provisions and the amounts that would have been payable under the settlement rates. Since the effective date of the proposed rate reductions will be April 1, 1963, under the terms of this order, under the circumstances of these cases it is appropriate that our approval of these proposals be conditioned upon Gulf's and Socony's refunding to Transco the difference between the amounts paid for at a rate of 19.5¢ per Mcf by Transco for gas which it was obligated to take from April 1, 1963 on but not taken under the above mentioned rate schedules and the amounts that would have been paid at a rate of 19¢ per Mcf. We shall also give Gulf and

[11] "Order Severing Proceedings, Conditionally Approving Settlement Agreements and Conditionally Issuing Certificate of Public Convenience and Necessity," *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, issued August 7, 1963. 30 FPC 456.

[12] *Gulf Oil Corporation*, Docket No. G–9520, *et al.*, issued April 25, 1963. 29 FPC 837.

[13] See *Texaco Inc.*, 28 FPC 247.

Socony the alternative which Transco suggests of making refunds in kind over the life of the contract.

Each pipeline purchaser (shown in the Appendix) who will receive refunds and future gas purchase cost reductions in substantial amounts as a result of these settlements, with the exceptions noted below, is under no obligation to pass on the refunds and rate reductions to its jurisdictional customers, subject to accumulation provisions in some cases. United Gas Pipeline Company's rate case in Docket No. RP63–1 is presently before the Commission, so refunds and adjustments in rates to reflect producer rate reductions can be effected in that proceeding.

On August 22, 1963, the Public Service Commission of New York (PSC) filed comments on both settlement proposals. The comments of PSC are directed to Docket Nos. CI61–1630 and CI61–1640. PSC states that, based on the estimated deliveries shown in the certificate applications, the rate reductions would result in an annual reduction in Transco's gas purchase cost of $182,500 but that Transco does *not* intend to pass on any of this reduction to its customers in the form of lower rates.

Transco, on September 9, 1963, filed a letter with the Secretary (and served copies to all parties) advising that the settlement agreement in Docket No. RP61–13 approved by the Commission by order of February 2, 1962,[14] does not provide for reductions in rates based upon the reductions in the producer rates in Docket Nos. CI61–1630 and CI61–1640 because Transco did not commence purchasing gas under the rate schedules related to the latter two dockets until July 1962. Transco states that even the reduced rates under these two rate schedules are more than 1¢ per Mcf higher than the average cost of gas for settlement purposes in Docket No. RP61–13. Transco concludes that any attempt to order a rate reduction based upon the Gulf and Socony settlements in Docket Nos. CI61–1630 and CI61–1640 would be inequitable and unjustfied since the flow through provisions in Transco's rate settlement in Docket No. RP61–13 do not specifically mention Docket Nos. CI61–1630 and CI61–1640. Transco's letter. *supra*, did not consider the effects of its reduced gas purchase costs resulting from the settlement in Docket No. CI61–659. Its letter was an answer to the comments of PSC concerning Docket Nos. CI61–1630 and CI61–1640 only. In view of the foregoing, we shall require Transco to hold the refunds and amounts equal to the reductions in purchased gas costs which will accrue as a result of the settlements in all of these dockets subject to further orders of the Commission. Transco will be required to report to the Commission its proposed disposition of the refunds and its proposed rate adjustments, if any, to reflect its reduced gas purchase costs.

Southern Natural Gas Company (Southern) whose purchased gas costs also will be substantially affected by these settlements should be subject to the same holding and reporting requirements as Transco since the flow through provisions of our opinion and order in Southern's rate case, decided on February 18, 1963,[15] do not specifically refer to the dockets settled herein.

Comments favoring the Gulf settlement proposal were filed on July 23, 1963, by the Long Island Lighting Company, Philadelphia Gas Works Division

---

[14] See *Transcontinental Gas Pipe Line Corporation*, 27 FPC 187.

[15] *Southern Natural Gas Company*, Docket No. G–20509, *et al.*, Opinion No. 379 and Opinion No. 379A, (1963), 29 FPC 323 and 779, respectively.

of the United Gas Improvement Company and the United Gas Improvement Company, and on July 31, 1963, by Public Service Electric and Gas Company.

We find these settlement proposals, as herein modified, to be in the public interest.

In keeping with our present policy we shall require that the applicants pay interest on the amounts to be refunded at 7 percent per annum, such interest to accrue through the last day of the month in which the respective settlement proposals were filed.

The settlement provisions for adjustments in rates according to our order or orders in Area Rate Proceeding, Docket No. AR61–2, seek to anticipate in part the nature of our final determinations in the matter. It is clear that we shall make no determinations in this matter which will control our conclusions in Docket No. AR61–2. The settlement proposal also provides that adjustments in price growing out of the Area Rate Proceeding, Docket No. AR61–2, should go into effect upon conclusion of judicial review of our final order. However, we cannot now commit the Commission to conditionally staying the effectiveness of its final order in Docket No. AR61–2. These matters should be decided at the conclusion of that proceeding and our approval of the settlements will be so conditioned.

In accordance with the above we shall sever these individual dockets from the consolidated proceeding Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*, omit the intermediate decision in regard to these dockets [16] and issue certificates of public convenience and necessity in accordance with the applications, settlement proposals and conditions of this order.

The Commission finds:

(1) Gulf and Socony are "natural-gas companies" within the meaning of the Natural Gas Act, and are engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(2) The proposed sales of natural gas are subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The applicants herein are able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, are required by the public convenience and necessity and are in the public interest upon the conditions set forth below, and certificates should be issued as ordered below.

(5) It is in the public interest and it is appropriate in carrying out the provisions of the Natural Gas Act that Transco and Southern be required to submit the reports and retain the refunds, interest and purchased gas cost reductions as ordered below.

---

[16] The hearing in the *Union Texas Petroleum, et al.* consolidated proceeding concluded July 25, 1963.

(6) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

(7) No party has opposed the waiver of the intermediate decisions in these proceedings.

The Commission orders:

(A) The motions for waiver of the intermediate decisions are granted.

(B) The matters in Docket Nos. G–19062, G–19467, CI60–54, CI60–440, CI60–824, CI61–716, CI61–1562, CI61–1630, CI62–62, CI62–411, CI62–412, CI62–859, CI62–965, CI60–310, CI60–311, CI60–392, CI61–290, CI61–659, CI61–674, CI61–1128, and CI61–1640 are hereby severed from the consolidated proceeding, Union Texas Petroleum, *et al.* Docket No. G–13221, *et al.*

(C) Certificates of public convenience and necessity are hereby issued upon the conditions set forth herein ot the applicants for the sales of natural gas in interstate commerce for resale as proposed and as modified by the settlement proposals and this order, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in the applications and settlement proposals herein.

(D) The certificates issued by paragraph (C) above, are granted upon the express condition that the applicants comply fully with the terms of the settlement proposals which settlements are expressly approved, as modified by this order.

(E) Within 30 days after making the refunds required by the terms and conditions of this order and the settlement proposals, the applicants shall report to the Commission, in triplicate, the amount of the refunds made to each pipeline purchaser, showing separately the amount of principal and interest so paid and the bases used for such determinations, together with releases from the purchasers showing receipt of the refunds in conformity to the settlements and the conditions of this order.

(F) The certificates issued by paragraph (C) above are issued upon express condition that the effective date for rate reductions proposed herein be April 1, 1963, and that Gulf and Socony refund to the respective pipeline purchasers all amounts above the settlement rates for gas delivered since April 1, 1963; and upon the further condition that Gulf and Socony refund to Transco the difference between the amount actually paid by Transco for gas not taken attributable to the months of April, May and June, 1963, and the amount that would have been paid had the payment for gas paid for but not taken attributable to the months of April, May and June 1963, been made at the settlement rates; *Provided, however,* that Gulf and Socony shall have the option of refunding as to such take-or-pay-for payments and over the life of the contracts, a volume of gas attributable to the difference between the settlement rate of 19¢ per Mcf and the price of 19.5¢ per Mcf for volumes paid for but not taken attributable to the months of April, May and June, 1963. The volume of such refund gas shall be calculated at the price or prices prevailing at the time delivered, and no interest shall be charged. Interest at 7% on all monies to be refunded will accrue through July 31, 1963. Gulf and Socony shall report to the Commission within 15 days of their acceptance or rejection of these conditions and their choices provided for herein.

(G) Upon full compliance of the applicants with all the terms of this order and of the settlement proposals as modified, the applicants shall be relieved of any further refund obligations in these certificate proceedings and the proceedings in Docket Nos. G–19062, G–19467, CI60–54, CI60–440, CI60–824, CI61–716, CI61–1562, CI61–1630, CI62–62, CI62–411, CI62–412, CI62–859,

CI62-965, CI60-310, CI60-311, CI60-392, CI61-290, CI61-659, CI61-674, CI61-1128, and CI61-1640 shall terminate.

(H) The certificates herein issued are not transferable and shall be effective only so long as the applicants continue the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and order of the Commission.

(I) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or Part 154 of the Regulations thereunder; *Provided, however*, that the 30-day notice provision of Part 154.94 (b) and the detailed submittal requirements of Part 154.94 (f) are hereby waived insofar as they apply to the filing of reductions in rates as required by this order and the settlement proposals.

(J) The grant of certificates herein and approval of the settlement proposals is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the applicants, particularly any proceeding under Section 5 of the Natural Gas Act and Section 5(c) of the Outer Continental Shelf Lands Act, and is without prejudice to claims or contentions which may be made by the Commission, applicants, the Commission staff, or any affected party herein in any other proceeding.

(K) Within 15 days from the date of receipt of refunds and interest required by this order, Transco and Southern shall each submit a report to the Commission and serve a copy on their respective jurisdictional customers, and the various State Utility Commissions wherein each pipeline does business, setting forth the amount of refund and interest received, the estimated annual reduction in purchased gas costs due to these rate reductions, their proposed disposition of such refunds and their proposed rate adjustments to reflect the reductions in gas purchase costs. Pending Commission action and further orders respecting such proposed dispositions, the aforementioned companies shall hold such refunds, interest and amounts equal to the reduction in purchased gas costs which accrue as a result of these settlements in a special fund (without further interest obligation).

(L) Gulf's FPC Gas Rate Schedule No. 229 is hereby accepted for filing effective as of the date of initial delivery.

Commissioner Woodward *dissenting*.

APPENDIX I

SALES BY GULF

R.S. No.	Docket No.	Purchaser	Present rate (cents/ Mcf)	Proposed initial service rate (cents/ mcf)
170	G-19062	Tennessee Gas Transmission Co.	21.25	20.625
175	G-19467	Tennessee Gas Transmission Co.	21.25	20.625
184	CI60-54	Tennessee Gas Transmission Co.	21.25	20.625
188	CI60-440	Southern Natural Gas Co.	20.75	20.625
199	CI60-824	Trunkline Gas Co.	21.25	20.625
208	CI61-716	American Louisiana Pipe Line Co.	21.25	20.625
219	CI61-1562	Trunkline Gas Co.	21.80	20.625
220	CI61-1630	Transcontinental Gas Pipe Line Corp.	19.50	[1] 19.0
224	CI62-62	United Gas Pipe Line Co.	22.25	20.625
228	CI62-412	United Gas Pipe Line Co.	21.25	20.625
229	CI62-411	Trunkline Gas Co.	23.25	[2] 20.625
233	CI62-859	Texas Gas Transmission Corp.	21.25	20.625
235	CI62-965	United Gas Pipe Line Co.	21.25	20.625

[1] Offshore.
[2] Our files indicate that this has not yet commenced.

APPENDIX II

SALES BY SOCONY

R.S. No.	Docket No.	Purchaser	Present rate (cents/mcf)	Proposed initial service rate (cents/mcf)
229	CI60-311	United Gas Pipe Line Co	[1] 22.375	20.375
230	CI60-310	Tennessee Gas Transmission Co	22.8333	20.625
231	CI60-392	Tennessee Gas Transmission Co	22.8333	20.625
258	CI61-1128	United Gas Pipe Line Co	[2] 23.3	20.25
268	CI61-1640	Transcontinental Gas Pipe Line Corp	19.5	[3] 19.0
269	CI61-674	Texas Gas Transmission Corp	23.25	[4] 20.625
300	CI61-290	Southern Natural Gas Co	22.05	20.625
302	CI61-659	Transcontinental Gas Pipe Line Corp	23.05	20.625

[1] This rate is presently under suspension in Docket No. RI63-412, and according to the terms of the Proposal will be collected subject to refund at such time as it is made effective.
[2] This rate is presently being collected subject to refund in Docket No. RI61-441, and according to the terms of the proposal will continue to be collected.
[3] Offshore.
[4] Our files indicate that this sale has not yet commenced.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

WESTERN GAS SERVICE COMPANY, DOCKET NO. CP63-308

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 9, 1963)

On May 16, 1963, as supplemented on June 17, 1963, Western Gas Service Company (Applicant) filed in Docket No. CP63-308 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of additional natural gas transmission facilities; the installation and operation of a new compressor station and appurtenant facilities; and also the certification of certain existing pipeline facilities, all as more fully set forth in the application.

More specifically, Applicant would construct and operate 3.5 miles of 6-inch pipeline beginning at a point 6.5 miles from the Town of Etter, Moore County, Texas, being the southeast corner of Section 364, thence 3 miles eastward along the south boundaries of Sections 363, 362 and 361, to the southeast corner of Section 361; thence northward along the east boundary of Section 361 for 0.5 miles, all in Block 44, H. and T. C. R. R. Survey, Moore County, Texas. Applicant would also construct and operate one 100 horsepower field compressor station and appurtenant facilities. Applicant now has approximately 21.22 miles of previously constructed 6-inch pipeline extending from a point near Stratford, Sherman County, Texas, to a point near Dumas, Moore County, Texas, which has not been heretofore certified and for which Applicant seeks authorization in this application.

Applicant requests authorization for the new existing facilities in order to take a new supply of natural gas. The facilities will form a continuous system with certain facilities authorized in Docket No. G-16390. The estimated

cost of the new facilities is $104,000. No additional financing will be required by Applicant for the construction.

Applicant was granted temporary authorization on July 11, 1963, to construct and to operate the subject facilities as applied for herein.

Pursuant to due notice, a public hearing was held in Washington, D.C., on September 26, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30 (c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Western Gas Service Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the operation of the existing facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(4) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30 (c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Western Gas Service Company, to construct and operate the proposed facilities, and to operate the existing facilities, as hereinbefore described, all as more fully set forth in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(4) and (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

CARNEGIE NATURAL GAS COMPANY, DOCKET NO. CP64-26

FINDINGS AND ORDER PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued October 10, 1963)

On July 24, 1963, Carnegie Natural Gas Company (Applicant) filed in Docket No. CP64-26 an applicant pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon facilities devoted to delivering natural gas to The Manufacturers Light and Heat Company (Manufacturers) under an exchange agreement filed with the Federal Power Commission as part of Applicant's FPC Gas Tariff, Original Volume No. 2 and designated as Rate Schedule X-3.

More specifically, the facilities for which abandonment is sought include: 1,892 feet of 2-inch pipeline, 2,218 feet of 3-inch pipeline, and the necessary measuring and regulating appurtenances, all located in Fayette County Pennsylvania, used in delivering natural gas from two wells designated as wells No. 967 and No. 970 on Applicant's records.

It appears that production from the aforementioned gas wells has declined to a point where it is no longer economical to produce and deliver gas at those locations.

Concurrently with the abandonment application, Applicant filed Second Revised Sheet No. 47 to its FPC Gas Tariff, Original Volume No. 2, which reflects the elimination of the pertinent delivery point from its Rate Schedule X-3.

On July 22, 1963, Manufacturers filed Second Revised Sheet No. 16 to its FPC Gas Tariff Original Volume No. 2, which reflects the elimination of the point of receipt of gas by Manufacturers from Applicant, under Manufacturers Rate Schedule X-3.

Pursuant to due notice, a public hearing was held in Washington, D.C., on September 24, 1963 respecting the matters involved in and the issues presented by the application herein. No protest or petition to intervene has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30 (c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Carnegie Natural Gas Company, a Pennsylvania corporation with its principal place of business in Munhall, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities to be abandoned, as hereinbefore described are subject to the jurisdiction of the Commission, and abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The abandonment by Applicant, as hereinbefore described, is permitted by the public convenience and necessity, and an order permitting and approving the same should be issued as hereinafter ordered.

(4) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record

and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Permission for and approval of the abandonment by Applicant, Carnegie Natural Gas Company, of the facilities hereinbefore described, all as more fully described in the application in this proceeding, be and the same are hereby granted.

(B) Applicant shall advise the Commission of the date of the subject abandonment within 10 days of the date thereof.

(C) The tariff sheets hereinbefore described shall become effective on the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NOS. G-1895, G-18337 AND G-18538

ORDER AMENDING ORDERS ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 10, 1963)

On July 12, 1963, El Paso Natural Gas Company (Applicant) filed in Docket Nos. G-1895, G-18337 and G-18538 an application to amend the Commission's order issued April 4, 1962, as amended on January 14, 1963, in Docket No. G-1895 and the Commission's order issued June 12, 1963, in Docket Nos. G-18337 and G-18538, all as more fully set forth in the application to amend.

Applicant requests in Docket No. G-1895 that the order of April 4, 1952, as amended, be further amended by deleting the volumetric limitations on annual and daily deliveries of natural gas to Arizona Public Service Company (Public Service) for resale to Salt River Project Agricultural Improvement and Power District (Salt River) for use as fuel in the latter's Kyrene electric generating plant. In Docket Nos. G-18337 and G-18538 Applicant requests that the order of June 12, 1963, be amended by clarifying the volumetric limitations on deliveries of natural gas to Public Service and El Paso Electric Company (El Paso Electric) and by authorizing in Docket No. G-18538 an increase in delivery limitations on El Paso Electric.

The order of April 4, 1952, as amended, in Docket No. G-1895 authorized Applicant to construct and operate certain facilities necessary to sell and deliver gas to Public Service for resale to Salt River for use as fuel in the latter's Kyrene plant. Said order, as amended, limited daily and annual deliveries of natural gas to 25,000 Mcf and 3,502,000 Mcf, respectively.

The order of June 12, 1963, issued in Docket No. G-18337 and G-18538 authorized Applicant to construct and operate certain facilities necessary for the direct sale and delivery of natural gas to Public Service for use as fuel in the latter's Ocotillo Power Plant located near Phoenix, Arizona, and the direct sale and delivery of natural gas to El Paso Electric for use as fuel in the latter's Newman Power Plant located near El Paso, Texas. Ordering paragraph (C) of said order imposed the following condition:

(C) The facilities authorized in Docket No. G-18337 shall not be used to transport in excess of an annual net increase of 12,300,000 Mcf of

natural gas over the 1959 annual volumes transported and delivered by Applicant to Arizona Public Service Company. Likewise, the facilities authorized in Docket No. G–18538 shall not be used to transport in excess of an annual net increase of 2,500,000 Mcf of natural gas over the 1959 annual volumes transported and delivered by Applicant to El Paso Electric Company.

The application shows that electric energy requirements of the Phoenix, Arizona, area are supplied by an interconnected system of power plants owned by Public Service and Salt River. Applicant sells gas to Public Service for: (1) use as fuel in Public Service's Ocotillo, Phoenix and Saguaro plants, and (2) resale to Salt River for use as fuel in Salt River's Aqua Fria, Cross Cut and Kyrene plants. The above-quoted condition provides for an annual net increase in deliveries of 12,300,000 Mcf over deliveries to Public Service during the year 1959. Applicant states that such 1959 deliveries totaled 34,948,879 Mcf and that it, therefore, construes the volumetric limitation on deliveries to Public Service to be 47,248,879 Mcf per year. Applicant states that it is in doubt whether this limitation relates only to the deliveries of natural gas to Public Service for use by the latter in its own plants, or whether said limitation is to include, as Applicant has done in its determination, the resale volumes to Salt River for use in the latter's plants, including the Kyrene plant. Applicant requests, therefore, that the subject order be clarified to specify 47,248,879 Mcf as the annual volumetric limitation.

Further, Applicant states that the above limitation of 47,248,879 Mcf includes deliveries to Public Service for resale to Salt River for use at the Kyrene plant and, in order to allow freedom in load-shifting among Salt River's plants, Applicant requests that the daily and annual volumetric limitation imposed in Docket No. G–1895 be deleted.

The application further shows that electric energy requirements of the El Paso, Texas, area are supplied by El Paso Electric. The foregoing condition quoted from the order of June 12, 1963, provides, in Docket No. G–18538, for an annual net increase in deliveries of 2,500,000 Mcf over deliveries to El Paso Electric during the year 1959. Applicant states that such 1959 deliveries totaled 11,881,939 Mcf and that it, therefore, construes the volumetric limitation on deliveries to El Paso Electric to be 14,381,939 Mcf per year. The application indicates that deliveries to El Paso Electric during 1962 aggregated 14,379,930 Mcf and that the projected requirements for 1963 and 1967 are estimated at 15,608,457 Mcf and 21,363,892 Mcf, respectively. The existing contract between Applicant and El Paso Electric provides for a maximum annual volume of 25,793,250 Mcf by the year 1966, and Applicant states that annual deliveries to El Paso Electric will approach these contract levels.

Therefore, Applicant requests herein that the order of June 12, 1963, be amended to state specifically the annual delivery limitation to El Paso Electric and requests that such limitation be increased to the contract maximum for 25,793,250 Mcf.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on September 11, 1963 (28 F.R. 9890). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued April 4, 1952, as amended on January 14, 1963,

in Docket No. G–1895 and the Commission's order issued June 12, 1963, in Docket Nos. G–18337 and G–18538 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued April 4, 1952, as amended on January 14, 1963, in Docket No. G–1895 be and the same is hereby further amended by deleting therefrom the volumetric limitations upon deliveries of natural gas by Applicant to Arizona Public Service Company for resale to Salt River Project Agricultural Improvement and Power District for use as fuel in the latter's Kyrene electric generating plant, as hereinbefore described and as set forth in the application herein.

(B) Ordering paragraph (C) of the Commission's order issued June 12, 1963 in Docket Nos. G–18337 and G–18538 is hereby amended to read as follows:

(C) The facilities authorized in Docket No. G–18337 shall not be used to transport natural gas which, on an annual (calendar year) basis, when taken with the volumes of natural gas transported and delivered by Applicant to Arizona Public Service Company for use in its Phoenix and Saguaro Power Plants and transported and delivered by Applicant to Arizona Public Service Company for delivery to Salt River Project Agricultural Improvement and Power District for use in the latter's Kyrene, Cross Cut and Agua Fria Power Plants, under Applicant's Rate Schedule X-7, FPC Gas Tariff, Third Revised Volume No. 2, shall exceed the volume of 47,248,879 Mcf (at 14.73 psia). Likewise, the facilities authorized in Docket No. G–18538 shall not be used to transport natural gas which, on an annual (calendar year) basis, when taken with the volumes of natural gas transported and delivered by Applicant to El Paso Electric Company for use in its Rio Grande Power Plant, shall exceed the volume of 25,793,250 Mcf (at 14.73 psia).

(C) In all other respects said orders shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP64–7

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 10, 1963)

On July 10, 1963, El Paso Natural Gas Company (Applicant) filed an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities and the sale and delivery of natural gas through those facilities to Wyoming Industrial Gas Company for resale and general distribution in Kemmerer, Wyoming, and its environs. The proposed facilities to consist of a measuring and regulating station located in Lincoln County, Wyoming adjacent to Applicant's 22-inch main line.

The estimated cost of Applicant's facilities is $8,400 and it is to be financed out of current working funds.

The proposed sales are for both firm and interruptible gas in accordance with effective Rate Schedules DS–1 and I–1, of Applicant's FPC Gas Tariff, Original Volume No. 3.

The estimated annual and peak-day requirements for the fifth year are 209,558 Mcf and 1,515 Mcf respectively.

Pursuant to due notice, a public hearing was held in Washington, D.C., on September 24, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of January 11, 1944, in Docket No. G–288 (4 FPC 486).

(2) The facilities hereinbefore described, as more fully described in the application, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation of natural gas by Applicant are required by the public convenience and necessity and a certificate therefore should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30 (c)(1) of the Commission Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, El Paso Natural Gas Company, to construct and operate the proposed facilities and to transport and sell natural gas as hereinbefore described, all as more fully described in the application, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulation.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the transportation and delivery of natural gas authorized in paragraph (A) above shall commence as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP64-13

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 10, 1963)

On July 16, 1963, Natural Gas Pipeline Company of America (Applicant) filed its so-called Amended Application for Certificate of Public Convenience and Necessity in Docket No. CP63-264. Ths filing in fact covers only a part of the original application in Docket No. CP63-264 and is being treated as a new application assigned the designation Docket No. CP64-13.

The authorization requested herein covers the acquisition of certain underground storage rights and the construction and operation of pipeline and well facilities for evaluation of the characteristics and capabilities for development of an underground natural gas storage reservoir described as the Keota Storage Area, located in Washington County, Iowa, all as more fully set forth in said application.

The facilities proposed include:

(1) 1.1 miles of 10-inch lateral pipeline extending from Applicant's main transmission system to the proposed Keota Storage Area;

(2) 1.2 miles of 6-inch gathering line in the same area;

(3) 6 injection-withdrawal and 8 observation wells; and other appurtenant facilities.

The estimated cost of the project including cushion gas and acquisition of storage rights is $1,086,550, to be financed from funds on hand. Applicant proposes to inject approximately 1,500,000 Mcf of natural gas into the St. Peter formation in the Keota Storage Area as the initial stage of its development program.

Applicant states that the proposed storage project, if successful, will provide an economical means of augmenting Applicant's ability to meet the increased peak-day requirements of its customers and that further authorization to so utilize the proposed storage will be requested upon completion of the initial testing and development program.

Pursuant to due notice, a public hearing was held in Washington, D.C., on September 26, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 13, 1942, in Docket No. G-235 (3 FPC 830).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, will be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the acquisition, construction and operation thereof by Applicant are

subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed acquisition, construction and operation of facilities are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms set forth in paragraphs (a), (b), (c)(3), (c)(4), (d)(2), (d)(3) and (e) of Section 157.20 of said Regulations.

(6) The time within which the facilities authorized hereinafter should be acquired, completed and placed in actual operation as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations should be fixed at one year from the date on which this order issues.

(7) The maximum inventory of natural gas stored in the Keota Storage Area should be limited to 1,500,000 Mcf at 14.65 psia.

(8) Applicant should be required to submit to the Commission quarterly reports containing information on the proposed testing operations as specified hereinafter.

(9) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30 (c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Natural Gas Pipeline Company of America, to acquire, construct and operate the facilities hereinbefore described, as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms set forth in paragraphs (a), (b), (c)(3), (c)(4), (d)(2), (d)(3) and (e) of Section 157.20 of said Regulations.

(C) The time within which the facilities authorized by paragraph (A) above shall be acquired, completed and placed in actual operation as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act is hereby fixed at one year from the date on which this order issues.

(D) The maximum inventory of natural gas stored in the Keota Storage Area is hereby limited to 1,500,000 Mcf at 14.65 psia.

(E) Applicant shall submit to the Commission quarterly reports on proposed testing operations containing the following information:

(a) The volumes of natural gas injected into the St. Peter formation;

(b) The volumes of injected natural gas present in the St. Peter formation;

(c) The amount of leakage (if any) from the St. Peter formation;

(d) The maximum daily injection volume experienced during the reporting interval:

(e) The shut-in wellhead pressure for each well;
(f) The subsea elevation of the water level in each well;
(g) The location and extent of the gas bubble (or bubbles) plotted on a structure map of the storage reservoir; and
(h) A brief discussion of current operations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

NORTHERN INDIANA PUBLIC SERVICE COMPANY, DOCKET NO. CP63-325

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued October 10, 1963)

On May 27, 1963, as amended on July 12, 1963, Northern Indiana Public Service Company (Applicant) filed in Docket No. CP63-325 an application pursuant to Section 7 (a) of the Natural Gas Act for an order of the Commission directing American Louisiana Pipe Lines Company (American) to establish physical connection of its transmission facilities with the proposed facilities of and to sell and deliver gas to Applicant for distribution and resale to certain communities in the State of Indiana, and their environs, all as more fully set forth in the application, as amended.

Applicant requests the Commission to direct American to establish two new delivery points on existing transmission lines for the delivery of additional quantities of natural gas to provide initial service by Applicant to the communities and environs of Wolcottville, LaGrange County; Rome City, Noble County; Berne, Adams County; and Geneva, Adams County, all located in the State of Indiana. American presently maintains a delivery point at LaGrange County, Indiana, from which Applicant proposes delivery of additional gas for initial service to the community of Howe and its environs, located in LaGrange County. The proposed new delivery point to serve Wolcottville and Rome City would be located just east of the community of LaGrange, while the second delivery point would be located just south of Berne to provide gas for service to Berne and Geneva. Applicant estimates that it will need the following volumes of natural gas from American to meet peak-day and annual requirements in each of the indicated areas in the third year of operation: The above-estimated volumes of gas required to serve the

Area	Peak-day	Annual
Howe	511	60,693
Wilcottville-Rome City	786	91,471
Berne-Geneva	2,218	250,324
Totals	3,515	402,488

Howe area are in addition to the 1,495 Mcf Applicant now receives daily from American pursuant to existing Commission authority.

Applicant proposes to construct, own and operate all of the necessary transmission and distribution facilities for service to the above-named communities at an estimated cost of $1,059,726 to be financed from cash on hand. Upon the granting of the application, it will be necessary for American to

construct and establish the two new delivery points which are estimated to cost $20,000 each. The Howe and Wolcottville-Rome City systems will become part of Applicant's existing overall LaGrange System, while the Berne-Geneva systems will become part of Applicant's existing overall Fort Wayne Division.

On June 28, 1963, as supplemented on August 5, 1963, American filed an answer to the subject application stating that it did not object to furnishing the proposed service.

It appears that Applicant has received franchises from the incorporated communities of Geneva, Wolcottville and Berne. The Public Service Commission of Indiana has granted Applicant the necessary authority to render gas distribution to the unincorporated communities of Rome City and Howe in addition to the rural territory adjacent to the communities of Wolcottville, Berne, and Geneva.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on August 29, 1963, (28 F.R. 9489), as amended and published in the Federal Register on September 19, 1963, (28 F.R. 10282). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

(1) American Louisiana Pipe Line Company, a Delaware corporation having its principal place of business in Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) Applicant, Northern Indiana Public Service Company, is an Indiana corporaton and is legally authorized to do business in the State of Indiana, the only state in which it operates.

(3) It is necessary and desirable in the public interest that American be directed to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant and to sell and deliver up to 3,515 Mcf of natural gas per day in the third full year of operation, as set forth in the application, as amended, and as hereinafter ordered and conditioned.

(4) Applicant should be prepared to receive natural gas from American within one year from the date of issuance of this order, and in addition should execute a service agreement with American in accordance with the Commission's Regulations under the Natural Gas Act.

(5) American should provide the proposed service at a minimum inlet pressure of 150 psig, and should submit a statement showing the total cost of all its facilities installed.

(6) The requirement that American serve Applicant, as proposed, will not place any undue burden upon American nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) American Louisiana Pipe Line Company be and it is hereby directed to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant, Northern Indiana Public Service Company, and to sell and deliver up to 3,515 Mcf of natural gas per day to the latter, its estimated third year peak-day requirement, all as hereinbefore described and as set forth in the application herein.

(B) Applicant shall be prepared to receive natural gas from American within one year from the date of issuance of this order, and in addition

execute a service agreement with American in accordance with the Commission's Regulations under the Natural Gas Act.

(C) Applicant shall provide the proposed service at a minimum inlet pressure of 150 psig, and submit a statement showing the total cost of all its facilities installed.

(D) American shall report to the Commission in writing the date of commencement of service to Applicant.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TRANSWESTERN PIPELINE COMPANY, DOCKET NO. CP63-290; NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP63-291

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND DISMISSING APPLICATION IN PART

(Issued October 10, 1963)

On April 25, 1963, and April 29, 1963, Transwestern Pipeline Company (Transwestern) in Docket No. CP63-290 and Northern Natural Gas Company (Northern) in Docket No. CP63-291, respectively, filed applications pursuant to Section 7(c) of the Natural Gas Act for certificates of public convenience and necessity authorizing the exchange of quantities of natural gas, and the construction and operation of facilities enabling such exchange, all as more fully represented in the applications.

The Applicants state that pursuant to an agreement dated April 12, 1963, Transwestern agrees to deliver to Northern an average daily volume of 30,000 Mcf of natural gas for an initial period of one year with the parties exercising their best efforts to increase such average daily volume to 40,000 Mcf per day. Northern shall have the option to take like volumes for an additional year immediately following final delivery of the initial volumes. Beginning two years after date of first delivery by Transwestern, Northern would begin the redelivery of natural gas to Transwestern in the Permian Basin Area. The redelivery of gas would extend for as long a period as may be required for Northern to redeliver a total volume of gas equal to the volume delivered by Transwestern. The parties contemplate that the period of redelivery would approximate the length of the original delivery period from Transwestern to Northern. Delivery to Northern would be at a point where the parties' existing lines cross in Hutchinson County, Texas, and in Beaver County, Oklahoma, and at such other points as may be mutually desired by the parties.

Northern seeks authority at this time to construct a side tap on its existing 30-inch pipeline in Hutchinson County, Texas, and to construct and operate the necessary exchange facilities for redelivery to Transwestern approximately two years hence on the theory that operating characteristics of the two pipeline systems may be somewhat different then and it is not possible at this time to select the most advantageous point or points of redelivery. However, Northern has stated, subsequent to the filing of its application, that it has no objection to the Commission's not granting its blanket authority request for the future redelivery facilities in this order.

Such an exchange authorization will allow Northern to better balance the takes of natural gas from its various sources of supply during the exchange

period. It will not increase Northern's salable capacity. The deliveries by Transwestern will aid in alleviating the present oversupply of natural gas on its system and will assist Northern in balancing purchase requirements with market volumes.

Transwestern estimates that the installation of its necessary metering and related facilities will cost $33,780. Northern presently proposes to construct its side tap at an estimated cost of $1,800.

Temporary authorization for the construction and service requested in these dockets, as conditioned, was granted to Applicants by letters dated July 25, 1963.

Pursuant to due notice, a public hearing was held in Washington, D.C., on October 1, 1963, respecting the matters involved in and the issues presented by the applications consolidated herein. No petition to intervene or protest to the granting of the applications has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicants, Transwestern Pipeline Company, a Delaware corporation having its principal place of business in Houston, Texas, and Northern Natural Gas Company, likewise a Delaware corporation having its principal place of business in Omaha, Nebraska, are both "natural-gas companies" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities proposed to be constructed and put in operation, as more fully described in the applications in this proceeding, are to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the exchange and delivery of natural gas proposed by Applicants will likewise be in interstate commerce, subject to the jurisdiction of the Commission and both are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicants are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the exchange and delivery of natural gas by Applicants are required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificates issued hereinafter and the rights granted thereunder be conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(4) and (e) of Section 157.20 of such Regulations.

(6) That portion of Northern's application in Docket No. CP63-291 requesting authorization to construct and operate unspecified facilities for future redelivery of natural gas to Transwestern should be dismissed.

(7) Public convenience and necessity require that the certificates issued hereinafter authorizing the exchange and delivery of natural gas be limited to a one-year period.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of

record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Certificates of public convenience and necessity be and the same are hereby issued authorizing Applicants, Transwestern Pipeline Company and Northern Natural Gas Company, to construct and operate certain proposed facilities, and to exchange and deliver natural gas, all as more fully described in the respective applications herein, upon the terms and conditions of this order.

(B) That portion of Northern Natural Gas Company's application in Docket No. CP63-291 seeking authorization to construct and operate unspecified facilities for future redelivery of natural gas to Transwestern Pipeline Company be and it is hereby dismissed.

(C) The certificates issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(4) and (e) of Section 157.20 of such Regulations.

(D) The certificates issued by paragraph (A) above authorizing the exchange and delivery of natural gas shall be limited to a one-year period.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TRUNKLINE GAS COMPANY, DOCKET NO. CP63-215

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 10, 1963)

On July 2, 1963, Trunkline Gas Company (Trunkline) filed a petition to amend the Commission's order issued on May 14, 1963, in Docket No. CP63-215. The order of May 14 authorized, among other things, the delivery of an additional 29,941 Mcf of natural gas per day to existing customers.

It appears that three of the customers originally included in the application who had underestimated their requirements, and eight customers who had not previously requested increases, now require increased contract demands to meet their peak day requirements during the coming winter. These increased contract demands are as follows:

Customer	*Mcf*
Somerville, Tenn	125
Hickman, Ky	250
Vienna, Ill	100
Northern Indiana Public Service Company	5,000
Colfax, La	100
Union Gas Company	172
Trimble, Tenn	45
Obion, Tenn	189
Troy, Tenn	38
Lake County Utility District	590
McLeansboro, Ill	350

The increases in contract demand for the eleven customers total 6,959 Mcf, which Trunkline proposes to serve with existing facilities.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued May 14, 1963, in Docket No. CP63-215 be amended as hereinafter ordered.

The Commission orders:

(A) Trunkline's total contract demand for the eleven customers as hereinbefore set forth and as more fully set forth in the subject application to amend, is hereby increased by the aggregate amount of 6,959 Mcf.

(B) In all other respects, said order issued May 14, 1963, shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

CITY OF PHILIPSBURG, PROJECT NO. 1269

ORDER ACCEPTING SURRENDER OF LICENSE (TRANSMISSION LINE)

(Issued October 11, 1963)

Application was filed on July 30, 1962 by City of Philipsburg, Montana, licensee for transmission line Project No. 1269, for surrender of its license for the line affecting lands of the United States within the Deerlodge National Forest and other lands of the United tSates in Granite County, Montana. The application states that the line has been removed.

The Department of the Interior has advised that it has no objection to Commission acceptance of surrender of the license.

The Forest Service, Department of Agriculture has advised that the National Forest lands involved have been restored to a condition satisfactory to the Service.

Annual charges under the license have been paid through November 19, 1959.

The Commission finds:

Acceptance of surrender of the license for transmission line Project No. 1269 is appropriate, as hereinafter provided.

The Commission orders:

Surrender of the license for transmission line Project No. 1269 is hereby accepted, effective as of November 19, 1959.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

THE STEVENS COUNTY OIL & GAS COMPANY, DOCKET NO. G-14824

ORDER ACCEPTING OFFER OF SETTLEMENT AND TERMINATING PROCEEDING

(Issued October 11, 1963)

On June 26, 1963, The Stevens County Oil & Gas Company (Stevens County) filed a motion in the above-entitled proceeding containing an offer of settle-

ment. This proceeding relates to the jurisdictional sale of natural gas to Northern Natural Gas Company (Northern) by Stevens County, under its FPC Gas Rate Schedule No. 20, as a signatory co-owner of a one-quarter working interest in a 640 acre unit operated by Cities Service Production Company (Cities Service) in the Hugoton Field, Morton County, Kansas.

The offer of settlement by Stevens County to accept, among other things, a settlement rate of 11¢ per Mcf is similar to the one approved by the Commission in its order issued December 26, 1962 in *Cities Service Production Company*, Docket No. G–9510, *et al.*, 28 FPC 1114. At the time of the *Cities Service* settlement, Cities Service, like Stevens County, collected 12.0¢ per Mcf for its share of the gas subject to refund.

In support of its offer of settlement, Stevens County states that by letter of January 25, 1963, Cities Service advised it of the settlement covering Cities Service's interest in the said unit and inquired whether Stevens County desired to have its interest included under the settlement, to which Stevens County replied in the affirmative. Stevens County further states that it has refunded to Northern the sum of $187.70, plus interest of $13.28, representing in full Stevens County's obligation to refund under the terms of the said *Cities Service* rate settlement as evidenced by Stevens County's enclosure of Northern's letter of June 10, 1963.

Since the instant settlement proposal of Stevens County is identical to that accepted in *Cities Service*, we believe that Stevens County should be accorded the same treatment and should be allowed to settle under the same terms and conditions of the aforementioned *Cities Service* settlement. Our action herein should not be construed, nor may it be, as constituting approval of any future rate increase, if any, that may be filed under the subject rate schedule, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate proceedings, involving Stevens County's rates and rate schedules.

The Commission finds:

The proposed settlement of the subject proceeding on the basis described herein, as more fully set forth in Stevens County's motion filed June 26, 1963 in Docket No. G–14824, is in the public interest and it is appropriate in carrying out the provisions of the Natural Gas Act that it be granted as hereinafter ordered.

The Commission orders:

(A) The settlement of this proceeding on the basis of the settlement proposal contained in Stevens County's motion filed June 26, 1963 in Docket No. G–14824 is hereby approved and made effective subject to the following terms and conditions.

(B) The settlement rate of 11.0¢ per Mcf for The Stevens County Oil & Gas Company's FPC Gas Rate Schedule No. 20 shall be effective as of October 1, 1962, which is the same effective date ordered for Cities Service Production Company's FPC Gas Rate Schedule No. 70 under the said *Cities Service* settlement order.

(C) Within 15 days from the date of the issuance of this order, Stevens County shall file its acceptance of this order, and within 90 days from the date of issuance of this order Stevens County shall make such filings under its rate schedule as are required to make effective the terms of the settlement proposal.

(D) The rate suspension proceeding in Docket No. G–14824 is hereby terminated.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

DAIRYLAND POWER COOPERATIVE, MINNKOTA POWER COOPERATIVE, INC., SOUTH CENTRAL RURAL ELECTRIC COOPERATIVE, INC., DOCKET NO. E-7113

ORDER PERMITTING INTERVENTION AND PRESCRIBING REVISED PROCEDURE

(Issued October 14, 1963)

On August 2, 1963, the Public Service Commission of the State of North Dakota intervened in the above-entitled proceeding by filing a Notice of Intervention. On August 30, 1963, petitions seeking leave to intervene were filed by (1) Honorable Orville L. Freeman, Secretary of Agriculture (Secretary) and (2) a "Committee of Rural Electric Cooperatives" (Committee). The Committee lists as joint petitioners approximately 300 Statewide Associations of Electric Cooperatives and rural electric cooperatives. We shall treat the Committee, the listed Statewide Associations and cooperatives and all additional such associations and cooperatives as respond to the Committee's solicitation as a single petitioner upon whom service can be made at:

Special Committee on F.P.C. Jurisdiction
% National Rural Electric Cooperative Association
2000 Florida Avenue, N.W.
Washington 9, D.C.

and whose attorney of record is:

Wise and Potamkin
615 Perpetual Building
Washington 4, D.C.

On September 3, 1963, the 27 rural electric cooperative members of Dairyland Power Cooperative filed a joint petition to intervene. We shall likewise treat these joint petitioners as a single petitioner (Dairyland Member Cooperative) upon whom service can be made through its attorney:

Wheeler, Van Sickle, Day & Goodman
One West Main Street
Madison, Wisconsin

The Secretary of Agriculture has general direction and supervision of the administration of the Rural Electrification Act under which the three cooperatives involved in this proceeding are financed. The Committee represents associations which are interested, as is the Secretary of Agriculture, in the question whether a cooperative association is a "public utility" within the meaning of Part II of the Federal Power Act. Dairyland Member Cooperatives is also interested in this issue and further is made up of wholesale purchasers from a party to the proceeding. We believe the Secretary, the Committee and Dairyland Member Cooperatives have shown an interest of such nature that their participation in this proceeding may be in the public interest. It should be stressed, however, that this proceeding concerns the ownership or operation of facilities and consequent possible "public utility" status of only the three cooperatives named in the original order issued July 22, 1963, in this proceeding. It is contemplated that intervenors, who are similarly situated, will urge in support of respondents' position a number of considerations applicable in principle to themselves and respondents without relating such considerations to the various systems and operations of each intervenor through the development of detailed and specific facts con-

cerning its particular system and operation. As noted this proceeding will be dispositive of the jurisdictional status of respondents, only.

The requests for extension of time in the petitions to intervene were recognized by the Secretary of the Commission when on September 16, 1963, he granted a 45-day adjournment of the original hearing schedule. Since that time, Minnkota Power Cooperative, Inc. (Minnkota) has filed a motion requesting several alternative changes in the hearing schedule. Among other matters, Minnkota proposes that the Commission staff be required to present its direct case before any filing by other parties. Although the requirement of simultaneous filing of prepared testimony has demonstrated its merits in other proceedings, we shall adopt Minnkota's suggestion in this proceeding, in the interest of expediting the proceeding. We are therefore directing staff to proceed first and to file prepared testimony as an opening presentation and are fixing a new schedule for the testimony of respondents and intervenors. The oral hearing will commence on December 10 as presently scheduled.

In affording respondents and intervenors opportunity to present evidence subsequent to the staff's opening case, it is contemplated that the procedure herein adopted will enable respondents and intervenors to present prior to the commencement of the hearing all engineering, financial, socio-economic or other data upon which they propose to rely in support of their position. Examination of the pleadings herein indicates that respondents and intervenors wish to present such data. It is contemplated that further testimony by the staff in rebuttal to the evidence of respondents and intervenors may be proffered subsequent to cross-examination herein and that the Examiner will rule thereon within the authority delegated under the Rules of Practice and Procedure.

We have considered all of the material in the petitions to intervene and Minnkota's motion. Our action herein makes unnecessary, nor is it appropriate, to answer many of the claims and arguments contained in these papers. However, in light of the numerous comments stating that the Commission has not regulated cooperatives in the past, it is appropriate that we clarify the statement in our order of July 22, 1963 referring to our "finding in *Southwestern Power Administration*, Docket No. E-6975, 27 FPC 895, 898 (1962) that Associated Electric Cooperative, Inc. and several other cooperatives are 'public utilities.'"

The Commission was referring to the undisputed fact that in numerous proceedings we have made express findings that certain cooperatives were public utilities within the meaning of the Federal Power Act. See for example, 6 FPC 1037 (1947), 8 FPC 869 (1949), 9 FPC 1298 (1950), 10 FPC 864 (1951), 11 FPC 1543 (1952), 14 FPC 941 (1955), 15 FPC 1139 (1956), 17 FPC 578 (1957), 24 FPC 361 (1960) and 27 FPC 922 (1962).

We wish to make it clear that the purpose of this hearing is to re-examine this question of jurisdiction on the basis of the record in this proceeding and that we do not consider the cited cases as necessarily controlling our decision herein.

The Commission further finds:

The following revised schedule for the service of testimony, motions to strike prepared testimony and answers to motions to strike prepared testimony is reasonably necessary and appropriate to carry out the provisions of the Federal Power Act.

The Commission orders:

(A) The Secretary, the Committee, and Dairyland Member Cooperatives are hereby permitted to intervene as individual parties in this proceeding, subject to the rules and regulations of the Commission: *Provided, however,* That their partcipation shall be limited to matters affecting asserted rights and interests set forth in their petitions for leave to intervene insofar as they may relate to the "public utility" status of the three respondents named in the Commission's order of July 22, 1963, herein: and *Provided, further,* That the admission of such intervenors shall not be construed as recognition by the Commission that such petitioners might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(B) The following revised schedule for the service of testimony, motions to strike prepared testimony, and answers to motions to strike prepared testimony, is ordered:

November 8, 1963	Service of opening testimony by Commission Staff.
December 2, 1963	(1) Service of testimony by all other parties, including intervenors. (2) Service of motions to strike staff testimony by such parties, including intervenors.
December 6, 1963	(1) Service of answer by Commission Staff to motions to strike. (2) Service of motions to strike directed to testimony filed December 2, 1963, by all parties, including intervenors.
December 10, 1963	(1) Service of answers to motions to strike filed December 6, 1963. (2) Cross-examination to commence upon the Examiner's rulings on motions and answers

(C) Except as herein granted, all requests, prayers, and motions set forth in the petitions to intervene filed by the Secretary, the Committee, and Dairyland Member Cooperatives, and in the motion filed by Minnkota, are hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

DUKE POWER COMPANY, DOCKET NO. E-7121

ORDER AUTHORIZING ACQUISITION AND MERGER OR CONSOLIDATION OF FACILITIES

(Issued October 14, 1963)

Duke Power Company (Duke), incorporated under the laws of the State of New Jersey and qualified to do business as a foreign corporation in the States of North Carolina and South Carolina, with its principal place of business in Charlotte, North Carolina, filed an application on August 9, 1963 as amended on September 23, 1963, for an order, pursuant to Section 203 of the Federal Power Act, authorizing it to acquire and merge or consolidate with its own facilities subject to the jurisdiction of the Commission, all of the facilities of the Belton Light and Power Company (Belton), incorporated under the laws of the State of South Carolina and doing business in that state with its principal place of business in Belton, South Carolina.

Duke is engaged principally in the business of generating, purchasing, transmitting, distributing and selling electric energy in the Piedmont section of North Carolina and South Carolina. The company is also engaged in the operation of local transportation systems and in water supply systems in portions of its electric service area. The company had net plant of $617,000,000 as of May 31, 1963, and it received total operating revenues of $197,900,000 in the twelve months ending May 31, 1963.

Belton is a small electric utility which operates in the eastern part of Anderson County, South Carolina, principally in the towns of Belton and Williamston. The company had net utility plant of $470,000 as of December 31, 1962, and it received total operating revenues of $622,000 in the year 1962.

Pursuant to an Agreement and Plan of Reorganization dated as of May 1, 1963 Duke will acquire all the outstanding shares of Belton common stock (2000 shares) in exchange for 26,000 shares of Duke common stock. Belton has no other outstanding securities. After the stock acquisition, Belton's property will be conveyed to Duke and Belton will be dissolved. The application indicates that the exchange basis was arrived at through negotiations between Duke and the stockholders of Belton.

The principal facilities to be transferred are (1) Belton's 3,600 kw Holiday Bridge hydroelectric plant on the Saluda River, (2) Belton's office building in Belton, South Carolina, (3) warehouses and garages used in connection with operations, (4) substation lots used in connection with transmission lines (5) approximately 9 miles of 22.5 kv transmission lines extending from the Holiday Bridge hydroelectric plant to Willimston, and (6) a distribution system in the towns of Belton and Williamston.

Duke proposes to apply for a license for the Holiday Bridge hydroelectric plant subsequent to the completion of the plan of reorganization.

The Belton service territory is entirely surrounded by Duke's service area, the two systems are interconnected and Duke has been supplying a major part of Belton's energy requirements. It appears that any further necessary integration of the two systems can be easily accomplished. The application states that Duke will continue existing rates in Belton's service area which are presently the same as Duke's rates and will expand the capacity of the system to meet future requirements in the Belton service area.

The 26,000 shares of Common Stock which Duke proposes to issue are recorded on Duke's books in Account 124 at a total acquisition cost of $1,576,250. For the acquisition of Belton's Common Stock, Duke proposes to debit Account 123, Investment in Associated Companies with $1,576,250 and credit Account 124 with the same amount. This amount is $973,646 in excess of Belton's net assets of $602,604 and, therefore an acquisition adjustment of $973,646 will be created on Duke's books whch it proposes to eliminate by a debit to Account 216, Unappropriated Earned Surplus.

Written notice of the application has been given to the North Carolina Utilities Commission and the South Carolina Public Service Commission and to the Governor of each of those States. Notice was also published in the Federal Register on August 23, 1963 (28 F.R. 9333), stating that any person desiring to be heard or to make any protest with reference to the application should file a petition or protest on or before September 5, 1963, with the Federal Power Commission, Washington 25, D.C. No protest, petition, or request to be heard in opposition to the granting of the application has been received.

By order of July 31, 1963 The South Carolina Public Service Commission approved Duke's acquisition of Belton's Common Stock and the merger of Belton into Duke.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued August 1, 1962, *Duke Power Company*, Docket No. E–7041. (28 FPC 255).

(2) By the proposed transaction, as described above, Duke will acquire the stock of Belton and merge or consolidate its facilities subject to Commission jurisdiction with those of Belton, another person, within the meaning and subject to the requirements of Section 203 of the Act.

(3) The proposed acquisition and merger or consolidation by Duke of the facilities of Belton with its own facilities will be consistent with the public interest as expressed in the Act, for the reasons set forth in the recital above.

The Commission orders:

(A) The proposed stock acquisition and merger or consolidation by Duke of its facilities with the facilities of Belton, as described above, is authorized and approved upon the terms and conditions as specified in the application, as amended, subject to the provisions of this order.

(B) This authorization shall expire unless the transaction herein authorized is consummated within 90 days from the date of issuance of this order.

(C) Duke shall submit an application for license for constructed project in accordance with the Regulations of this Commission under the Federal Power Act within 180 days from the consummation of the merger.

(D) Duke shall record the transaction herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees. Duke shall dispose of the Electric Plant Acquisition Adjustment arising from the proposed transaction by a debit to Account 216, Unappropriated Earned Surplus.

(E) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuations, estimates or determinations of cost, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

PACIFIC POWER & LIGHT COMPANY, DOCKET NO. E–7123

ORDER AUTHORIZING ASSUMPTION OF LIABILITY AS GUARANTOR OF INDEBTEDNESS

(Issued October 14, 1963)

Pacific Power & Light Company (Applicant), incorporated under the laws of the State of Maine and doing business as a qualified foreign corporation in the States of California, Oregon, Washington, Wyoming, Montana and Idaho, with its principal place of business at Portland, Oregon, filed an application on August 22, 1963, for an order pursuant to Section 204 of the Federal Power Act, authorizing the Applicant to assume liability as guarantor of promissory notes or other evidence of indebtedness or obligations issued to commercial banks by persons to finance costs of constructing and installing extensions of

electric or water service lines and costs of acquisition and installation by customers of the Applicant of wiring modernization or improvements and wired-in electrical equipment and appliances, the aggregate principal amount of all such obligations not to exceed $3,000,000, at any one time.

Applicant is engaged principally in the business of generating, purchasing, transmitting, distributing, and selling electric energy in California, Oregon, Washington, Wyoming, Montana and Idaho. Applicant also supplies water, steam-heating and telephone service in various communities in its service area.

According to the application, the Applicant proposes to assume liability as guarantor of promissory notes or other evidences of indebtedness where the purposes of such notes or obligations are as follows:

(1) To finance payment by property owners to the Applicant of part of the cost of constructing and installing extensions of the Applicant's electric or water service lines required in order to supply adequate electric or water utility service to the properties of such property owners under circumstances which are such that under applicable rules, regulations and tariffs the property owners or other customers to be furnished service by the line extension would be required, as a condition to obtaining the new service, to make an advance payment or payments to the Applicant.

(2) To finance payment by property owners of the cost of acquisition and installation in and about houses and other residential buildings, owned partly or wholly by such owners and being furnished electric service by the Applicant, of wiring modernization or improvements, or of equipment and appliances for the utilization of electricity (of such kind as to necessitate more or less permanent wiring-in to the structure or other attachment to the structure or land), along with any necessary wiring modification or changes for the installation and operation of such equipment and appliances.

(3) To finance payment by property owners or their tenants of the cost of acquisition and installation in and about buildings and structures used principally for a commercial purpose or purposes, and to which the Applicant at the time is furnishing electric utility service through one or more customer accounts, of wiring modernization or improvements, or of equipment and appliances for the utilization of electricity (of such kind as to necessitate more or less permanent wiring-in to the structure or other attachment to the structure or land), along with any necessary wiring modifications or changes for the installation and operation of such equipment and appliances.

Under the financing arrangements, the maximum liability to be assumed by the Applicant with respect to any such note, or other evidence of indebtedness or obligation for any of the above-described purposes, shall not exceed $5,000 with respect to the purpose numbered (1) above; $1,200 for the purpose numbered (2) above; and $2,500 for the purpose numbered (3) above. Each obligation made or entered into for the purpose numbered (1) above shall be payable in monthly installments within a period not exceeding ten years from the date it becomes effective. Each obligation made or entered into for the purposes numbered (2) and (3) above shall be payable in monthly installments within a term or period not exceeding 60 months from the date it becomes effective. The aggregate principal outstanding balance of all such obligations for purposes numbered (1) above to which the Applicant, at any one time shall assume liability, shall not exceed $2,000,000 and the aggregate principal outstanding balances of all such obligations for purposes numbered (2) and (3) above with respect to which the Applicant at any one time may assume liability, shall not exceed $1,000,000. The face amount of said obligations will generally

vary in each case and the total amount outstanding will vary from time to time, but the aggregate will not exceed $3,000,000 at any one time.

According to the Applicant, the guarantee by the Company of notes, and other evidences of indebtedness and obligations of property owners and customers in its service areas to commercial banks to finance costs of line extensions, wiring modifications and modernizations, and for installation of wired-in electrical equipment and appliances will enable such customers and property owners to obtain the benefits of electric and water use and increased electrical use and correspondingly will result in the Company increasing its load and revenues. Further, the Applicant believes the purchase and installation by the Company's customers of electric space heating equipment, water heaters, permanent lighting fixtures and wiring improvements will improve the Company's competitive position with gas, oil and other fuels.

The Applicant further states, the maximum limits to which the Company could become obligated as guarantor of such notes, or other evidences of indebtedness or obligations, within the limits imposed as set forth above, would be small in relation to its total assets and liabilities and the Company believes its losses would be small in relation to the maximum limit of its liability as such guarantor. Before the Company would assume liability as guarantor of any such obligations, a purchaser's credit statement would be obtained and a credit analysis made of the principal obligor in each instance. The Company would not be required to repurchase any such obligations until payments thereon become at least 60 days delinquent.

Most large electric systems, for a number of years, have been active in promoting new and increased uses for electric energy through various campaigns and programs. This proposed program should be attractive to Applicant's customers as one transaction could cover the financing and preliminary planning and engineering of each extension or improvement. This is the first such program, however, to come before this Commission for approval and we note it could result in the granting of favors and other abuses. For that reason we find it necessary and appropriate to limit our authorization for new assumptions of liability as guarantor to a period of two years from the date of this order and further to provide that at the end of one year, the applicant shall file a report of its experience under this authorization, setting forth, among other matters, the number of loans it has been requested to endorse as guarantor, their geographic distribution on Applicant's system and the number of such requests it has rejected, together with its reasons therefor. We are not, however, limiting the length of the loan period of loans which Applicant may endorse during the year.

Written notice of the application has been given to the California Public Utilities Commission, the Public Utility Commissioner of Oregon, the Washington Public Service Commission, the Public Service Commission of Wyoming, the Board of Railroad Commissioners of Montana, and the Idaho Public Utilities Commission, and to the Governor of each of those States. Notice of application has also been given by publication in the Federal Register on September 5, 1963 (28 F.R. 9709), stating that any person desiring to be heard or to make any protest with reference to the application should on or before September 25, 1963, file with the Federal Power Commission, Washington 25, D.C., petitions or protests. No petition or protest or request to be heard in opposition to the granting of the application has been received.

The Commission further finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission, as

heretofore determined and set forth in the Commission's order issued March 28, 1963, *Pacific Power & Light Company*, in Docket No. E-7025.

(2) The proposed guarantee of promissory notes or other evidence of indebtedness by the Applicant will constitute an assumption of liability as guarantor in respect of a security of another person within the purview of Section 204 of the Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issue here involved is regulated by a State commission within the meaning of Section 204(f) of the Act, and the proposed issuance of securities, is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(4) The proposed assumption of liability as guarantor in respect of securities of other persons, as hereinafter authorized, will be for a lawful object, within the corporate purposes of the Applicant and compatible with the proper performance by the Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

The Commission orders:

(A) The proposed assumption of liability as guarantor in respect of securities of other persons, as described above, is hereby authorized, subject to the provisions of this order, *Provided, that* new liabilities may be assumed hereunder only during the period of two years from the date of this order.

(B) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of costs, or any matter whatsoever which is now pending or which hereafter may come before this Commission.

(C) The Applicant, in connection with its recording the assumption of liabilities as guarantor of promissory notes or other evidences of indebtedness, shall be guided by the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees, particularly General Instruction 15 thereof, Contingent Assets and Liabilities.

(D) Within 30 days from the first anniversary date of this order, the Applicant shall file with this Commission a report of its experience under this authorization, setting forth, among other matters, the number of loans it has been requested to endorse as guarantor, the geographic distribution of such requests, the number of such requests it has rejected, together with its reasons for such rejection.

(E) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect of any securities to which this order relates.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

SABINE RIVER AUTHORITY OF TEXAS AND SABINE RIVER AUTHORITY OF LOUISIANA, PROJECT NO. 2305

ORDER ISSUING LICENSE (MAJOR)

(Issued October 14, 1963)

Joint application was filed on January 29, 1962, and supplemented on February 14, 1963, by Sabine River Authority of Texas and Sabine River Author-

ity of Louisiana (Applicants) for a license under Section 4(e) of the Federal Power Act (Act) for proposed major Project No. 2305, known as the Toledo Bend Project, to be located on Sabine River in Newton, Sabine and Shelby Counties, Texas, and Sabine and DeSoto Parishes, Louisiana.

The proposed project is to be located some 156 river miles upstream from the mouth of the Sabine River at Sabine Lake on the Gulf of Mexico. The Sabine River has been used extensively in logging operations and for transportation by boats from its mouth to points upstream from the proposed project. The proposed project will also affect lands of the United States within the Sabine National Forest.

The Secretary of the Army and Chief of Engineers, in reporting on the application, have advised that the plans of the project structures were satisfactory insofar as the interests of navigation are concerned, and such plans were approved in accordance with the provisions of Section 4(e) of the Act.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project, certain special conditions in the interests of fish and wildlife and archeological survey and salvage work in the area involved.

The Department of Agriculture and the Forest Service, in reporting on the application, recommended for inclusion in any license for the project certain conditions for the protection and administration of the Sabine National Forest.

On July 6, 1961, Applicants filed a declaration of their intention to construct the proposed Toledo Bend Project. The Declaration of Intention, which was docketed as No. E-7003, shows that the proposed project would occupy several thousand acres of National Forest lands of the United States.

The purpose of a declaration of intention to construct a proposed project is to institute an investigation under the second sentence of Section 23(b) of the Federal Power Act to determine whether a license is required for the proposed construction. Since the aforesaid Declaration of Intention recites that hydroelectric project works are proposed to be constructed by Applicants on lands and reservations of the United States, it shows that the project comes within the first sentence of Section 23(b) of the Act which makes it unlawful to construct projects on such lands and reservations except under and in accordance with a license from the Commission. Accordingly, we are hereinafter dismissing the Declaration of Intention.

The Commission finds:

(1) The proposed project will affect lands and navigable waters of the United States.

(2) Applicants are municipal corporations organized under the laws of the States of Texas and Louisiana, respectively, and have submitted satisfactory evidence of compliance with the requirements of all applicable States' laws insofar as necessary to effect the purposes of a license for the project.

(3) No conflicting application is before the Commission. Public notice of the application has been given. No formal protests have been received.

(4) The issuance of a license as hereinafter provided will not affect a Government dam or the development of any water resources for public purposes which should be undertaken by the United States.

(5) The issuance of a license as hereinafter provided will not interfere or be inconsistent with the purposes for which the Sabine National Forest was created or acquired.

(6) The project will be best adapted to a comprehensive plan for improving and developing a waterway or waterways for the use or benefit of interstate or

foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes, upon compliance with the terms and conditions hereinafter imposed.

(7) The installed horsepower capacity of the proposed project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 108,000 horsepower, and the energy to be generated by the proposed project will be sold to public utilities in the area.

(8) The amount of annual charges to be paid under the license for the purpose of reimbursing the United States for the costs of administration of Part I of the Act and for recompensing the United States for the use, occupancy and enjoyment of its lands as hereinafter fixed and specified.

(9) The step-up transformers and switchyard mentioned in paragraph (B) below, which were included in the joint application for license, are parts of the proposed project within the meaning of Section 3(11) of the Act and should be included in the license for the project.

(10) Applicants have submitted satisfactory evidence of their ability to finance construction of the project.

(11) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of the license for the project.

The Commission orders:

(A) This license is hereby issued jointly to Sabine River Authority of Texas and Sabine River Authority of Louisiana (Licensees) under Section 4(e) of the Act for a period of 50 years, effective as of October 1, 1963, for the construction, operation and maintenance of Project No. 2305 to be located on the Sabine River in Texas and Louisiana, and affecting navigable waters of the United States and lands of the United States within the Sabine National Forest, subject to the terms and conditions of the Act, which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has prescribed under the provisions of the Act.

(B) Project No. 2305 consists of:

(i) All lands constituting the project area and inclosed by the project boundary or the limits which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the Licensee or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit J: (FPC No. 2305–7) General Vicinity Map; and

Exhibit K: Three Sheets (FPC No. 2305–18, –9 and –10) Reservoir Topography Maps.

(ii) Project works consisting of:

A rolled earth-fill dam with a maximum height of 112 feet; three earth dikes; a reservior with normal pool elevation of 172 feet, an area of 181,600 acres, and a total storage of 4,477,000 acre-feet of which 1,554,000 acre-feet will be active storage for power generation; a spillway comprised of a concrete, gravity type, gated weir with a concrete chute and stilling basin, and a discharge channel in the left abutment; a sluiceway; a powerhouse located in the right abutment containing two 55,750 horsepower turbines each connected to a 42,500 kva generator (40,375 kw @ 0.95 P.F.); step-up transformers; a switchyard; and appurtenant electrical and mechanical facilities; the location, nature and character of which are more specifically shown by the exhibits

hereinbefore cited and by certain other exhibits which also formed part of the application for license and which are designated and described as follows:

Exhibit L: General Design Drawings

Sheet 1 (FPC No. 2305-19) Location Plan;
Sheet 2 (FPC No. 2305-20) Embankment-Plan & Profile;
Sheet 3 (FPC No. 2305-21) Embankment-Plan & Profile;
Sheet 4 (FPC No. 2305-22) Spillway – Elevation & Sections;
Sheet 5 (FPC No. 2305-23) Embankment-Typical Sections;
Sheet 13 (FPC No. 2305-31) Power Plant Area General Plan;
Sheet 14 (FPC No. 2305-32) Section Through Intake and Power House;
Sheet 15 (FPC No. 2305-33) Spillway — General Plan;

Supplemental Sheet A (FPC No. 2305-34) Spillway Low-Flow Pier Plan and Section; and

Supplemental Sheet B (FPC No. 2305-35) Spillway Left Non-Over Flow Section.

Exhibit M: Two typewritten pages entitled "Power Plan Equipment" filed in the Commission February 14, 1963.

(iii) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as a part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights the use or possession of which is necessary or appropriate in the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-6, December 15, 1953, entitled "Terms and Conditions of License for Unconstructed Major Project Affecting Navigable Waters and Lands of the United States" (16 FPC 1121), which terms and conditions are attached hereto and made a part hereof, except for Articles 7, 14, 17, 23, 24 and 25 thereof, and subject to the following special conditions set forth herein as additional articles:

Article 28. The Licensees shall commence construction of the proposed project works within two years of the effective date of this license, shall thereafter in good faith and with due diligence prosecute such construction, and shall complete construction of such project works within six years from the effective date of this license.

Article 29. The Licensees shall within one year from the date of completion of the project, file with the Commission revised Exhibits F and K to define the final project boundary in accordance with the rules and regulations of the Commission. Licensees shall cooperate with the Forest Service in fixing the project boundary on Forest lands.

Article 30. The Licensees shall, for the conservation and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance and operation of such facilities and comply with such reasonable modifications of the project structures and operation as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the Louisiana Wild Life and Fisheries Commission or The Texas Game and Fish Commission, or the Forest Service, after notice and opportunity for hearing and upon findings based on substantial evidence that such facilities and modifications are necessary and desirable, reasonably consistent with the primary purpose of the project, and consistent with the provisions of the Act.

Article 31. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its expense, the Licensees shall permit the United States or its designated agency to use, free of cost, such of Licensees' lands and interests in lands, reservoirs, waterways, and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensees shall modify the project operation as may be prescribed by the Commission, reasonably consistent with the primary purpose of the project, in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provision of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensees of any obligation under the license.

Article 32. The Licensees shall cooperate with the University of Texas, Louisiana State University, Northwestern Louisiana State College, and the National Park Service in a program for the survey and salvage of historical and archeological data (including relics and specimens) in the project area.

Article 33. The Licensees shall do everything reasonably within their power and shall require their employees, contractors, and employees of contractors to do everything reasonably within their power both independently and upon the request of officers of the agency concerned to prevent, make advance preparations for suppression, and suppress fires on the lands to be occupied or used under the license. The Licensees shall be liable for and pay the costs incurred by the United States in suppressing fires caused from the construction, operation, or maintenance of the project works or of the work appurtenant or accessory thereto under the license.

Article 34. So far as is consistent with proper operation of the project, the Licensees shall allow the public free access to a reasonable extent, to project waters and adjacent lands owned by the Licensees for the purpose of full public utilization of such lands and water for navigation and recreational purposes, including fishing and hunting, and shall allow to a reasonable extent for such purposes the construction of access roads, wharves, landings, and other facilities on its lands the occupancy of which may in appropriate circumstances be subject to payment of rent to the Licensees in a reasonable amount; Provided, that the Licensees may reserve from public access, such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health and property and provided further, that the Licensee's consent to the construction of access roads, wharves, landings, and other facilities shall not, without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities. These facilities are in addition to the facilities that the Licensees may construct and maintain as required by the license.

Article 35. The Licensees shall construct, maintain and operate or shall arrange for the construction, maintenance and operation of such recreational facilities including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities and utilities, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or interested State agencies, after notice and opportunity for hearing and upon findings based upon substantial evidence that such facilities are necessary and desirable, and reasonably consistent with the primary purpose of the project. The Licensees shall, within one year from the date of issuance of the license, file with the Commission for approval their pro-

737-370—66——67

posed recreational use plan for the project. The plan shall be prepared after consultation with appropriate Federal, State and local agencies, and shall include recreational improvements which may be provided by others in addition to the improvements the Licensees plan to provide.

Article 36. The Licensees shall within six months of the date of issuance of this license submit for Commission approval a plan for clearing the reservoir area and upon approval the clearing shall be done to the satisfaction of the Commission's representative.

Article 37. The reservoir operation schedule shall be adjusted to accommodate the recreation use of the reservoir area as far as such adjustment is compatible with the primary purpose of the project and requirements of downstream releases.

Article 38. The Licensees shall be responsible for and shall minimize soil erosion and siltation on lands adjacent to the stream resulting from construction and operation of the project. The Commission upon request, or upon its own motion, may order the Licensees to construct and maintain such preventive works to accomplish this purpose and to revegetate exposed soil surface as the Commission may find to be necessary after notice and opportunity for hearing.

Article 39. The operation of any navigation facilities, which may be constructed as a part of or in connection with any dam or diversion structure constituting a part of the project works, shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including the control of the level of the pool caused by such dam or diversion structure, as may be made from time to time by the Secretary of the Army. Such rules and regulations may include the construction, maintenance and operation by the Licensees at their own expense of necessary remedial works as may be required in the interests of navigation as directed by the Secretary of the Army.

Article 40. The Licensees shall for the protection of navigation construct, maintain and operate at its own expense such lights and other signals on fixed project structures in or over navigable waters of the United States as may be directed by the Secretary of the Department in which the Coast Guard is operating.

Article 41. When and if an authorized navigation project is constructed through the Toledo Bend Dam and Reservoir, the Licensees shall permit the Federal Government to locate the navigation channel through the Toledo Bend Reservoir without restriction as to location; to deposit within that portion of the reservoir that inundates the valley lands and at a reasonable distance from the navigation channel all spoil materials resulting from construction and future maintenance dredging of the navigation channel; to construct a navigation lock with adjoining movable and overflow dams in the upper portion of the inundated reservoir lands as may be necessary to provide a navigation pool through the Toledo Bend Reservoir; the above rights to be reserved at no cost to the Federal Government.

Article 42. The Commission reserves the right to determine at a later date what transmission lines and appurtenant facilities, if any, shall be included in this license as part of the project works.

Article 43. The Licensees shall install additional capacity or make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so, after notice and opportunity for hearing.

Article 44. The Licensees shall, after notice and opportunity for hearing, coordinate the operation of the project, hydraulically and electrically, with such other power systems and in such manner as the Commission may direct in

the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensees as the Commission may order.

Article 45. The Licensees shall pay to the United States the following annual charges:

(i) For the purpose of reimbursing the United States for the cost of administration of Part I of the Act, a reasonable annual charge in accordance with the provisions of Part II of the Commission's regulations as in effect from time to time. The authorized installed capacity for such purpose is 108,000 horsepower; and

(ii) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands, exclusive of transmission line right-of-way, $84,000.

Article 46. The Licensees shall, prior to commencement of construction of the spillway structure, make hydraulic model tests of such structure, together with the approach and outlet channels under both flood flow and normal operating conditions.

Article 47. No lease of the project or any part thereof whereby the lessee is granted the occupancy, possession, or use of the project, or any part thereof, shall be made without prior written approval of the Commission; and the Commission may, if in its judgment the situation warrants, require that all the conditions of the license, of the Act, and of the rules and regulations of the Commission shall be applicable to such property so leased to the same extent as if the lessee were the licensee: Provided, that the provisions of this article shall not apply to leases of land or buildings or other property while not required to achieve the purposes of the license.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of the license for the project.

(E) The aforementioned Declaration of Intention filed by Applicants on July 6, 1961, is hereby dismissed.

(F) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the Licensees and returned to the Commission within 60 days from the date of issuance of this order.

Commissioner Ross will set forth his individual views in an order granting another license application shortly to be issued. While not stated at this time in order to allow the immediate issuance of this license, the views to be expressed are nevertheless applicable to this license. See 30 FPC 1338 at 1341.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

WESTERN LEWIS-RECTORVILLE WATER DISTRICT, DOCKET NO. CP61-291

ORDER AMENDING ORDER UNDER SECTION 7(a) OF THE NATURAL GAS ACT

(Issued October 14, 1963)

On May 9, 1963, Western Lewis-Rectorville Water District filed a petition to amend the order issued August 24, 1961, in this proceeding. The order directed Kentucky Gas Transmission Corporation to establish physical connec-

tion with the facilities of Western and to provide service as described in the Application. The order limited the volumes of natural gas to be delivered and sold to 420 Mcf per day with no annual limitation. The petition requests that such volumetric limitation be removed.

Western states that, during the winter of 1962–63, it purchased volumes of natural gas up to 420 Mcf per day. However, it has naturally increased its customers since then while its present customers have increased their requirements. Western maintains that the volumetric limitation prevents the full and orderly development of its business while being placed in a less advantageous position from that enjoyed by other customers of Kentucky, who are not bound by such limitation.

On June 17, 1963, Kentucky Gas advised the Commission by letter that it had no objection to the relief requested by the Petitioner.

Due notice of the filing of the petition to amend and opportunity for hearing thereon has been given by publication in the Federal Register on August 13, 1963 (28 F.R. 8302). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the order issuing a certificate in Docket No. CP61–291 on August 24, 1961, in this matter, should be amended by deleting the provision limiting the peak-day delivery volume.

The Commision orders:

(A) The order in Docket No. CP–291, issued on August 24, 1961 is hereby amended by deleting therefrom the limitiation of the volume specified therein.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

LONE STAR GAS COMPANY, DOCKET NO. CP64–33

FINDINGS AND ORDER PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued October 15, 1963)

On July 31, 1963, Lone Star Gas Company (Applicant) filed in Docket No. CP64–33 an application pursuant to Section 7(b) of the Natural Gas Act for authority to abandon and remove the following described facilities located on its 10-inch line TB in the Golden Trend Field, Garvin County, Oklahoma:

A dehydration plant authorized by a certificate issued by the Commission on December 4, 1956, in Docket No. G–8763.

Applicant states that due to the drop in pressure in the reservoir of the Hart formation of the field supplying the gas to the dehydration plant described above, gas will no longer feed into it against the pressure maintained in the line in its T Line System. Since November 1961 the plant has not been operational and no further need for these facilities is anticipated.

The removal of the plant will not affect natural gas service to any community now being served. The facilities to be abandoned and removed will be salvaged.

Pursuant to due notice, a public hearing was held in Washington, D.C., on October 8, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing

that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant is a "natural-gas company" within the meaning of the Natural Gas Act and the facilities hereinabove described were authorized by the Commission on December 4, 1956, in Docket No. G–8763 and are subject to the jurisdiction of this Commission.

(2) The facilities to be abandoned, as heretofore described, are subject to the jurisdiction of the Commission, and abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) Such abandonment by Applicant, as heretofore described, is permitted by the public convenience and necessity, and an order authorizing and approving same should be issued as hereinafter ordered.

(4) A request made during the public hearing by Staff Counsel for omission of the intermediate decision procedure under Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Rules.

The Commission orders:

(A) Applicant be and is hereby permitted to abandon and remove the facilities heretofore described, as more fully described in the application.

(B) Applicant shall within ten days after removal of the said facilities from their emplacement advise the Commission thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

MONTANA-DAKOTA UTILITIES CO., DOCKET NO. CP63–110

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 15, 1963)

On October 30, 1962, as supplemented on December 3, 1962, and June 13 and July 2, 1963, Montana-Dakota Utilities Company (Montana-Dakota) filed in Docket No. CP63–110 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of natural gas facilities as hereinafter set forth and as more fully described in the application and supplements.

Montana-Dakota proposes to construct and operate the following facilities:

1. Approximately 98.5 miles of 12¾" O.D. gas transmission main from the Riverton Dome area in Fremont County, Wyoming, to Applicant's Worland compressor plant in Washakie County, Wyoming;

2. A gas measurement station at Riverton Dome area in Fremont County, Wyoming, for the purchase of gas from The Atlantic Refining Company;

3. A gas measurement check station at Applicant's Worland compressor plant in Washakie County, Wyoming, at the terminus of the proposed 12¾" O.D. transmission main from Riverton Dome area:

4. Additional piping, valves and modifications at Applicant's Worland, Wyoming compressor plant to connect the terminus of the propossed 98.5 miles of 12¾" tranmission main from Riverton Dome area with existing facilities;

5. Approximately 1.93 miles of 12¾" O.D. gas transmission main near Rairden in Big Horn County, Wyoming, for completing a loop on about a 4.8 mile section of Applicant's existing 12¾" O.D. transmission main extending north from the Worland compressor plant discharge;

6. A new compressor plant at Lovell, Wyoming, consisting of three 880 horsepower compressor units and related facilities for service on Applicant's Worland, Wyoming, to Cabin Creek, Montana, 12¾" O.D. transmission main;

7. Approximately 5.4 miles of 6⅝" O.D. lateral transmission main in Washakie County, Wyoming, to continue service to the city of Worland, Wyoming, by a connection to the proposed Riverton Dome area to Worland compressor plant 12¾" O.D. transmission main; and

8. A gas pressure reducing and regulating station on the proposed 6⅝" O.D. transmission lateral to the city of Worland, Wyoming.

The proposed facilities are for the purpose of transporting gas to be purchased from The Atlantic Refining Company in the Riverton Dome area, Fremont County, Wyoming, to increase system gas reserves and deliverability for service to Applicant's existing customers and to provide capacity for the future growth of system market requirements.

The Atlantic Refining Company has filed applications for authority to make the subject sales to Montana-Dakota in Docket Nos. G–3894 and CI63–576, which applications were included in the Notice of Applications, etc. in Docket No. G–3894, *et al.*, issued on June 26, 1963.

The estimated cost of the proposed facilities is $4,347,600 which will be financed through internally generated funds and short term bank loans.

Temporary certificate authorization for the construction and operation proposed under this application was issued to Applicant on September 5, 1963.

Pursuant to due notice, a public hearing was held in Washington, D.C., on October 8, 1963, respecting the matters involved in and the issues presented by the application herein. A protest by Northern Utilities, Inc. and a petition for leave to intervene by Kansas-Nebraska Natural Gas Company, Inc. were filed in this proceeding but were subsequently effectively withdrawn. No other petitions to intervene or protests to the granting of the application have been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Montana-Dakota Utilities Company, a Delaware corporation having its principal place of business in Minneapolis, Minnesota, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 22, 1946, in Docket Nos. G–220 and G–402 (5 FPC 64).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are proposed to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of said Regulations.

(6) The time within which Applicant shall have completed construction and commenced operation of the proposed facilities, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations should be fixed at one year from the date on which this order issues.

(7) The certificate authorization hereinafter issued to Applicant should be made contingent upon The Atlantic Refining Company receiving certificate authorization for the sale of natural gas pursuant to its applications in Docket Nos. G–3894 and CI63–576 hereinbefore referred to.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Montana-Dakota Utilities Company, to construct and operate the proposed facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of said Regulations.

(C) The time within which Applicant shall have completed construction and commenced operation of the proposed facilities as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations is hereby fixed at one year from the date on which this order issues.

(D) The certificate issued by paragraph (A) above and the rights granted thereunder are further conditioned upon The Atlantic Refining Company receiving certificate authorization for the sale of natural gas pursuant to its applications in Docket Nos. G–3894 and CI63–576.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

THE MONTANA POWER COMPANY, PROJECT NO. 2188

ORDER APPROVING REVISED PROJECT EXHIBIT

(Issued October 15, 1963)

On August 7, 1963, The Montana Power Company, licensee for Project No. 2188, filed for Commission approval revised sheets of Exhibit K which fix a new project boundary by deleting therefrom certain lands occupied by six resi-

dences formerly housing personnel required in the operation and maintenance of the Morony development of the project. The Morony development has been automated and the one operator remaining will continue to occupy a residence within the project boundary. The lands and six residences formerly occupied by personnel of the Licensee are no longer necessary or useful in the operations of the Morony development.

The Commission finds:

Revised Exhibit K, sheet one of three (FPC No. 2188–90) and sheet three of three (FPC No. 2188–91) conform to the Commission's rules and regulations and should be approved as part of the license for the project, and Exhibit K, sheet 1 of 3 (FPC No. 2188–11) and sheet 2 of 3 (FPC No. 2188–10) now part of the license, and which have been superseded, should be eliminated from the license.

The Commission orders:

The revised Exhibit K sheets described in the above finding are hereby approved as part of the license for Project No. 2188, and the Exhibit K sheets described in the same finding as being superseded are hereby eliminated from the license for the project.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

NIAGARA MOHAWK POWER CORPORATION, PROJECT NO. 2060

ORDER APPROVING REVISED PROJECT EXHIBIT MAPS

(Issued October 15, 1963)

On May 28, 1963, Niagara Mohawk Power Corporation, licensee for Carry Falls Project No. 2060, filed for Commission approval revised Exhibit K maps fixing the new project boundary by including therein certain lands owned by the licensee which are presently within the project boundary of the licensee's downstream Racquette River Project No. 2084, and by deleting therefrom certain lands owned by the licensee which are proposed to be included within the Racquette River project boundary. The land adjustment is for accounting purposes.

By order of even date we are approving revised Exhibit K maps for Project No. 2084.

The Commission finds:

Revised Exhibit K maps, sheets 2A, 3A, 5A and 6B of 7 (FPC No. 2060–18, –19, –20, –21) conform to the Commission's rules and regulations and should be approved as part of the license for the project, and Exhibit K, sheets 2, 3, 5 and 6A of 7 (FPC Nos. 2060–3, –4, –6 and –7), now part of the license, and which have been superseded, should be eliminated from the license.

The Commission orders:

The revised Exhibit K maps described in the above finding are hereby approved as part of the license for Project No. 2060, and the Exhibit maps described in the same finding as being superseded are hereby eliminated from the license for the project.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

NIAGARA MOHAWK POWER CORPORATION, PROJECT NO. 2084

ORDER APPROVING REVISED PROJECT EXHIBIT MAPS

(Issued October 15, 1963)

On May 28, 1963, Niagara Mohawk Power Corporation, licensee for the Racquette River Project No. 2084, filed for Commission approval revised Exhibit K maps fixing the new project boundary by including therein certain lands owned by the licensee which are presently within the project boundary of the licensee's upstream Carry Falls Project No. 2060, and by deleting therefrom certain lands owned by the licensee which are proposed to be included in the Carry Falls project boundary. The land adjustment is for accounting purposes.

By order of even date we are approving revised Exhibit K maps for Project No. 2060.

The Commission finds:

Revised Exhibit K maps, sheets 1B, 2A, 3C, 4C, 5B, 6B, 8B, 9B and 10A (FPC No. 2084–47 through –55) conform to the Commission's rules and regulations and should be approved as part of the license for the project, and Exhibit K, sheets 1A, 2, 3B, 4B, 5A, 6A, 8A, 9A and 10 (FPC No. 2084–41, –3, –42, –43, –30, –31, –32, –33 and –11), now part of the license, and which are being superseded, should be eliminated from the license.

The Commission orders:

The revised Exhibit K maps described in the above finding are hereby approved as part of the license for Project No. 2084, and the Exhibit K maps described in the same finding as being superseded are hereby eliminated from the license for the project.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

SUPERIOR OIL COMPANY, DOCKET NO. G–6067

ORDER REINSTATING INTERVENTION

(Issued October 15, 1963)

On October 7, 1963, the Public Service Commission of New York (Public Service Commission) filed a motion requesting that its previous notice of intervention in the above-entitled proceeding dated June 11, 1963, be reinstated.

The Public Service Commission originally became a party to this proceeding by filing a notice of intervention dated June 11, 1963. The Commission alleges that at the request of counsel for applicant, informal conferences were held among the parties — applicant, purchaser, interveners and staff, in which the Public Service Commission sought further details as to the nature of the proposed amendment to Applicant's certificate.[1]

The Public Service Commission further indicates that, based on certain information supplied by counsel for applicant and counsel for the purchaser, and

[1] The proposed amendment consists essentially of a proposal to substitute heretofore undedicated acreage for acreage presently dedicated to American Louisiana Pipeline company pursuant to a contract with the latter company dated July 17, 1953.

its then understanding of the issues raised by the proposed amendment, the Commission, by letter dated August 16, 1963, withdrew its intervention. However, the Commission points out that the subsequent order of this Commission (Federal Power Commission) issued September 18, 1963, more specifically indicated that the issue in the case would be the determination of the appropriate in-line price level for the gas to be sold from the substituted acreage. In view of that order and its specification of issues the Public Service Commission requests that its previous notice of intervention be reinstated.

The Commission finds:

It appears that the Public Service Commission of New York has a continuing interest in the issue specified in the Commission's order of September 18, 1963, i.e., the appropriate price level at which Superior may be authorized to make sales from the substituted off-shore properties as proposed in the amendment to its permanent certificate. Since the Public Service Commission has now been clearly apprised of the issue to be contested in this proceeding, it would not be in the public interest to preclude the Commission from reasserting a right of intervention which it had. Consequently, the participation of the Commission in this proceeding is in the public interest.

The Commission orders:

The original notice of intervention of the Public Service Commission of the State of New York dated June 11, 1963, is hereby reinstated.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

CENTRAL MAINE POWER COMPANY, PROJECT NO. 2194

ORDER DETERMINING ACTUAL LEGITIMATE ORIGINAL PROJECT COST; ACCRUED DEPRECIATION; NET INVESTMENT; AND PRESCRIBING ACCOUNTING THEREFOR

(Issued October 16, 1963)

Central Maine Power Company, Licensee for Project No. 2194,[1] on February 18, 1957, filed its initial statement, pursuant to Sections 4.20 and 4.1 of the Commission's Regulations under the Federal Power Act, claiming (1) for the existing project as of July 1, 1955, the effective date of the license, and as of January 31, 1957 an actual legitimate original of $218,782.46 and an applicable reserve for accrued depreciation in the amount of $28,007.10, resulting in a claimed net investment as of July 1, 1955, of $190,775.36;[2] and (2) an actual legitimate original cost of the redeveloped project in the amount of $1,267,797.88 as of January 31, 1957. Licensee's afore-mentioned claimed and recorded project costs result in a total claimed actual legitimate original cost for Project No. 2194 as of January 31, 1957, of $1,486,580.34.

[1] The project is located on the Saco River in York County, Maine, and may be referred to as the Bar Mills project. The license, authorizing the construction, operation, and maintenance of the redeveloped project was issued (pursuant to Section 4(e) of the Federal Power Act) for a period of 50 years commencing July 1, 1955. Commercial operation of the project commenced February 21, 1956.

[2] Articles 22 and 23 of the license provide for Commission determination of the actual legitimate original cost of the portion of the project completed prior to the effective date of the license and the applicable reserve for depreciation thereon both as of the effective date of the license; the difference being the net investment of the Licensee in the project as of that date; and the actual legitimate original cost of the parts of the project to be completed after the effective date of the license, together with any additions to or betterments of the project.

The Commission's staff conducted a field examination of the books and records of Licensee and other data for the purpose of ascertaining the correctness of the above claimed and recorded project costs, reserve for depreciation, and resulting net investment.

Following that examination an agreement, subject to Commission approval, was reached between the staff and representatives of the Licensee with respect to certain proposed adjustments involving: (1) the reclassification of a number of items totaling $298,052.09 within project plant accounts; (2) the elimination of a total amount of $20,778.08 from claimed and recorded project cost as of January 31, 1957, consisting of eliminations of $9,486.29 from the existing project's cost as of July 1, 1955, and January 31, 1957, and of $11,291.79 from the project redevelopment's cost as of January 31, 1957; (3) a decrease in the claimed and recorded project reserve for depreciation as of July 1, 1955, in the amount of $7,623.96; and (4) the accounting disposition of all amounts involved in the proposed adjustment.

The proposed reclassifications totaling $298,052.09 within project plant accounts consist of the following net amounts by accounts:

Account No.[1]		Amount
		Debit or ( ) credit
320	Land and land rights	($45,085.77)
322	Reservoirs, dams and waterways	45,085.77
72	Legal expense	(1,806.02)
302	Franchises and consents	1,806.02
321	Structures and improvements	(251,160.30)
322	Reservoirs, dams and waterways	251,160.30
		0

[1] Account references are to account numbers and titles prescribed in the Commission's Uniform System of Accounts for Public Utilities and Licensees effective prior to Jan. 1, 1961. This reflects the fact that the project cost and project accrued depreciation herein determined are recorded in Licensee's accounts as of dates prior to Jan. 1, 1961.

The proposed eliminations from the claimed and recorded cost of the existing and redeveloped project as of January 31, 1957, consist of the following items:

	Constructed project
Removal costs and repairs erroneously capitalized—1936 flood	($6,517.07)
Underpriced retirement of temporary crest of the dam	(2,969.22)
	Project redevelopment
Excessive administrative and general expenses and related interest	(6,966.87)
Unsupported charges for engineering services	(4,324.92)
Total	(20,778.08)

The accounting disposition of all of the amounts involved in the proposed adjustments set forth above are shown by the following composite journal entry:

Account No.	Title	Debit	Credit
100.1	Electric Plant in service, project No. 2194		$20,788.08
250.1	Accumulated provision for depreciation:		
	Project No. 2194		20,383.14
	Nonproject	$21,861.19	
271	Unappropriated earned surplus	19,300.03	

By letters dated February 24 and July 25, 1961, Licensee confirmed its agreement with, and filed revised schedules giving effect to, the proposed adjustments, accounting dispositions, and resulting project costs, project depreciation reserve, and net investment.

The Maine Public Utilities Commission was advised by letter of this Commission dated August 24, 1961, of the proposed adjustments, including the accounting disposition, resulting project costs and resulting project depreciation reserves, all as recommended by this Commission's staff and agreed to by Licensee as set forth above. By letter dated December 19, 1961, that Commission indicated that it had no objection to the foregoing.

The Commission finds:

(1) Licensee, by its tentative agreement to the proposed adjustments, including the accounting dispositions, and resulting project costs, depreciation reserves, and resulting net investment, and its letters of February 24 and July 25, 1961, and the Main Public Utilities Commission, by its letter dated December 19, 1961, have obviated the necessity for notice and opportunity to protest provided by Sections 4.4, 4.5, 4.22, and 4.23 of the Commission's Regulations under the Federal Power Act.

(2) The foregoing adjustments, including the accounting dispositions, as proposed by the staff and agreed to by the Licensee, are reasonable and appropriate for the purposes of the Federal Power Act, and, therefore, should be approved and directed as hereinafter provided.

(3) As of the effective date of the license, July 1, 1955, the actual legitimate original cost of the constructed portion of Project No. 2194 is $209,296.17; the accrued depreciation applicable to in-service project properties as of that date is $20,383.14; and the resulting net investment of Licensee therein is $188,913.03.

(4) The actual legitimate original cost of the redeveloped portion of Project No. 2194 as of January 31, 1957, is $1,256,506.09. The resulting total actual legitimate original cost of the project as of January 31, 1957, is $1,465,802.26.

The Commission orders:

(A) The provisions of Sections 4.4, 4.5, 4.22 and 4.23 of the Commission's Regulations under the Federal Power Act are hereby waived for the purposes of this order.

(B) The foregoing adjustments, including the accounting dispositions as proposed by the staff and agreed to by the Licensee, are hereby approved and directed to be made by licensee.

(C) Licensee, to the extent that it has not already done so, shall (a) establish and maintain control and detailed plant accounts for the constructed portion of Project No. 2194, showing the debit balance of $209,296.17 as of July 1, 1955, and January 31, 1957; the debit balance of $1,256,506.09 for the redeveloped portion of Project No. 2194 as of January 31, 1957; and the resulting total debit balance of $1,465,802.26 for Project No. 2194 as of January 31, 1957; all as more specifically shown in the attached Schedules I and II classified by primary plant accounts of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees effective prior to January 1, 1961; and (b) establish and maintain a reserve account for accrued depreciation applicable to in-service project properties showing the credit balance of $20,383.14 as of July 1, 1955.

(D) Licensee shall file with the Commission, within 90 days from the issuance of this order, FPC Form No. 7 and three certified copies of its adjusting journal entries showing compliance with this order.

SCHEDULE I

PROJECT NO. 2194 (BAR MILLS) CENTRAL MAINE POWER COMPANY

ACTUAL LEGITIMATE ORIGINAL COST AS OF EFFECTIVE DATE OF LICENSE[1] PROJECT REDEVELOPMENT AND TOTAL PROJECT COST AS OF JAN. 31, 1957

Account [2]		Constructed works [1]			Redevelopment as adjusted [3] schedule II	Allowed total project as of Jan. 31, 1957
Number	Title	As claimed	Adjustments	As adjusted		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
302	Intangible plant:					
	Franchises and Consents				$1,876.57	$1,876.57
	Production plant:					
320	Land and land rights	$74,385.77	($45,085.77)	$29,300.00	2,425.93	31,725.93
321	Structures and Improvements	450.00		450.00	65,526.29	65,976.29
322	Reservoirs, Dams and Waterways	143,946.69	35,599.48	179,546.17	402,917.34	582,463.51
323	Water wheels, turbines and generators				573,667.57	573,667.57
324	Accessory electric equipment				129,049.98	129,049.98
325	Miscellaneous power plant equipment				48,351.96	48,351.96
	Total production plant	218,782.46	(9,486.29)	209,296.17	1,221,939.07	1,431,235.24
	Transmission plant:					
342	Structures and improvements				1,188.26	1,188.26
343	Station equipment				31,502.19	31,502.19
	Total transmission plant				32,690.45	32,690.45
	Total project	218,782.46	(9,486.29)	209,296.17	1,256,506.09	1,465,802.26

( ) Denotes credit.

[1] In existence as of July 1, 1955, the effective date of license. No change in cost of constructed works between July 1, 1955 and Jan. 31, 1957.

[2] Account references are to account numbers and titles prescribed in the Commission's Uniform System of Accounts effective prior to Jan. 1, 1961.

[3] Redevelopment authorized in art. 23 of the license. Cost as of Jan. 31, 1957.

SCHEDULE II

PROJECT NO. 2194 (BAR MILLS) CENTRAL MAINE POWER COMPANY, LICENSEE

ACTUAL LEGITIMATE ORIGINAL COST AS OF JAN 31, 1957 OF PROJECT REDEVELOPMENT AS AUTHORIZED IN LICENSE SHOWING COST AS CLAIMED, STAFF RECOMMENDED ADJUSTMENTS, COSTS AS ADJUSTED, BEFORE AND AFTER ALLOCATION OF INDIRECT AND OVERHEAD COSTS

		Cost of redevelopment			Allocation of overhead and indirect charges							
					Allocation							
Number	Account [1]	As claimed	Staff adjustments	As adjusted	Accounts 61-69 inclusive	Account 71	Account 72	Total directs and accounts 61-72 inclusive	Allocation of account 76	Total all costs except interest	Allocation of account 77	Total costs after allocations
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
	Intangible plant											
302	Franchises and consents		$1,806.02	$1,806.02				$1,806.02	$27.47	$1,833.49	$43.08	$1,876.57
	Production plant											
320	Land and land rights	$2,072.82		2,072.82			$261.91	2,334.73	35.51	2,370.24	55.69	2,425.93
321	Structures and improvements	308,956.82	(251,160.30)	57,796.52	$1,656.55	$3,609.93		63,063.00	959.16	64,022.16	1,504.13	65,526.29
322	Reservoirs, dams and waterways	104,227.07	251,160.30	355,387.37	10,186.06	22,197.27		387,770.70	5,897.84	393,668.54	9,248.80	402,917.34
323	Water wheels, turbines and generators	505,995.13		505,995.13	14,502.76	31,604.13		552,102.02	8,397.25	560,499.27	13,168.30	573,667.57
324	Accessory electric equipment	113,826.68		113,826.68	3,262.48	7,109.53		124,198.69	1,889.01	126,087.70	2,962.28	129,049.98
325	Miscellaneous power plant equipment	42,648.16		42,648.16	1,222.37	2,663.77		46,534.30	707.77	47,242.07	1,109.89	48,351.96
	Total production plant	1,077,726.68		1,077,726.68	30,830.22	67,184.63	261.91	1,176,003.44	17,886.54	1,193,889.98	28,049.09	1,221,939.07
	Transmission plant											
342	Structures and improvements	1,106.57		1,106.57	1.57	33.66		1,141.80	14.19	1,155.99	32.27	1,188.26

343	Station equipment	29,336.49		29,336.49	41.64	892.23		30,270.36	376.27	30,646.63	855.56	31,502.19
	Total transmission plant	30,443.06		30,443.06	43.21	925.89		31,412.16	390.46	31,802.62	887.83	32,690.45
	Total direct costs	1,108,169.74	1,806.02	1,109,975.76	30,873.43	68,110.52	261.91	1,209,221.62	18,304.47	1,227,526.09	28,980.00	1,256,506.09
	Indirect costs											
61	Temporary construction facilities	5,338.08		5,338.08	(5,338.08)							
62	Construction equipment	9,330.26		9,330.26	(9,330.26)							
64	Labor expense	1,923.02		1,923.02	(1,923.02)							
66	Insurance, injuries, and damages	422.60		422.60	(422.60)							
67	Cleaning up site	1,446.59		1,446.59	(1,446.59)							
69	Contractors fee	12,412.88		12,412.88	(12,412.88)							
	Total indirect costs	30,873.43		30,873.43	(30,873.43)							
	Overhead construction costs											
71	Engineering	72,273.00	(4,162.48)	68,110.52		(68,110.52)						
72	Law expenditures	2,067.93	(1,806.02)	261.91			(261.91)					
76	Administrative and general expense	25,174.18	(6,869.71)	18,304.47					(18,304.47)			
77	Interest	29,239.60	(259.60)	28,980.00							(28,980.00)	
	Total overhead costs	128,754.71	(13,097.81)	115,656.90		(68,110.52)	(261.91)		(18,304.47)		(28,980.00)	
	Total indirect and overhead costs	159,628.14	(13,097.81)	146,530.33								
	Total project	1,267,797.88	(11,291.79)	1,256,506.09								

[1] Account references are to account numbers and titles prescribed in the Commission's Uniform System of Accounts effective prior to Jan. 1, 1961.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

PACIFIC GAS & ELECTRIC COMPANY, PROJECT NO. 175

ORDER DETERMINING NET CHANGE IN ACTUAL LEGITIMATE ORIGINAL PROJECT COST AND PRESCRIBING ACCOUNTING THEREFOR

(Issued October 16, 1963)

Pacific Gas and Electric Company, Licensee for Project No. 175,[1] from time to time filed statements, pursuant to Section 4.1 of the Commission's Regulations under the Federal Power Act, claiming for the period from January 1, 1927 through December 31, 1954 a net increase, in the original cost of the project of $256,400.09, consisting of claimed and recorded project gross additions of $441,571.60, gross retirements of $191,204.24, debit adjustments of $6,235.05, and contributions in aid of construction in the credit amount of $202.32, resulting in a claimed and recorded total actual legitimate original cost of the project as of December 31, 1954, of $5,506,573.56.[2]

The Commission Staff made a field examination of Licensee's books and records and other data for the purpose of ascertaining the correctness of the above claimed and recorded project cost changes for the period from January 1, 1927 through December 31, 1954.

Following that examination, the staff proposed an adjustment, agreed to by representatives of Licensee, subject to Commission approval, consisting of the addition of the net amount of $57,970.09 to claimed and recorded changes in project cost for the period from January 1, 1927 through December 31, 1954, and the accounting disposition thereof, with the resulting total actual legitimate original cost of the project as of December 31, 1954, being $5,564,543.65, as shown in the attached schedule.

The proposed net addition of $57,970.09 to claimed and recorded project cost changes represents net overstated retirements. Staff and Licensee's representatives tentatively agree that the proposed net addition be disposed of by a debit of $57,970.09 to Account 101, Electric Plant in Service—Project No. 175, and a credit of a like amount to Account 108, Accumulated Provision for depreciation of Electric Plant in Service—Project No. 175.

---

[1] The project is located on the North Fork of Kings River in Fresno County, California, and may be described as the Balch Project. The license, issued pursuant to Section 4(d) of the Federal Water Power Act to San Joaquin Light and Power Corporation, authorizing the construction, operation, and maintenance of the project, is by its terms effective for a period of 50 years, commencing July 28, 1922. By order issued October 10, 1939 (2 FPC 622), the Commission approved the transfer of the license as amended, from San Joaquin Light and Power Corporation to Pacific Gas and Electric Company, effective November 22, 1939.

[2] By order issued March 14, 1946 (5 FPC 402), the Commission determined the actual legitimate original cost of the project as of December 31, 1930 (exclusive of additions and retirements from January 1, 1927 through December 31, 1930) to be $5,250,173.47, and by order issued May 3, 1946 (5 FPC 492), the Commission granted Licensee's application for rehearing with respect to the disposition requirements for items disallowed as project cost.

By order issued February 27, 1950 (9 FPC 524), on rehearing, the Commission among other things, affirmed the original cost of the project as of December 31, 1930 (exclusive of additions and retirements from January 1, 1927 through December 31, 1930) to be $5,250,173.47.

In Licensee's reclassification and original cost studies of its electric plant, as approved by Commission order issued February 27, 1950 (9 FPC 545), the total balance of $32,773.78 in Account 301, Organization, was reclassified to Account 322, Reservoirs, Dams and Waterways, as reflected in the attached schedule.

Staff analysis of Licensee's provisions for project depreciation has not been completed, and the Staff proposes that the Commission defer for future consideration and determination the amount of accrued depreciation applicable to in-service project properties as of December 31, 1954.

By letter dated January 25, 1962, Licensee confirmed its agreement with respect to the proposed adjustment, accounting disposition, and resulting project costs.

The California Public Utilities Commission was advised by letter of this Commission dated June 12, 1962 of the proposed adjustment, including the accounting disposition, and resulting project costs, all as recommended by this Commission's Staff and agreed to by Licensee as set forth above. That Commission signified its concurrence in the foregoing by letter dated June 19, 1962.

The Commission finds:

(1) The acceptance of the Staff's recommendations by Licensee and by the California Public Utilities Commission, as set forth above, obviate the necessity for notice and opportunity to protest provided in Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act.

(2) The foregoing adjustment, including the accounting disposition, as proposed by the Staff and agreed to by Licensee, is reasonable and appropriate for the purposes of the Federal Power Act, and, therefore, should be approved and directed as hereinafter provided.

(3) The net increase or change in the actual legitimate original cost of Project No. 175 for the period from January 1, 1927, through December 31, 1954 is $314,370.18, comprised of gross additions of $441,571.60, gross retirements of $133,234.15, net debit adjustments of $6,235.05, and contributions in aid of construction in the credit amount of $202.32; and the resulting actual legitimate original cost of the project as of December 31, 1954 is $5,564,543.65, classified by primary plant accounts as shown in the attached schedule.

(4) It is necessary and appropriate for the purposes of the Fedaral Power Act that the determination of the accrued depreciation applicable to in-service project properties of Project No. 175 as of December 31, 1954 be reserved for future Commission consideration as hereinafter provided.

The Commission orders:

(A) The provisions of Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act are hereby waived for the purposes of this order.

(B) The foregoing adjustment, including the accounting disposition as proposed by the Staff and agreed to by Licensee, is hereby approved and directed to be made by Licensee.

(C) Licensee, to the extent that it has not already done so, shall establish and maintain control and detailed project plant accounts, for Project No. 175 showing the debit amount of $314,370.18 as the net increase or change in the actual legitimate original cost of the project for the period from January 1, 1927 through December 31, 1954 and the total debit balance of $5,564,543.65 as the actual legitimate original cost of the project as of December 31, 1954, all as more specifically shown in the attached schedule classified by primary plant accounts.

(D) The matter of Commission determination of accrued depreciation applicable to in-service project properties of Project No. 175 as of December 31, 1954, is hereby expressly reserved for future Commission consideration and decision.

737-370—66——68

PACIFIC GAS AND ELECTRIC COMPANY, LICENSEE, PROJECT NO. 175 (BALCH)

ACTUAL LEGITIMATE ORIGINAL COST

Account [1]		Original cost as of Dec. 31, 1930			Changes from Jan. 1, 1927, through Dec. 31, 1954			Allowed as of Dec. 31, 1954
No.	Title	Allowed [2]	Reclassification [3]	As reclassified	As claimed	Adjustments	As adjusted	
	Intangible Plant							
301	Organization	$32,773.78	($32,773.78)					
	Hydraulic Production Plant							
320	Land and land rights	7,286.16		$7,286.16				$7,286.16
321	Structures and improvements	457,634.06		457,634.06	$105,855.33	($418.12)	$105,437.21	563,071.27
322	Reservoirs, dams, and waterways	3,549,153.43	32,773.78	3,581,927.21	25,819.75		25,819.75	3,607,746.96
323	Water wheels, turbines, and generators	470,793.70		470,793.70	54,497.33	58,388.21	112,885.54	583,679.24
324	Accessory electric equipment	103,528.68		103,528.68	2,721.10		2,721.10	106,249.78
325	Miscellaneous power plant equipment	18,425.90		18,425.90	22,062.54		22,062.54	40,488.44
326	Roads, railroads, and bridges	97,513.83		97,513.83				97,513.83
	Total hydraulic production plant	4,704,335.76	32,773.78	4,737,109.54	210,956.05	57,970.09	268,926.14	5,006,035.68
	Transmission Plant							
340	Land and land rights	29,086.26		29,086.26	3,403.57		3,403.57	32,489.83
341	Clearing land and rights of way	14,280.00		14,280.00				14,280.00
343	Station equipment	201,229.56		201,229.56	9,140.98		9,140.98	210,370.54
344	Towers and fixtures	150,865.80		150,865.80	12,938.80		12,938.80	163,804.60
346	Overhead conductors and devices	110,539.19		110,539.19	12,843.06		12,843.06	123,382.25
349	Roads and trails							
	Total transmission plant	506,000.81		506,000.81	38,326.41		38,326.41	544,327.22
	General Plant							
378	Communication equipment	7,063.12		7,063.12	7,319.95		7,319.95	14,383.07
	Total electric plant in service	5,250,173.47		5,250,173.47	256,602.41	57,970.09	314,572.50	5,564,745.97
265.2	Contributions in aid of construction—Federal				(202.32)		(202.32)	(202.32)
	Total cost of project	5,250,173.47		5,250,173.47	256,400.09	57,970.09	314,370.18	5,564,543.65

( ) Denotes Credit.

[1] Account references are to account numbers and titles prescribed in the Commission's uniform system of accounts for public utilities and licensees effective prior to Jan. 1, 1961.

[2] Excluding additions and retirements from Jan. 1, 1927 through Dec. 31, 1930. See Commission orders issued Mar. 14, 1946 (5 FPC 402) and Feb. 27, 1950 (9 FPC 524).

[3] See reclassification and original cost studies of electric plant, approved by Commission order issued Feb. 27, 1950 (9 FPC 545).

(E) Licensee shall within 90 days from the issuance of this order file with the Commission certified copies of Licensee's adjusting journal entry showing compliance with this order; three copies of that journal entry to be submitted to the Secretary, Federal Power Commission, Washington, D.C., 20426, and two copies thereof to be submitted to the Regional Accountant, Federal Power Commission, San Francisco, California, 94111.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

PACIFIC GAS & ELECTRIC COMPANY, PROJECT NO. 1333

ORDER DETERMINING NET CHANGE IN ACTUAL LEGITIMATE ORIGINAL PROJECT COST AND PRESCRIBING ACCOUNTING THEREFOR

(Issued October 16, 1963)

Pacific Gas and Electric Company, License for Project No. 1333,[1] from time to time filed statements, pursuant to Section 4.1 of the Commission's Regulations under the Federal Power Act, claiming for the period from May 2, 1939, through December 31, 1954 a net increase in the original cost of the project of $115,617.78,[2] consisting of claimed project gross additions of $181,252.19, gross retirements of $65,169.91, and contributions in aid of construction in the credit amount of $464.50, resulting in a claimed total actual legitimate original cost of the project as of December 31, 1954 of $957,000.28, as more specifically shown in the attached schedule.

The Staff made a field examination of the books and records of License and other data for the purpose of ascertaining the correctness of the above claimed and recorded project cost change for the period from May 2, 1939 through December 31, 1954. Following that examination, agreement, subject to Commission approval, was reached between the Staff and representatives of Licensee with respect to a proposed adjustment for the period from May 2, 1939 through December 31, 1954 consisting of a reduction of $2,367.91 in the claimed and recorded project cost change and the accounting disposition of that amount.

The proposed reduction of $2,367.91 in the claimed and recorded change in project cost represents the cost of an auxiliary diversion dam located outside the approved project boundary. The proposed accounting disposition of this amount is by a debit of $2,367.91 to Account 101, Electric Plant in Service-Nonproject, with a concurrent credit of $2,367.91 to Account 101, Electric Plant Service, Project No. 1333.

---

[1] The project is located on the North Fork of the Middle Fork (Doyle Branch) of the Tule River in Tulare County, California, and may be described as the Upper Tule Project. The license, issued pursuant to the Federal Power Act to San Joaquin Light and Power Corporation, authorizing the operation and maintenance of the project is by its terms effective for a period of 50 years, commencing May 1, 1939. By order issued October 10, 1939 (2 FPC 622), the Commission approved the transfer of the license from San Joaquin Light and Power Corporation to Pacific Gas and Electric Company, effective November 22, 1939.

[2] By order issued February 27, 1950 (9 FPC 534), the Commission determined the actual legitimate original cost of the project to be $841,382.50, the accrued depreciation applicable to project property to be $202,842.40, and the fair value of the project to be $638,540.10, all as of May 1, 1939, the effective date of the license. The fair value determination was in accordance with Article 17 of the license for the project as issued to the original licensee, San Joaquin Light and Power Corporation.

The claimed cost of the project at December 31, 1954 exceeds the recorded project cost in the amount of $6.47 as of that date. No adjustment is proposed by the Commission's Staff with respect to this excess amount, however, because a correction to the project plant ledger was recorded by Licensee in 1956, subsequent to the period covered in the Staff's field examination referred to above.

Staff analysis of Licensee's provisions for project depreciation as of December 31, 1954, has not been completed, and the Staff proposes that the Commission defer for future consideration and determination the amount of accrued depreciation applicable to in-service project properties as of that date.

Based upon the proposed adjustment, the Staff recommends and Licensee concurs, that the Commission determine: (1) the net increase or change in project cost for the period from May 2, 1939 through December 31, 1954 to be $113,249.87 comprised of gross additions of $178,884.28 less gross retirements of $65,169.91 and contributions in aid of construction of $464.50; and (2) the actual legitimate original cost of the project as of December 31, 1954 to be $954,632.37, classified by primary plans accounts as shown in the attached schedule.

By letter dated January 25, 1962, Licensee confirmed its agreement with respect to the proposed adjustment, accounting disposition, and resulting project costs.

The California Public Utilities Commission was advised by letter of this Commission dated June 15, 1962 of the proposed adjustment, including the accounting disposition, and resulting project costs, all as recommended by this Commission's Staff and agreed to by Licensee as set forth above. By letter dated June 19, 1962, that Commission stated that "it has no exception to take to the proposals."

The Commission finds:

(1) Licensee, by its tentative agreement to the proposed adjustment, including the accounting dispositions, and the resulting project costs, and its letter dated January 25, 1962, and the California Public Utilities Commission, by its letter dated June 19, 1962, have obviated the necessity for notice and opportunity to protest provided in Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act.

(2) The adjustment described above, including the accounting disposition, proposed by the Staff and agreed to by the Licensee, is reasonable and appropriate for the purposes of the Federal Power Act, and, therefore, should be approved and directed as hereinafter provided.

(3) The net increase or change in the actual legitimate original cost of Project No. 1333 for the period from May 2, 1939 through December 31, 1954 is $113,249.87 and the resulting actual legitimate original cost of the project as of December 31, 1954 is $954,632,37, classified by primary plant accounts as shown in the attached schedule.

(4) It is necessary and appropriate for the purposes of the Federal Power Act that the determination of the accrued depreciation applicable to in-service project properties of Project No. 1333 as of December 31, 1954 be reserved for future Commission consideration hereinafter provided.

The Commission orders:

(A) The provisions of Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act are hereby waived for the purposes of this order.

PACIFIC GAS AND ELECTRIC COMPANY, LICENSEE PROJECT NO. 1333 (UPPER TULE)

Actual Legitimate Original Cost

Account [1] No.	Title	Allowed cost as of May 1, 1939 [2]	Changes from May 2, 1939 through Dec. 31, 1954 As claimed	Adjustments	As adjusted	Allowed cost as of Dec. 31, 1954
	Intangible Plant					
302	Franchises and consents	$739.45	($478.95)		($478.95)	$260.50
	Hydraulic Production Plant					
320	Land and land rights	14,893.56	478.95		478.95	15,372.51
321	Structures and improvements	64,373.67	12,021.18		12,021.18	76,394.85
322	Reservoirs, dams, and waterways	577,191.86	60,825.50	($2,367.91)	58,457.59	635,649.45
323	Water wheels, turbines, and generators	65,302.10	9,356.12		9,356.12	74,658.22
324	Accessory electric equipment	18,100.09	2,681.87		2,681.87	20,781.96
325	Miscellaneous powerplant equipment	2,686.17	9,774.02		9,774.02	12,460.19
	Total production plant	742,547.45	95,137.64	(2,367.91)	92,769.73	835,317.18
	Transmission Plant					
340	Land and land rights	855.08	21.86		21.86	876.94
341	Clearing land and rights of way	938.60				938.60
343	Station equipment	28,440.84	193.28		193.28	28,634.12
345	Poles and fixtures	27,424.02	15,114.54		15,114.54	42,538.56
346	Overhead conductors and devices	32,631.14	4,025.97		4,025.97	36,657.11
	Total transmission plant	90,289.68	19,355.65		19,355.65	109,645.33
	General Plant					
378	Communication equipment	7,805.92	2,067.94		2,067.94	9,873.86
	Total electric plant in service	841,382.50	116,082.28	(2,367.91)	113,714.37	955,096.87
265.2	Contributions in aid of construction—Federal		(464.50)		(464.50)	(464.50)
	Total cost of project	841,382.50	115,617.78	(2,367.91)	113,249.87	954,632.37

( ) Denotes Credit.

[1] Account references are to account numbers and titles prescribed in the Commission's uniform system of accounts for public utilities and licensees effective prior to Jan. 1, 1961.

[2] See Commission order issued Feb. 27, 1950 (9 FPC 534).

(B) The foregoing adjustment, including the accounting disposition, proposed by the Staff and agreed to by the Licensee, is hereby approved and directed to be made by the Licensee.

(C) Licensee, to the extent that it has not already done so, shall establish and maintain control and detailed project plant account for Project No. 1333 showing the debit amount of $113,249.87 as the net increase or change in the project cost for the period from May 2, 1939 through December 31, 1954, and the total debit balance of $954,632.37 as the actual legitimate original cost of the project as of December 31, 1954, all as more specifically shown in the attached schedule classified by primary plant accounts of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees effective prior to January 1, 1961.

(D) The matter of Commision determination of the accrued depreciation applicable to in-service project properties of Project No. 1333 as of December 31, 1954, is hereby expressly reserved for future Commission consideration and decision.

(E) Licensee shall within 90 days from the issuance of this order file with the Commission certified copies of Licensee's adjusting journal entry as of December 31, 1954 showing compliance with this order; three copies of that journal entry to be submitted to the Secretary, Federal Power Commission, Washington, D. C., 20426, and two copies thereof to be submitted to the Regional Accountant, Federal Power Commission, San Francisco, California, 94111.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP64-20

FINDINGS AND ORDER PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued October 16, 1963)

On July 23, 1963, United Gas Pipe Line Company (Applicant) filed in Docket No. CP64-20 an application pursuant to Section 7(b) of the Natural Gas Act for authority to abandon and remove the orifice meter station and appurtenant facilities serving Socony Mobil Oil Company, Inc., located on the Latex-Beaumont-Port Neches main line in Jefferson County, Texas.

Applicant states that for quite some time it has been selling gas to Socony Mobil Oil Company, Inc., for use in the operation of its Magpetco Terminal, Jefferson County, Texas. The customer requested that service be terminated in accordance with the terms of their contract on June 17, 1963, and since then no sales have been made. No other customer is being served by these facilities.

Applicant proposed to remove the facilities from the present site and use them elsewhere in its operations when required.

Pursuant to due notice, a public hearing was held in Washington, D.C., on September 26, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant is a natural gas company within the meaning of the Natural Gas Act and the above-described facilities are a part of Applicant's interstate pipeline system and subject to the jurisdiction of the Commission.

(2) The facilities to be abandoned, as hereinbefore described and as more fully described in the application, as supplemented, in this proceeding, are subject to the jurisdiction of the Commission and abandonment of such facilities by Applicant is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) Such abandonment, as hereinbefore described, is permitted by the public convenience and necessity and an order authorizing and approving same should be issued as hereinafter ordered.

(4) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Permission for and approval of the abandonment by United Gas Pipe Line Company, of the facilities hereinbefore described, as more fully described in the application, in this proceeding, be and the same is hereby granted.

(B) Applicant shall advise the Commission of the date of removal of the facilities within 10 days thereafter.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

THE HEFNER COMPANY (OPERATOR), ET AL., DOCKET NO. RI63-472

ORDER DENYING MOTION FOR RECONSIDERATION AND VACATION OF SUSPENSION ORDER AND TERMINATION OF PROCEEDING

(Issued October 17, 1963)

On July 1, 1963, The Hefner Company (Operator), *et al.* (Hefner) filed a motion for reconsideration of the order issued June 20, 1963, which suspended a periodic increased rate of 16.0¢ per Mcf proposed by Hefner for sales under Hefner's FPC Gas Rate Schedule No. 2 to Lone Star Gas Company (Lone Star) from the Fox-Graham and Cruce Fields, Carter and Stephens Counties, Oklahoma (Oklahoma-Other Area).

In support of its motion, Hefner states that the wells from which the gas is produced are capable of delivering gas in excess of 500 psig, but at the request of Lone Star the gas is delivered at pressures of 620 psig and 780 psig, at an additional cost to Hefner of approximately 3¢ per Mcf. Thus, Hefner contends the net rate received is 13¢ per Mcf, not 16c per Mcf. Hefner claims that the instant case is similar to the situation involved in *George S. Hammonds* and *Scott Hammonds*, Docket Nos. G-16520, and G-16521, which rate proceedings were terminated by order issued March 15, 1963, 29 FPC 495. Hefner contends that its "net rate" of 13¢ per Mcf is 2¢ per Mcf below the 15¢ per Mcf initial area rate established by the Commission's

Statement of General Policy No. 61–1,[1] and that Hefner could have received the 13¢ net rate as an initial rate if it had filed for such rate.

The *Hammonds* case is inapposite here. As pointed out in that order, there were special circumstances present in that case justifying the action taken. Conversely, Hefner has set forth no special circumstances which would justify similar treatment here.

Hefner's position in this case is based on the theory that the claimed cost of additional compression should properly be subtracted from the base rate provided for by contract in determining whether the proposed rate is in excess of the applicable area ceiling for "pipeline quality gas". In effect, Hefner is asserting that its gas, because of the claimed exceptionally high delivery pressure, is superior to "pipeline quality gas" as that term is used in the policy statement. Such an approach misconstrues the import of the area rate levels announced in the policy statement, which are considered to be a ceiling, not a floor as Hefner apparently construes them. And, in any event, no upward quality adjustment to the area ceiling based on delivery pressure differentials would appear to be appropriate or necessary. Accordingly, the 11.0¢ per Mcf ceiling rate is applicable to Hefner's 16.0¢ proposed rate, and the proposed rate was properly suspended. Actually, even the "net rate" of 13.0¢ per Mcf claimed by Hefner would be suspendible as in excess of the ceiling. Moreover, Hefner is incorrect in assuming that we would have certificated the sale involved at the claimed "net rate" of 13.0¢ without imposing a rate condition in view of the fact, as explained above, that such action would have permitted Hefner to obtain, in effect, a higher rate than the 15.0¢ initial rate level permitted in this area. We must, therefore, reject Hefner's position in this case.

The Commission finds:

For the foregoing reasons, the motion for reconsideration filed by Hefner on July 1, 1963, should be denied.

The Commission orders:

The motion for reconsideration filed by Hefner on July 1, 1963, is hereby denied.

Commissioner O'Connor *not participating.*

[1] Issued September 28, 1960, 24 FPC 818.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

AMENDING REGULATIONS TO GOVERN THE FILING OF RATE SCHEDULES BY PUBLIC UTILITIES AND LICENSEES, DOCKET NO. R–227

ORDER AMENDING ORDER NO. 271 AMENDING REGULATIONS TO GOVERN THE FILING OF RATE SCHEDULES BY PUBLIC UTILITIES AND LICENSEES

(Issued October 17, 1963)[1]

Two paragraphs were inadvertently omitted from Order No. 271, Amending Regulations to Govern the Filing of Rate Schedules by Public Utilities and Licensees, issued September 26, 1963 (28 F.R. 10572). They are corrections of cross-references to Part 35 made in other parts of Chapter I of Title 18 of the Code of Federal Regulations. They are made necessary by the changes in the numbering of sections in Part 35.

[1] Published in the Federal Register on October 24, 1963 (28 F.R. 11404).

The Commission pursuant to the authority contained in Order No. 271, *orders:*

(A) Order No. 271 is hereby amended to add the following paragraphs:

(D) In section 32.38 of Part 32—Interconnection of Facilities; Emergencies; Transmission to Foreign Country, Chapter I, Title 18, of the Code of Federal Regulations, change "§§ 35.1 – 35.12" to "§§ 35.1 – 35.16." As so amended, the section reads as follows:

32.38 Filing rate schedules and annual reports

Persons authorized to transmit electric energy from the United States shall file all rate schedules, supplements, notices of succession in ownership or operation, notices of cancellation, and certificates of concurrence with respect to such energy in the form and manner specified in the provisions of §§ 35.1 to 35.16, inclusive, of this chapter.

(E) In section 131.51, 131.52 and 131.53 of Part 131—Forms, of Subchapter D — Approved Forms, Federal Power Act, Chapter I, Title 18, of the Code of Federal Regulations, change the material in parentheses at the head of sections from "(See §§ 35.1–35.12 of this chapter.)" to "See §§ 35.1–35.21 of this chapter.)".

(B) Order No. 271 is further amended to make the following corrections in the attachment:

Footnote 1, insert after "Part 154 of" the words "this chapter, *i.e.*". As corrected the footnote reads as follows:

1 The term "tariff" means a compilation, in book form, of rate schedules of a particular public utility, effective under the Federal Power Act, and a copy of each form of service agreement. In connection herewith, attention is invited to Part 154 of this chapter, i.e., the Commission's Regulations under the Natural Gas Act, as a guide to the form and composition of a tariff.

In § 35.12(b)(2)(ii), insert the words "filling and each" in the last sentence after "part of the". As corrected, the subdivision reads as follows:

(ii) A summary statement of all cost (whether fully distributed, incremental or other) computations involved in arriving at the derivation of the level of the rate, in sufficient detail to justify the rate, shall be submitted with the filing, except that if the filing includes nothing more than service to one or more added customers under an established rate of the utility for a particular class of service, such summary statement of cost computations is not required. In all cases, the Secretary is authorized to require the submission of the complete cost studies as part of the filing and each filing public utility shall submit the same upon request by the Secretary in such form as he shall direct.

In § 35.13(b)(4)(i), change "N" to "O". As corrected, the subdivision reads as follows:

(4)(i) Except as provided in subdivision (ii) below, if the rate schedule provides for an increased rate, then 60 days prior to the date that such changed rate is proposed to become effective the filing public utility shall submit a statement showing its cost of the service to be supplied under the new rate schedule according to supporting statements A through O as described below. Simultaneously, the public utility shall submit the material on sales and revenues described in (a) above and, unless the rate schedule containing the proposed increased rate is likewise simultaneously filed, a summary statement of such proposed increased rate: *Provided, however,* That the submittal of such summary statement of the rate schedule shall not be in lieu of the rate schedule as required to be filed with the Commission pursuant to these Regulations.

In § 35.13(b)(4)(ii), change "increase" to "increases", and insert after "incidental to" ",". As corrected, the subdivision reads as follows:

(ii) No cost of service data shall be required in cases where the application of the proposed change in rate schedule effects rate increases of less than $50,000 annually resulting from, but incidental to, changes such as a rate design, delivery points and delivery voltage. Specifically designed rate increases of less than $50,000 annually (as opposed to incidental increases), increases resulting from changes made in fuel clauses, and increases of rates comprising an integral part of coordination and interchange arrangements in the nature of power pooling transactions, shall be supported by cost data as identified in § 35.12(b)(2).

In § 35.13(b)(4)(iv), change "N" to "O". As corrected, the subdivision reads as follows:

(iv) The statement of cost of service shall include an attestation by the chief accounting officer or other authorized accounting representative of the filing public utility that the cost statements and supporting data submitted as a part of the filing which purport to reflect the books of the public utility do, in fact, set forth the results shown by such books. Following is a description of statements A through O required to be filed pursuant to this subparagraph.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

AREA RATE PROCEEDING, ET AL., DOCKET NO. AR61-2, ET AL.

ORDER GRANTING STAY OF PRESIDING EXAMINER'S RULINGS

(Issued October 18, 1963)

Cities Service Oil Company, Continental Oil Company, Gulf Oil Corporation, Humble Oil & Refining Company, Marathon Oil Company, Pan American Petroleum Corporation, Phillips Petroleum Company, Skelly Oil Company, Socony-Mobil Oil Company, Inc., Sunray DX Oil Company, Texas Inc., Texaco-Seaboard, Inc., Union Oil Company of California and Union Texas Petroleum (Cities Service *et al.*), on October 11, 1963, tendered for filing an appeal from rulings by the presiding examiner made on October 2 and 3, 1963, at a prehearing conference in which the presiding examiner directed Cities Service, *et al.*, to provide Federal Income Tax data to the Municipal Distributor Group, interveners in these proceedings. The presiding examiner ordered that the data be furnished on or before October 21, 1963. Cities Service, *et al.*, requested the presiding examiner to certify his rulings to the Commission but the presiding examiner refused to so certify. The appeal filed by Cities Service, *et al.*, seeks Commission review of these rulings. Concurrently with the filing of the appeal, Cities, *et al.*, filed a motion for an order directing the withdrawal from the Public Reference Room of the Schedule Q forms contained in the Appendix B questionnaire data filed by the said Respondents in accordance with Commission order dated May 25, 1962. Cities Service, *et al.*, also filed a motion for a stay of the presiding examiner's rulings pending action on the aforesaid appeal and upon the motion to withdraw the Schedule Q data.

In order to give due consideration to a determination whether to accept the appeal, it is considered appropriate in the circumstances to grant a stay

of the presiding examiner's rulings pending action by the Commission. While the effect of this stay will be to relieve Cities Service, *et al.*, from the requirement to supply the data on or before October 21, 1963, as now required by the presiding examiner's order, Cities Service, *et al.*, are advised to be in a position to comply immediately with such order in the event the effect of the Commission's action herein is to permit the presiding examiner's rulings to remain in effect and the stay granted herein is terminated.

The Commission finds:

A stay of the effectiveness of the presiding examiner's rulings above referred to should be granted.

The Commission orders:

The effectiveness of the presiding examiner's rulings on October 2 and 3, 1963 in these proceedings directing that Cities Service, *et al.*, furnish certain Federal Income Tax data to the Municipal Distributors Group on or before October 21, 1963, is stayed pending action to be taken by the Commission with respect to the appeal from said ruling.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

EKLUTNA PROJECT, ALASKA, DOCKET NO. E-6544

FINAL ALLOCATION OF COST

(Issued October 18, 1963)

The Congress, by the Act of July 31, 1950 (64 Stat. 382) as amended by the Act of August 13, 1953 (67 Stat. 574) authorized the Secretary of the Interior to construct, operate and maintain the Eklutna project in the vicinity of Anchorage, Alaska, ". . . in order to encourage and promote the economic development of the Territory of Alaska, to foster the establishment of essential industries in said Territory, and to further the self-sufficiency of national defense installations located therein, . . ." The project consists of a low dam at Lake Eklutna, a diversion tunnel and penstock, a power plant with an installed capacity of 30,000 kilowatts made up of two units rated at 15,000 kilowatts each, transmission lines to Anchorage and other load centers, and related works.

Section 1 of the enabling act referred to above provides in part as follows:

> . . . The capital investment properly allocable to each unit of said project, as determined by the Federal Power Commission, shall be amortized over a reasonable period of years, and interest shall be charged on the unamortized balance of the full capital investment in said project at a rate of 2-1/2 per centum per annum and shall be covered into the Treasury of the United States to the credit of miscellaneous receipts.

The reference to an allocation "to each unit of said project" appears to come from predecessor bills relating to this project in which a development including additional units and the use of water resources for several purposes was contemplated. However, such a development was not undertaken, and the Eklutna project as finally authorized is a single-purpose project for the development of hydroelectric power and all costs thereof are, accordingly, properly allocable to the power development.

Pursuant to Section 1 of the enabling act referred to above, the Commission made the following determination with respect to the allocation of Eklutna project costs to power:

> The allocation of the Eklutna project costs to power is $30,700,000 and this sum shall be used on an interim basis for amortization of the capital investment in the project, pending submission of final costs data and the Commission's final determination thereon of the capital investment allocable to power.

This interim determination of the allocation of Eklutna project costs to power was issued July 19, 1954, while the project was still under construction, in order that the results of such an allocation would be available in determining the rates at which power from the Eklutna project must be sold.

The Eklutna project consists of a low dam at Lake Eklutna, Alaska, a diversion tunnel and penstock, a 30,000-kilowatt power plant with two units of 15,000 kilowatts each, transmission lines, and related works. The project was constructed by the Bureau of Reclamation and has been operating since 1955. The annual generation averages about 157,000,000 kilowatt-hours.

The Bureau of Reclamation recently supplied the Commission with a statement of the actual investment costs for use by the Commission in making a final determination of Eklutna project costs to power and further states that the project is being operated for power purposes only.

The Commission's staff has analyzed all available data relating to the Eklutna project. On the basis of these studies the Commission's Bureau of Power has prepared and submitted a report, dated September 12, 1963 on "Final Allocation of Costs to Power Development, Eklutna Project, Alaska."

The Commission having considered the matters hereinabove recited and other pertinent data relating to the Eklutna project, together with the applicable statutes, *finds*:

All project costs are properly allocable to power and after taking into account interest during construction at the rate of 2-1/2 per annum, the capital investment of the Eklutna Project power development as of June 30, 1962 is $32,767,216.

Upon consideration of the above finding and the report of the Bureau of Power, dated September 12, 1963, a copy of which is attached hereto, and in the light of the provisions of the Act of July 13, 1950 as amended by the Act of August 13, 1953, referred to above the Commission makes the following final determination with respect to allocation of Eklutna project cost to power:

The final allocation of the Eklutna project cost to power is, 100% of project costs is allocated to power, such costs being $32,767,216 on June 30, 1962, and this allocation shall be used for the amortization of the capital investment in the project.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

WARREN PETROLEUM CORPORATION, DOCKET NO. RI61-63

ORDER CONDITIONALLY ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICE OF CHANGE AND CONTRACT AMENDMENT, REQUIRING REFUND, AND TERMINATING PROCEEDING

(Issued October 18, 1963)

On July 23, 1963, Warren Petroleum Corporation (Warren) submitted an Offer of Settlement, pursuant to Section 1.18(e) of the Commission's Rules

of Practice and Procedure, in the above-designated proceeding, which relates to the jurisdictional sale of natural gas by Warren, under its FPC Gas Rate Schedule No. 49, to Tennessee Gas Transmission Company (TGT), from the Heyser Plant, Calhoun County, Texas (Railroad Commission District No. 2). The increased rate of 15.3333¢ per Mcf at 14.65 psia became effective subject to refund on February 8, 1961.

Under the terms of the offer, Warren proposes to waive the right to file for any rate increases under the favored-nation, price redetermination, and periodic escalation provisions of the rate schedule involved, and to establish a settlement rate of 15.0¢ per Mcf, inclusive of present tax reimbursement, for the remaining term of the contract. Warren also proposes to make appropriate refunds to TGT, in the amount of approximately $4,800, plus interest.

The offer of settlement contains the following reservation:

> In addition to and notwithstanding other provisions of this Settlement Proposal Warren reserves the right to file for and put into effect price increases to the extent permitted by its contract or as such contract may be amended under the following circumstances:
>
> (a) If Congress enacts any law or amendment of the Natural Gas Act or otherwise which releases, removes or exempts from Commission jurisdiction the sale of natural gas of the type covered by this rate schedule or the price applicable thereto or if Congress enacts any law pursuant to which Warren would be entitled but for this settlement agreement to claim or receive a price or rate under the rate schedule involved in excess of the 15.0¢ per Mcf, Warren shall have the right to claim and receive such price or prices as Warren may presently be or hereinafter become entitled to under its contract and the Settlement Proposal shall in no way effect such rights of Warren. * * *

This is the first time that the above reservation has ever been submitted in connection with this type of settlement offer. Thus, if accepted, Warren would obtain a benefit that other producers in the same situation have not received. Further, such a reservation is basically inconsistent with the provision for "elimination of all price escalation clauses" in the Second Amendment to the Statement of General Policy No. 61–1, issued December 20, 1960, 24 FPC 1107 as amended by Order No. 264, issued March 27, 1963, 29 FPC 589, in Docket No. R–234. But this amendment gives a producer a higher price than he could otherwise secure without suspension if he agrees to eliminate all possible future increases by amending his contract to exclude the clauses therein giving him a *contractual* right to the increase. What petitioner seeks is to keep the *contractual* right to an increase in the event that Congress removes all possible regulatory bars thereto. Accordingly, we shall reject the proposed reservation.

In all other respects the proposed settlement is consistent with the provisions of the Second Amendment to the Commission's Statement of General Policy No. 61–1, issued December 20, 1960, 24 FPC 1107, as amended by Order No. 264, issued March 27, 1963, 29 FPC 589, for jurisdictional sales of natural gas in Texas Railroad Commission District No. 2, and its acceptance would serve the public interest. As a condition of this order, consistent with our previous practice in this regard, we will require that Warren file an executed contract amendment deleting the favored-nation, price redetermination and periodic escalation provisions from its gas purchase contract with TGT.

However, we desire to make it clear that acceptance of the Offer of Settlement shall not be construed as approval of any future increased rate filed

in accordance with its reservation of the right to file increases to cover future tax increases.

The Commission finds:

The proposed settlement of the above-designated proceeding, on the basis described herein, as more fully set forth in the Offer of Settlement filed by Warren with the Commission on July 23, 1963, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The Offer of Settlement filed by Warren with the Commission on July 23, 1963, as herein conditioned, is hereby approved in accordance with the provisions of this order.

(B) Warren shall, over the signature of a responsible officer, file with the Commission, within 15 days from the date of issuance of this order, in writing an original and one copy of its acceptance or rejection of the terms and conditions of this order.

(C) Warren shall file, within 30 days from the date of issuance of this order, a notice of change providing for the 15.0¢ per Mcf rate, including present tax reimbursement, specified in its Offer of Settlement, and a contractual amendment to its FPC Gas Rate Schedule No. 49, unconditionally deleting the favored-nation, price redetermination and periodic escalation provisions therefrom. Both the notice of change and the contractual amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(D) Within 30 days from the date of issuance of this order, Warren shall refund to TGT all amounts collected under its FPC Gas Rate Schedule No. 49, in Docket No. RI61–63, in excess of the settlement rate of 15.0¢ per Mcf, together with simple interest at the rate of 7% per annum, from the date of receipt of such excess amounts by Warren to the date of refund. Warren shall bear all costs incidental to the making of such refunds.

(E) Within 45 days from the date of issuance of this order, Warren shall report to the Commission in writing the details of its calculations resulting in refunds ordered pursuant to paragraph (D) above, together with a copy of a release from TGT with respect to such refunds.

(F) Upon notification by the Secretary of the Commission that Warren has complied with the terms and conditions of this order, the rate and charge of 15.0¢ per Mcf at 14.65 psia, including present tax reimbursement, specified in its Offer of Settlement, shall be effective as of the date of issuance of this order, the above-designated proceeding shall be deemed terminated, and Warren's refund obligation with respect to the above-designated proceeding shall be deemed discharged.

Commissioner O'Connor *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP63–174

ORDER DENYING MOTION TO STAY OR IN ALTERNATIVE TO CONSOLIDATE PROCEEDINGS

(Issued October 21, 1963)

On October 11, 1963, Fuels Research Council, Inc., National Coal Association, Mid-West Coal Producers, Inc., and United Mine Workers of America,

interveners in this case, filed a motion to stay further action on the application of Natural Gas Pipeline Company of America (Natural) in this case or, in the alternative, to consolidate the proceedings on said application for hearing and decision with the proceedings under Section 5 (a) of the Natural Gas Act regarding the rates, charges and classifications of Midwestern Gas Transmission Company (Midwestern) under docket Nos. RP61–19 and RP62–7 and of Natural Gas Pipeline Company of America under docket No. RP63–6, pursuant to Section 1.20 (b) of the Commission's rules.

Natural filed an answer opposing said motion.

In support of their motion to stay further action on Natural's application under docket CP63–174 the coal interveners stated that in that application Natural seeks authorization for an increase in daily flow gas capacity of 110,000 Mcf in order to meet the peak-day or space heating demands on its existing distributor-customers; that the daily contract quantities required to meet existing peak demands create valleys of off-peak gas because of the low annual load factor of space heating consumers; that the distributors claim they must sell vast quantities of off-peak gas as interruptible boiler fuel at prices barely above the sum of the existing commodity component of Natural's tariff plus certain incremental costs and that because of competitive conditions they will not be able to make such sales of boiler fuel if Natural and Midwestern do not provide a two-part rate with a low commodity component; that any increase in Natural's flow gas capacity to provide its distributors with additional flow gas for space heating demands will create an even larger off-peak gas supply to be disposed of by the distributors; that Natural's proposed expansion presupposes that the additional gas will be sold under present rate design, which the coal interveners challenge as unlawful in the rate investigation proceedings under docket No. RP61–19 *et al.*, that the principal purpose of Natural's present low commodity component is to enable its customers to peg prices for boiler fuel sales just below the comparable price for coal; that to allow Natural to expand its facilities as it requests will aggravate the economic hardship already inflicted causing further irreparable injury to the coal industry and to the public interest; and that the economic feasibility of Natural's proposed expansion depends upon the decision of the issues raised by them in the rate investigation.

In support of the alternative motion for the consolidation of Natural's application under Docket No. CP63–174 with the proceedings under Docket No. RP61–19, *et al.* for the purpose of hearing and decision, the coal interveners say that they and Natural are parties to the certificate and rate investigation proceedings and that, in the latter proceedings, the examiner excluded a portion of the coal interveners' rebuttal evidence relating to the conservation or end-use of natural gas, the plight of the coal industry and the effect of pipeline sales and rates upon the coal industry, but held that such evidence was proper in a certificate proceeding.

Upon careful consideration of the coal interveners' motion and of Natural's answer thereto, we find that good cause has not been shown for staying further action on Natural's pending application under Docket CP63–174. Natural's application and exhibits in this case were filed December 18, 1962, and amended applications and exhibits were filed April 11, 1963, together with prepared testimony. Notice of application date of hearing was issued July 2, 1963 (28 F.R. 7044) scheduling a hearing to commence August 5, 1963. Upon the intervention of the coal interests the hearing was postponed by notice issued July 29, 1963 (28 F.R. 7964). By notice issued September 30, 1963 (28 F.R. 10760) a hearing on the issues presented by this application was set to commence October 21, 1963. On October 11, 1963, the coal interveners filed a "Request for post-

ponement of hearing" which was denied by notice issued October 16, 1963.[1] We find that the proper administration of the Natural Gas Act and the public interest require that the hearing on Natural's application in this case commence on October 21 as presently scheduled.

The Commission finds further that good cause has not been shown for consolidating the proceedings on Natural's certificate application under Docket CP63–174 with the rate investigation proceedings under Dockets RP61–19, *et al.* The hearing on the rate investigations was concluded October 17, 1963. The coal interveners offered no explanation of their delay in filing the motion to consolidate proceedings.

As indicated in the coal interveners' motion certain evidence proffered by them in the rate proceedings was excluded by the presiding examiner as being irrelevant in those proceedings, with an indication that such evidence might be relevant in a certificate proceeding. On appeal to us from the examiner's ruling we denied the appeal without prejudice. Thus, after the initial decision of the presiding examiner has been rendered, the way will be open to the coal interveners, through exceptions, if necessary, to the examiner's decision to again raise the question of the propriety of the examiner's exclusion of the proffered testimony. Furthermore, in this certificate proceeding, to which the coal interests are parties, they will have ample opportunity to proffer such testimony as they consider proper to show how they might be adversely affected if Natural's application were granted. They will have ample opportunity to proffer the same testimony in the certificate proceeding as was rejected in the rate proceedings subject to the presiding examiner's ruling as to its admissibility. The coal interveners have not been precluded, in the certificate proceeding, from offering testimony concerning the economic feasibility of Natural's project at the rates which it proposes to charge by the examiner's ruling in the rate proceedings.

The Commission orders:

(A) The coal interveners "Motion to stay or in alternative to consolidate proceedings" is hereby denied.

(B) The hearing in this case shall proceed to conclusion without recess for preparation of evidence or for preparation to cross-examine witnesses on proposed evidence served prior to the hearing date. Not less than 30 days shall be allowed for filing initial briefs.

OPINION NO. 406

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. G–10000

OPINION AND ORDER

(Issued October 21, 1963)*

Syllabus

1. Commission is not foreclosed from passing upon merits of proposed reduction in gas allocation because new contract was accepted for filing. P. 1046.

---

[1] Natural's answer to the various motions indicates that copies of its application together with copies of its exhibits and testimony were supplied to counsel for the coal interveners more than six months ago.

*Initial decision appears on p. 1047.

2. New contract purporting to reduce gas allocation is not sufficient evidence that full reduction should be granted where there is opposition to such reduction. P. 1046.
3. Bare fact that distributor acquiesced in pipeline's reduced allocation does not establish that public interest is so well protected that no further inquiry need be made. P. 1046.
4. Where predictions of anticipated need have not proved to be accurate, it is not in the public interest to require pipeline to hold facilities available but unused absent showing that they will ever be required to serve distributor. P. 1046.
5. Commission *authorizes* amendment of certificate to provide for permanent and temporary reduction in gas allocation. P. 1047.

Thomas F. Ryan, Jr., Richard J. Connor, William N. Bonner, Jr. and *Raymond V. Loftin, Jr.* for Transcontinental Gas Pipe Line Corporation.

Stanley M. Morley for Carolina Pipeline Company.

John E. Holtzinger, Jr. for Peoples Natural Gas Company of South Carolina.

Harry M. Lightsey, Jr. for South Carolina Public Service Commission.

David S. Lichtenstein for Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

BLACK, *Commissioner.*

By order dated March 1, 1957, this Commission issued a certificate to Transcontinental Gas Pipe Line Corporation (Transco) to construct and operate certain facilities as part of its interstate pipeline system extending from Louisiana to New York [17 FPC 360]. The order contained a condition that Transco allocate natural gas on a firm basis to Carolina Pipe Line Company (Carolina). As amended by order of March 25, 1959 [21 FPC 384], the allocation was fixed at 25,219 Mcf per day.

A new contract between Transco and Carolina, dated March 1, 1962, was filed with the Commission on March 10, 1962. This contract purported to fix the amount of gas to be allocated to Carolina by Transco at 12,500 Mcf per day. Transco now petitions to amend the original certificate by formal reduction of the allocation from 25,219 Mcf to 12,500 Mcf per day in accordance with the newly filed contract. Carolina joins in this request. Two intervenors have protested: South Carolina Public Service Commission (PSC) and Peoples Natural Gas Company of South Carolina (Peoples).

By decision issued June 18, 1963, the presiding examiner reduced the allocation by 8,000 Mcf per day, but refused to allow the additional reduction of 4,719 Mcf. Transco, Carolina, and Commission staff have excepted to the refusal to allow the additional reduction of 4,719 Mcf per day. PSC and People's did not except to the reduction of 8,000 Mcf, but ask that the examiner be sustained in his refusal to grant the further reduction. PSC has also asked that the decision in this case be deferred until the conclusion of hearings now pending before PSC, stating that the determination here may have some effect on the rates to be determined in that proceeding. Transco, on the other hand, pressed for a prompt decision, contending that it would be prejudiced by any delay.

Transco, Carolina, and the Staff introduced no evidence other than the new contract which purported to reduce the allocation from 25,219 to 12,500 Mcf per day. It is their contention that no other evidence is needed. They urge that Carolina's self-interest would prevent it from agreeing to any reduction below the amount of gas it needs to serve the public, and the fact

737-370—66——69

of Carolina's agreement here is sufficient evidence that the public interest is protected. They further point out that, since this Commission has no jurisdiction over Carolina, Carolina cannot be compelled in these proceedings to take more than 12,500 Mcf per day. Under the circumstances, if Transco's allocation to Carolina is not reduced, Transco will be in the position of having to hold gas available for Carolina which Carolina is under no obligation to take and which Transco wishes to sell elsewhere. Finally, although not raised on exception, these parties argued before the examiner that the reduction of the allocation is an accomplished fact which the Commission is now precluded from questioning by reason of the Commission's acceptance of the March 1, 1962 contract for filing without a hearing.

We cannot agree that this Commission is foreclosed from passing upon the merits of the proposed reduction in allocation because the new contract was accepted for filing. The letter of March 8, 1962, from Transco's counsel to the Commission requesting the filing, stated expressly that Transco was not then seeking a reduction of Carolina's permanent allocation. The Commission order allowing the filing was made "without prejudice to any findings or orders which may have been or may hereafter be made by this Commission in any proceeding now pending, or hereafter instituted by or against Transco."

Neither can we agree that the new contract of March 1, 1962, is sufficient evidence that the full reduction should be granted. We might concede that this agreement with Carolina, standing alone, is persuasive that the public interest does not require a continuance of the allocation. But, the State Public Service Commission and Carolina's main customer for gas appear in opposition; the bare fact of Carolina's acquiescence does not establish that the public interest is so well protected that no further inquiry need be made.

We now proceed to consider the additional facts available. It does not appear that there is any present need by Carolina for the 4,719 Mcf which Transco seeks to have released. Carolina's maximum delivery obligations under its service contracts would apparently require that Carolina continue to take the additional 4,719 Mcf contemplated by the Examiner's decision. But the record establishes that Carolina, under the reduced allocation contemplated by the March 1, 1962 contract, will still have adequate supplies to meet the highest one-day demand which it has ever experienced. Three communities which were to have received gas from the original allocation are not yet connected for service. And an additional source of supply has been found for Carolina.

The original allocation to Carolina was made on the basis of predictions of anticipated need. These predictions have not proved to be accurate. We do not feel it is in the public interest to require Transco to hold facilities available but unused when there is no showing that they will ever be required to serve Carolina.

We are of the opinion that the public interest requires issuance of an order permanently reducing Transco's allocation in conformity with the Examiner's decision, and temporarily reducing that allocation in the additional amount sought by Transco and Carolina, with provision for making the additional reduction permanent. For these reasons, the hearing in this docket will be reopened upon application of any party wishing to submit additional evidence. If no such application is received within sixty days from the time final order is entered in the proceeding now pending before PSC,

or within nine months in any case, the temporary additional reduction will become final without further order of this Commission.

This procedure will allow Transco to release the full amount of gas requested by their petition on an interim basis, and will allow PSC the opportunity to complete its present hearings and request reopening of this proceeding, before final action in this matter is taken. This will in no way prejudice Transco, since the Executive Vice President of Transco has indicated his company's ability and willingness to supply additional gas in the future should the need become apparent. Any order restoring the 4,719 Mcf allocation will provide such time as is necessary for Transco to furnish any additional facilities needed.

The Commission finds:

(1) The present and future convenience and necessity permit and require a permanent reduction of Transco's allocation to Carolina by 8,000 Mcf daily, and an additional 4,719 Mcf daily reduction in that allocation on a temporary basis until November 30, 1964.

(2) The determination of whether the present and future public convenience and necessity permit and require the additional 4,719 reduction of Transco's allocation to Carolina on a permanent basis after November 30, 1964, shall be held in abeyance a reasonable time to permit the introduction of additional evidence by any party.

The Commission orders:

(A) The permanent allocation by Transco to Carolina shall be reduced to 17,219 Mcf daily.

(B) The allocation by Transco to Carolina shall be further reduced, temporarily, to 12,500 Mcf daily from the date of this order through November 30, 1964.

(C) This hearing will be reopened for the introduction of additional evidence upon application by any party within sixty days of the date of the final order in the proceeding previously referred to now pending before PSC with respect to Carolina, or within nine months from the date of this order, whichever period shall first elapse.

(D) In the event no application is received from any party pursuant to paragraph (C) of this order within the time specified therein, the temporary reduction in allocation by Transco to Carolina set forth in paragraph (B) shall become permanent, without further order of this Commission.

INITIAL DECISION

OF THE PRESIDING EXAMINER APPROVING IN PART AND DENYING IN PART AN APPLICATION FOR A CERTIFICATE AMENDMENT

(Issued June 18, 1963)

TABLE OF CONTENTS

		Page
I	Nature of the case	1048
II	Issues	1048
III	Carolina's gas supply from Transcontinental and from Southern Natural	1049
IV	The "Public Convenience and Necessity" Test Required	1051
V	The "Public Convenience and Necessity" Test Applied	1053
VI	South Carolina Commission presentation	1055
VII	Conclusion and Order	1055

ELLIS, *Presiding Examiner:*

I — Nature Of The Case

Transcontinental Gas Pipe Line Corporation here seeks to reduce their natural gas firm service allocation to an important resale customer, the Carolina Pipeline Company serving numerous South Carolina communities, from the amount of 25,219 Mcf per day originally authorized in 1957 to the new figure of 12,500 Mcf which is the contract demand amount named in Carolina's service agreement the FPC accepted a year ago. The problem is that the only evidence the application produced was the new service agreement—Carolina wants, asks, and agrees to pay a demand charge for 12,500 Mcf only. Transcontinental says nothing more is needed to be shown or even known, and they seek immediate action because they now have other use for the unused capacity to be released represented by the 12,719 difference—or at least a use for part of it.

The present application was filed in February 1963, was the subject of a prehearing conference on April 22, formal hearing on that day and the next, and of briefs filed by the applicant, the FPC Staff, and two interveners, the last one received on May 22.

II — Issues

Transcontinental is quite forthright in its view that Commission's acceptance of the signed service agreement for 12,500 Mcf concludes the case, and justifies, indeed requires, the release of the entire unused capacity, saying that it is quite irrevelant to inquire or seek evidence of the Carolina company's requirements, or the needs of Carolina's many distributor customers. Their point is that they have urgent need for release of the unused (and unpaid for) capacity, in order to render a gas transportation service of 8,000 Mcf per day firm (and 16,000 interruptible) to a Texaco plant on the Delaware River, which is planned to begin in a few months. The certificate application therefore is pending under CP63–222, but has not yet been the subject of public notice by the Commission, or set for hearing. Carolina supported Transcontinental's request at the hearing, but has offered no evidence, nor has it filed a brief.

The FPC staff seems generally to be in agreement, pointing to a "pretty fair equilibrium" between Carolina's agreed supply and its apparent needs; also that the self-interest of the purchaser who seeks and signs up for 12,500 only is the best or at least enough index of the quantity really needed; finally that the Commission accepted Carolina's 12,500 Mcf service agreement with Transcontinental a year ago and is powerless now to require Carolina to buy any more, the purchaser itself being exempt from the Natural Gas Act (Section 1(c)).

A customer of Carolina, the Peoples Natural Gas Company of South Carolina, serving four communities in that state and evidently entirely dependent upon Carolina for its gas supply, has intervened and objected on many grounds. Their motive in so doing is claimed to be ulterior and suspect, and to be related in truth to a rate case now pending before the state utility commission. This motive, and the extent of their true interest in the present matter are reflected upon at great length in their opposition's briefs, but, whatever it is, the motivation is here regarded as irrelevant.

The substance of this customer company's point is that a proposal to amend an outstanding certificate is itself a certificate case, it must comply with the statutory requirements for a certificate, and the necessary findings cannot be

founded upon a mere scanning of the accepted service agreement, without some real reference to the true extent of the needs of the customers depending upon Carolina. What is suggested in effect is a dismissal of the application without prejudice to its proper and documented resubmission.

There was also full intervention and participation by counsel for the South Carolina Public Service Commission, whose brief "respectfully requests that the Federal Power Commission stay these proceedings until certain matters before the South Carolina Commission can be considered by it." These are (a) requests by several customer companies to reduce Carolina's demand schedules of service to them, and (b) a pending rate case of Carolina before the state commission. Some doubt is suggested about the adequacy of Carolina's supply but no accurate determination is said to be now available, nor does the state commission wish to be foreclosed upon "certain conclusions it might wish to make."

Thus the issue is whether a pipeline whose customer company will accept and pay for only half the peak day firm supply previously allocated to it may be permitted to cancel the unused allocation — so as to have the capacity available for use otherwise — without a new determination that the reduced allocation meets the statutory standards for its sanction by the FPC, i.e., whether the service under the new terms now proposed must be re-weighed upon the scale of the "present or future public convenience and necessity," the requisite standard specified in Section 7 of the Natural Gas Act.

So to put the question seems to answer it. The statute cannot be ignored merely because there are practical limits to what the Commission can accomplish by complying with it. Neither is to be supposed that the Commission's acceptance of the 12,500 Mcf service agreement a year ago (in an action without notice or hearing) now forecloses inquiry into whether the service now proposed — 12,500 Mcf *without* a reserve of capacity — will meet the requirements of the present or future public convenience and necessity. The Commission's action was, on its face, only an intermediate order, a mesne action without reference to the balance of capacity, and, as the Commission was careful to point out, did not constitute approval of the service and was "without prejudice to any findings or orders which have been or may hereafter be made by this Commission in any proceeding now pending, or hereafter instituted by or against Transco." (Ex. 3–R)

Hence some inquiry is required before the new arrangement may receive the Commission's stamp of approval—which does not come, as was here suggested, by rubber stamp. On the other hand, it does not follow that the label "certificate case" requires it to be proved by all the detailed estimates and projections that came in with the original application, since at that time the issues were very much broader.

III — Carolina's Gas Supply From Transcontinental and From Southern Natural

Turning to the record, such as it is, it may be found possible to find that Carolina's needs are adequately to be provided for, even with the release of the unused capacity, or at least of a part of it. This requires some review of the steps heretofore taken to establish Carolina's supply from Transcontinental, also its other supply from the Southern Natural Gas Company. In general, it shows an original allocation of about 25,000 Mcf per day from Transcontinental, a later and supposedly suplementary allocation of 10,340

from Southern Natural, and now some plain indication that the latter is to be used in part to supplant the former. Meanwhile, total firm gas usage has yet to exceed 20,000, while three new communities whom the Southern Natural allocation was expected to supply have not yet been served. The various steps in this progression — or retrogression and intercession — are confusing unless taken in order, as set out on the page opposite:

Allocations and supply for Carolina from Transcontinental and Southern Natural (MCF/D)

	Action Taken		Supply from Transco		Supply from Sou. Nat.		Total	
Reference	Date	Nature	Allocation	Actual	Allocation	Actual	Allocation	Actual
1	Mar. 1, 1957	Original Transco certification.	25,219				25,219	
2	Effective June 1, 1960.	Highest demand charge paid.		19,918			25,219	19,918
3	Mar. 10, 1961	Southern Natural certificate.			10,340		35,559	19,918
4	Nov. 1, 1961	Revised Transco service agreement.		16,918			35,559	16,918
5		Sou. Nat. initial service agreement.				5,000	35,559	21,918
6	Apr. 13, 1962	Current Transco service agreement accepted by FPC.		12,500			35,559	17,500
7	Before Nov. 1, 1961.	Peak day experienced (firm purchases).						19,918
8	Dec. 12, 1962	Peak day experienced, 1962 (firm sales).						19,039
9	Feb. 1963	New Transco allocation here sought to be approved.	12,500				22,840	
10	Apr. 1963	Total current customer demands on Carolina (approx.).						23,942
11	Nov. 1963	New increased service agreement with Sou. Nat. to become effective.				10,340		22,840

References for above table:
1. 17 FPC 360, 365, 367, amended by 21 FPC 384 (G–10000).
2. T134.
3. 25 FPC 518 (G–19, 632). This was in part to serve five new communities, only two of which have yet begun service. Southern Natural's gas was not to replace the Transco supply but to add to it, since Carolina's evidence claimed a total need of 32,719 Mcf. See 25 FPC at p. 520.
4. Exhibit 4–R.
5. T175.
6. FPC order dated April 13, 1962; also Exhibits 1–R, 3–R.
7. T134–6.
8. T–175; 244–248, *cf.* Ex. 5–R.
9. FPC notice dated March 1, 1963, G–10000.
10. T196; Exhibit 5–R, as revised at the hearing. This figure is the total of the contract demands of Carolina's wholesale and industrial customers plus its actual peak deliveries to its retail customers, and also the "Abbeville" system. It does not include any allowance for three new communities, not yet served, which the 1961 allocation from Southern Natural was supposed to be used for.
11. T16, 67, 86.

Current related proceedings

Docket	Parties	Subject	Status
RP63–4	Carolina Pipe Line Co. and Southern Natural.	S. 5 complaint—Carolina seeks more surplus gas.	In hearing.
CP63–84	Transcontinental Pipe Line Corp.	Construction program certificate application, from which the present item was severed.	
CP63–222	Transcontinental Pipe Line Corp.	S. 7—To provide gas transportation for Texaco, using 8,000 Mcf of firm capacity to be released herein.	Not yet "noticed".

The net result as to Carolina's firm supply is recapitulated as follows:

	MCF/D	
Present allocation from Transcontinental	25,219	
Present allocation from Southern Natural	10,340	
Total allocation in effect		35,559
Present service agreement with Transcontinental	12,500	
Southern Natural service agreement to become effective in November	10,340	
Total firm supply for 1963–4 season		22,840
New allocation total *after* approval of Transco's present application (12,500+10,340)		22,840

The significant conclusions as to supply are (1) that the firm service contract demands, per service agreement with their suppliers, total 22,840, (2) there would no longer be available for call a reserved and set aside pipeline capacity for an additional amount (as now in effect), and (3) the newer Southern Natural service is being used to take the place of an equal amount of Transcontinental service, not to supplement it (as the Commission was originally given to believe—25 FPC 518, 520).

IV — The "Public Convenience and Necessity" Test Required

The petition of Transcontinental is for a further amendment of its certificate (17 FPC 360, 367 as amended 21 FPC 384) "by reducing the allocation therein granted" from 25,219 to 12,500. What appears at page 367 of 17 FPC is not in so many words an allocation, but a certificate "authorizing Transcontinental * * * to make the sales referred to * * *" Other language in the two orders makes it plain that the permission to sell is to be treated as an allocation, and this is taken to imply a commitment or reservation of so much firm capacity, a dedication to the uses stated if, as, and when required.[1] It is the implied reservation of the capacity to this customer that occasions Transcontinental's request for an amendment so the unused part of the capacity will become available for the new use that has now developed. But since the document to be amended is a "certificate of public convenience and necessity," and it was issued under Section 7 of the Natural Gas Act, it follows that the amendment can be made only under the standards of that section and only if and as it appears that the newly revised certificate does indeed reflect an arrangement that meets the test of public convenience and necessity.

The certificate referred to was issued on the basis of formal findings that the "service proposed by Carolina Pipeline * * * are found to be required by the public convenience and necessity" (p. 358), to enable the rendition of which the allocation "should be made" which now is sought to be changed (p. 365).

It is evident that a revision of the allocation so carefully made, without any new review of what service is and will be required to meet the test of public convenience and necessity, would be both illogical as well as legally erroneous under the commanding requirements ("if it is found" etc.) of Section 7(e) of the Natural Gas Act. That test is meaningless indeed if

[1] Note that the FPC order merely authorized the sales, which seems to modify to that extent the initial decision in that case which had undertaken to authorize and *require* Transco to make the sales. 17 FPC at 359.

it does not weigh the needs of the very "public" whom the "service" was supposed to provide for, and upon that basis it is concluded that the amendment requested cannot be granted without compliance with that statutory test, without some summarization of that public need, and without some appraisal of how the net resulting arrangement will satisfy the need.

It is the Staff brief's conclusion that since the Commission has already accepted the new 12,500 service agreement, any evidence presently necessary that the unused supply (really a reserve of capacity) is not in fact needed can be inferred out of the Carolina Company's willingness to sign up for the 12,500 figure and no more. Staff relies upon the "credibility of self interest which the law wisely recognizes as a fairly reliable motivating factor." Aside from the obvious and elementary point that the utility's self-interest is not the guide to the public interest that the public utility laws are designed to protect, there are two other weaknesses to this form of reliance: (a) it is not the Carolina Pipeline Company's needs that are of concern, but those of their many customers and of the public throughout the area[2]; (b) something quite other than self interest may motivate their 12,500 Mcf service agreement when it is recalled that Carolina must pay nearly $40 per year demand charge for each and every Mcf of contract demand called for by their agreement.[3]

The identical test is applicable if the proceeding be regarded as an abandonment case, which, in truth, at least the action on the service agreement seems to constitute. Section 7(b) of the Natural Gas Act forbids Transcontinental to abandon "any service rendered" by means of its jurisdictional facilities without the Commission's prior approval, after hearing, and a finding that either the supply is depleted or "that the present or future public convenience or necessity permit such abandonment." It is settled that a partial reduction in the quantity being delivered constitutes an abandonment and is governed by Section 7(b).[4] Actually, by the new service agreements of 1961 and 1962 the "service rendered" by means of Transcontinental's facilities (to use the law's terms) was reduced, that is, abandoned in part, from a delivery of 19,918 Mcf per day to 16,918 and finally to 12,500 (T134–137). The Commission's order of April 13, 1962, in so many words "allowed" that new arrangement to take effect, although it purported to say that this action did not constitute "approval" of the service, which is evidently why the Commission felt that no hearing was then required, or finding of public convenience or necessity. Be that as it may, and whatever occurred a year ago, a hearing now has been held, reasonably practical and satisfactory evidence has been adduced, and the test of the public interest can now be applied to this final step in the partial abandonment of the service now sought to be confirmed by the concellation of the excess allocation.

Whether the entire action be looked upon realistically as a partial abandonment — once *de facto* and now *de jure* — or whether it be regarded merely as a present amendment of the certificate allocation, the net result is to require the same public interest test, since the ultimate command of Sections 7(b) and 7(e) is practically the same[5] — the change effected requires

[2] Kansas Pipe Line & Gas Co. (1939), 2 FPC 29, 56.

[3] As Transcontinental's public tariff, rate schedule CD–2, is understood.

[4] *Panhandle Eastern Pipe Line Company* v. *Michigan Consolidated Gas Company* (CA6, 1949) 177 F. 2d 942, 945; *Panhandle Eastern Pipe Line Company*, 11 FPC 167, 173, vacated on other grounds (CA3, 1953) 204 F. 2d 925 (where the reduction was from 125,000 Mcf to 87,500); *idem* 236 F. 2d 289.

[5] *Michigan Consolidated Gas Company* v. *F.P.C.*, 283 F. 2d 204, 214 (CADC, 1960).

FPC approval and that approval requires a hearing and a finding that it is permitted or required by the present or future public convenience and (or) necessity.

V — The Public Convenience and Necessity Test Applied

Neither Transcontinental nor Carolina has deigned to enlighten the record as to what demands on Carolina may likely be expected, or how Carolina proposes to prepare itself to meet them. Instead, we are advised that such evidence "is not pertinent to the inquiry," it is "not germane to the issue."[6]

But the record has evidence that may suffice for the limited present purpose, and this was supplied by the help of the intervener (Peoples Natural) who recommend that the application be dismissed. Using various sources, including data supplied by Carolina, the witness for Peoples has furnished the following details from which Carolina's total program can at least be envisioned and its resources assayed, even if neither can be precisely calculated:

Demands upon Carolina (Mcf/D)[1]

1. Present contract demands of wholesale customers:		
York Authority	6,590	
Chester Authority	2,476	
Lancaster Authority	2,451	
Peoples Natural Gas Company	3,395	
Bennettsville	1,507	
Total		16,419
2. Present contract demands of direct industrial customers:		
Dupont	250	
Burlington	400	
Delta	2,550	
Oak River	100	
Dixiana	180	
Total		3,480
3. Maximum actual "take" by Carolina's retail service customers as a group		3,046
4. Actual delivery to the Abbeville system		997
Total apparent requirements of Carolina's customers		23,942

[1] Derived largely from exhibit 5-R and the sources there cited.

It is apparent that these sources would not be adequate authority on which to certificate a new pipeline, but for the present limited purposes the total may be accepted as satisfactory evidence of Carolina's apparent needs. Neither Carolina nor Transcontinental strongly disputes the figures — and in view of their declination to offer the slightest such information, even after being told it was regarded as essential (T105, 282-3), they are hardly in a position to complain if the forum has nothing more complete to rely upon. There was some suggestion that item (1) may soon be reduced by the state commission, but this may be off-set by the possibility of higher needs for item (3), the retail users whose calls may hopefully be expected to increase.

[6] Transcontinental brief, pp. 3, 5, 7, Reply Brief, p. 4. But the same briefs at p. 4 agree that the Commission may properly inquire into the effect of this action on Transco and on its customers. How this inquiry as to this customer could be made without evidence is blandly unexplained.

It is the near proximity of the two results spelled out above—a need for 23,942 Mcf compared with the proposed new total allocation of 22,840—that leads the Staff brief to refer to them as in "pretty fair equilibrium." The requirements figure of 23,942 Mcf is also cited by Transcontinental without too serious disagreement. But the fact remains that the applicant and the staff join in asking FPC knowingly to approve as in the public interest an arrangement where the proposed allocation is 1,102 Mcf/day, or 5%, less than the evident needs of the public who are relying upon Carolina Pipeline. Just how that "short position" can be in the public interest is not at all explained.

The full story is that Carolina's need is supposed even to be 3,000 Mcf greater. When its second pipeline supply — the 10,340 from Southern Natural — was established by the Commission's certificate in 1961, 25 FPC 518, it was asked for, agreed to, and granted on the plain and presumably good faith representation that about half, 5,000, was to be used for service to five new towns (T107), but only two of them have been served to date. The other three are Georgetown, Conway and Myrtle Beach, no line has been laid to them, and it seems to have been accepted at the hearing that 3,000 of the new allocation was attributable to that projected service (T239). If now it is Carolina's plan to use the new supply for something else—to replace so much Transcontinental supply — manifestly simple candor would call for some new showing of why the change should be approved and what is proposed to be done about the previous plan which was presented here and accepted in good faith. Has the former promise now been forgotten?

The Staff brief's concurrence in the present plan seems unduly to hang upon Carolina's exempt status from the Natural Gas Act (20 FPC 54). That exemption has to do with Carolina's own transportation and sales, but has nothing whatever to do with the present case pertaining to the sale by Transcontinental *to* Carolina, which is fully jurisdictional and must meet the test of the public interest.

To recapitulate—

	Mcf/Day	
(a) Carolina's supply allocations total:		
From Transcontinental	25,219	
From Southern Natural	10,340	
Total		35,559
(b) Carolina's apparent needs:		
For present customers	23,942	
For three new towns	3,000	
Total		26,942
(c) Net difference evidently available for reassignment		8,617

As it happens, the alternative use of their capacity — on account of which Transcontinental asks immediate action on their petition — calls for just 8,000 of firm capacity, a little less than that which seems with satisfactory clarity to be available. The reduction of Transcontinental's allocation in *that* amount only, 8,000 Mcf per day, is therefore concluded to comply with the test of public convenience and (or) necessity (as worded in Section 7(b) and 7(e) of the Gas Act) in that—

(1) the Commission has already at least tentatively permitted the reduced rate of service to go into effect;

(2) the pipeline has alleged that it now has other and economic use for the unused capacity;

(3) the purchasing company is satisfied with the plan, supports the petition, declines the excess firm supply and wants to avoid any obligation to pay demand charges on it;

(4) after hearing held, it is established satisfactorily on the record that the reduction by 8,000 Mcf will not deprive Carolina or its customers of any supply that is or will be needed in the reasonably forseeable future.

VI—South Carolina Commission Presentation

The Public Service Commission of the State of South Carolina has cooperated in this case, appearing by counsel and on brief. The brief was filed May 15, and concludes as follows:

> For the reasons set forth above, the intervener, The South Carolina Public Service Commission, respectfully requests that the Federal Power Commission defer its action in this case until those matters now pending before The South Carolina Public Service Commission can be considered.

Principally the Commission's apprehension seems to be that this case may result in reducing Carolina's supply below the level of possible need, and the extent of that need is even now before them in a pending matter. It is believed the disposition of the case as here made may relieve this apprehension entirely, since there is retained and remains available to Carolina a substantial capacity, large enough for the three new towns and for other possible increases in service up to their distributors' contract demands. Whenever Carolina shall present a service agreement offering to pay for this unused capacity there should be no difficulty in making it available, unless, at least, in the meantime some other economic use for the unused capacity shall develop. In fact, Transcontinental appears so to stipulate (T103, 132).

It is believed the retention for Carolina's call of the 8,000 here released would not be in the public interest in that there is no evident imminence of their need for it and the pipeline supplier cannot be expected to reserve such a substantial amount indefinitely, to let it lie fallow, so to speak. Especially so since — (a) they are not collecting a demand charge on it, which implies that the customers in other states are currently bearing the burden of its cost; (b) the program to use this 8,000 of capacity for the service to Texaco will be forced to include an investment of $785,000 for a compression unit, which can be avoided if the capacity here unused can be released (T126).

In any event the State Commission's request is for the Federal Commission to withhold its action — for how long is not clear. If the South Carolina Commission still feels so advised, in the light of the action which follows, it appropriately should address the Federal Power Commission directly, through the medium of a bill of exceptions to this initial decision (FPC Rules 1.31).

VII—Conclusion and Order

Accordingly, upon consideration of the record —

(A) It is *Found* that the reduction in Transcontinental's allocation to Carolina by 8,000 Mcf only is permitted and required by the present and future public convenience and necessity; and,

(B) Subject to review by the Commission, it is *Ordered* that Transcontinental's firm sales allocation to Carolina Pipeline Company, as set forth in 17 FPC 360 and 21 FPC 384, be hereby reduced from 25,219 Mcf of natural

gas per day to 17,219 Mcf per day. The further reduction to 12,500 herein requested is denied upon the present record.

WILLIAM L. ELLIS,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

T. J. AHERN, ET AL., DOCKET NO. G–16705; H. L. BROWN, DOCKET NO. G–20010; WESTBROOK OIL CORPORATION, DOCKET NO. G–17297; BRIDWELL OIL COMPANY, DOCKET NOS. G–19582, RI61–208 AND RI61–189; RALPH E. FAIR (OPERATOR), ET AL., DOCKET NO. G–17146; VIRGINIA RAMSEY, ET AL., DOCKET NO. RI60–378; WIEGAND BROTHERS DRILLING COMPANY, DOCKET NO. G–17279

ORDER ACCEPTING OFFERS OF SETTLEMENT, REQUIRING FILING OF APPLICABLE CONTRACT AMENDMENTS, REQUIRING REFUNDS AND TERMINATING PROCEEDINGS

(Issued October 22, 1963)

Respondents in the above-entitled proceedings have severally filed offers of settlement, consistent with the Second Amendment to the Commission's Statement of General Policy No. 61–1, 24 FPC 1107 as amended by Order No. 264 issued March 27, 1963, 29 FPC 589, of their respective rate suspension proceedings involving their jurisdictional sales of natural gas to Tennessee Gas Transmission Company (TGT) from various leases in Texas Railroad District Nos. 2, 3 and 4.

The following table sets forth the data pertinent to the proceedings herein.

Docket Nos.	Rate schedule supply No.	Suspended rate cents	Effective date of suspended rate	Settlement rate cents/Mcf
G–16705	1–10	15.33333	----------	15.0
G–20010	12–1	17.24347	[1] 4– 2–60	15.0
G–17297	1–3	16.16947	----------	15.0
G–19582	4–3	15.0952	[1] 7–28–60	15.0
G–19582	3–4	[2] 15.0952	7–28–60	[2] 15.0
RI61–208	4–4	17.24347	4– 3–61	15.0
RI61–189	3–5	[1] 17.02416	3–31–61	15.0
G–17146	3–8	15.33333	7–27–59	15.0
RI60–378	2–(20–39)	17.24347	----------	14.6
G–17279	1–7	15.33333	[1] 7–28–59	15.0

[1] Suspended rate has not been made effective. No refunds are to be made.
[2] Includes TGT's system-wide dehydration charge of 0.21931¢.
[3] Does not include TGT's system-wide dehydration charge.

All of the producers involved here, with the exception of Ramsey, have agreed to eliminate all price escalation clauses except for provisions for future changes in tax reimbursement from their rate schedules. Ramsey has agreed to eliminate from its rate schedule all price escalation provisions except for periodic escalation provisions permitted under the Second Amendment, and provisions for future changes in tax reimbursement. The estimated total refund resulting from these settlement rates is approximately $19,000. The estimated annual decrease in rate from the suspended rates is approximately $14,350.

Since the proposed settlement rates involved in the various proceedings herein are acceptable under the provision of the aforementioned policy statement, it is believed that the public interest will best be served by accepting the respondents' offers of settlement as hereinafter set forth.

No protests have been received from any of the interveners in the respective proceedings. However, we desire to make it clear that the acceptance of these offers of settlement shall not be construed as approval of any future increased rate filed in accordance with the reservations of the respective respondents as indicated above of the right to file increases to cover future tax increases or periodic increases as the case may be.

The Commission finds:

The proposed settlements of the above-designated proceedings, on the basis described herein, as more fully set forth in the respective offers of settlement filed by the respondents herein, are in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offers of settlement filed in the above-designated proceedings by the respondents herein are approved in accordance with the provisions of this order.

(B) Each respondent herein shall file, within 30 days from the date of issuance of its order, a contractual amendment to its FPC Gas Rate Schedule involved herein, which each respondent shall execute with TGT in conformity with its offer of settlement in all respects. The contractual amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Within thirty days from the date of issuance of this order, each respondent, as applicable, shall refund to TGT all amounts collected, under its FPC Gas Rate Schedule involved herein, in excess of its aforementioned settlement rate, together with simple interest at the rate heretofore prescribed by Commission order in the respective proceeding, from the date of receipt of such excess amounts by said respondent to the date of refund. Each respondent shall bear all costs incidental to the making of its separate refund.

(D) Within 45 days from the date of issuance of this order, each respondent, as applicable, shall report to the Commission in writing the details of its calculations resulting in refunds ordered pursuant to paragraph (C) above, together with a copy of a release from TGT with respect to such refunds.

(E) Upon notification by the Secretary of the Commission to each respondent that it has complied with the terms and conditions of this order, the respective settlement rate prescribed herein shall be effective as of the date of issuance of this order, the related rate suspension proceeding of such respondent shall be deemed terminated, and the said respondent's refund obligation with respect to its above-designated rate suspension proceeding shall be terminated.

(F) The acceptance of these offers of settlement is without prejudice to any findings or determinations that may be made in any proceedings now pending or hereafter instituted by or against the respondents herein.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

GULF STATES UTILITIES COMPANY, DOCKET NO. E-7124

SUPPLEMENTAL ORDER AUTHORIZING THE ISSUANCE OF PREFERRED STOCK

(Issued October 22, 1963)

By order issued October 4, 1963, in the above-entitled matter, the Commission authorized Gulf States Utilities Company (Applicant) to issue and sell at

competitive bidding 100,000 shares of Preferred Stock, par value $100 per share, subject to the provisions, among others, as set forth in Paragraph (B) of that order as follows:

(B) The proposed issuance and sale of Preferred Stock at competitive bidding shall not be consummated until:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h) of those Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.

(ii) The Commission, by further orders, shall have approved the price to be received by Applicant for the proposed issuance of Preferred Stock and the dividend rate thereon.

Applicant, on October 21, 1963, filed an amendment, pursuant to the requirements of the aforementioned Commission order, in which it states, among other things, that it proposes to accept as representing the lowest annual cost of money to it, the bid of Stone & Webster Securities Corporation to purchase the 100,000 shares of the proposed issuance of Preferred Stock for $100.43 per share, with a dividend rate of $4.52 per share.

The Commission finds:

(1) Applicant has satisfactorily complied with the requirements relative to the issuance and sale of Preferred Stock contained in Paragraph (B) of the Commission's order issued October 4, 1963, in the above-entitled docket; and under the bid it proposes to accept for the purchase of the proposed issuance of Preferred Stock, the price per share of Preferred Stock to be received by Applicant and the dividend rate to be paid thereon are reasonable.

(2) The proposed issuance and sale of Preferred Stock, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

The Commission orders:

(A) The price per share of Preferred Stock to be received by Applicant and the dividend rate to be paid thereon by Applicant under the bid referred to above are approved as reasonable.

The proposed issuance and sale of Preferred Stock referred to above, upon the terms and conditions, and for the purposes specified in the application, as supplemented by the amendment referred to above, are authorized, subject only to the provisions of Paragraph (A) insofar as they relate to the issuance and sale of Preferred Stock, and of Parapraphs (C), (D), and (E) of the Commission's order issued October 4, 1963, in the above docket.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

CITY OF KETCHIKAN, ALASKA, PROJECT NO. 2328

ORDER ISSUING LICENSE (MAJOR)

(Issued October 22, 1963)

Application was filed on November 23, 1962, by the City of Ketchikan, Alaska (Applicant), for license under Secton 4(e) of the Federal Power Act

(Act) for proposed major Project No. 2328, known as the Lake Whitman Hydroelectric Project, to be located on Lake Whitman on Revillagigedo Island, near Ketchikan, Alaska, an affecting lands of the United States within the Tongass National Forest and other lands of the United States.

The project will utilize Lake Whitman as its reservoir and will involve rehabilitation of the existing dam, and the construction of other project works, including a powerhouse having an installed capacity of 5,400 horsepower. The energy produced will be used by Applicant. Available data indicate that the annual cost of generating power at this project will be substantially less than would be the cost of providing equivalent capacity and energy from the next cheapest alternative source, which was assumed to be a new diesel plant to be constructed by the applicant.

The Secretary of the Army and the Chief of Engineers, in reporting on the application, did not recommend for inclusion in any license issued for the project, special conditions in the interest of flood control and navigation.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license issued for the project, special conditions in the interest of fish and wildlife resources.

The Chief, Forest Service, acting for the Secretary of Agriculture, who has supervision over the Tongass National Forest, recommended for inclusion in any license issued for the project, special conditions in the interest of the National Forest.

The Commission further finds:

(1) Applicant is a municipal corporation organized under the laws of the State of Alaska, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effect the purpose of a license for the project.

(2) The project affects and will affect lands of the United States within the Tongass National Forest and other lands of the United States.

(3) Public notice of the application has been given. No protests have been received. There is no conflicting application before the Commission.

(4) The project does not affect a Government dam.

(5) The issuance of a license for the project will not interfere or be inconsistent with any reservation or with the purposes for which the Tongass National Forest was created or acquired.

(6) The issuance of a license for the project will not affect the development of any water resources for public purposes which should be undertaken by the United States.

(7) The project will be best adopted to a comprehensive plan for improving and developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes, upon compliance with the terms and conditions hereinafter imposed.

(8) The installed horsepower capacity of the project for the purpose of computing the capacity of the administrative annual charge is 5,400 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(9) The amount of annual charges to be paid under the license for the use, occupancy and enjoyment of United States lands by the project should be determined at a later date as hereinafter provided.

(10) The transmission facilities described in paragraph (B) below, which were included in the application for license, are parts of the project within

the meaning of Section 3(11) of the Act and should be included in the license for the project.

(11) The exhibits designated and described in paragraph (B) below which were filed as part of the application for license, conform to the Commission's rules and regulations, and should be approved as part of the license for the project.

The Commission orders:

(A) This license is hereby issued to City of Ketchikan, Alaska, (Licensee) under Section 4(e) of the Federal Power Act for a period of 50 years, effective as of August 1, 1963, for construction, operation and maintenance of Lake Whitman Hydroelectric Project No. 2328, located on Revillagigedo Island, near the City of Ketchikan, Alaska, and affecting lands of the United States within the Tongass National Forest and other lands of the United States, subject to the terms and conditions of the Act which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2328 consists of:

(a) All lands constituting the project area and inclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the Licensee or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit J & K: Sheet 1 (FPC No. 2328–1) General map of project area.

Exhibit J & K: Sheets 2 and 3 (FPC No. 2328–2 and –3) Project area.

(b) a rehabilitated existing concrete arch dam about 35 feet high located at the outlet of Lake Whitman into Case Creek; a new intake will tap the lake under water about 1,500 feet west of the dam; a reservoir with usable storage of 6,500 acre-feet at 60-foot drawdown; a 1,690-foot power tunnel; 950 feet of steel penstock; a surge tank; a powerhouse containing a 6,500 horsepower turbin connected to a generator rated at 4,500 kva, 0.90 p.f. operating under a head of 275 feet; a switchyard; a 34.5 kv transmission line about 6.3 miles long extending from the switchyard to Ketchikan; and appurtenant mechanical and electrical facilities, the location, nature, and character of which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also formed part of the application for license and which are designated and described as follows:

Exhibit L: General Design Drawings

Sheet 1 (FPC No. 2328–4) Powerhouse — Plan and Longitudinal Section

Sheet 2 (FPC No. 2328–5) One Line Diagram and Powerhouse Section

Sheet 3 (FPC No. 2328–6) Dam — Plan, Elevation, and Discharge Curve

Sheet 4 (FPC No. 2328–7) Intakes, Tunnel and Penstock-Plan and Profile, insofar as it shows the general layout

Exhibit M: Two typewritten pages entitled "General Description and General Specifications of Equipment".

(c) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project

area, if and to the extent that the inclusion of such property as a part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L–2, December 15, 1953, entitled "Terms and Conditions of License for Unconstructed Major Project Affecting Lands of the United States" (17 FPC 62), which terms and conditions, designated as Articles 1 through 24, are attached hereto and made a part hereof, except for Articles 12, 13, 17, 20, 21 and 22 thereof; and subject to the following special conditions set forth herein as additional articles:

Article 25. The Licensee shall pay to the United States the following annual charges:

(a) For the purpose of reimbursing the United States for the administration of Part I of the Act, a reasonable annual charge in accordance with the provisions of Part 11 of the Commission's Regulations. The authorized installed capacity for such purpose is 5,400 horsepower.

(b) The Commission reserves the right to determine at a later date annual charges for the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands, including transmission line right-of-way.

Article 26. The Licensee shall file within one year after completion of construction of the project, Exhibits F and K in accordance with the rules and regulations of the Commission.

Article 27. The Licensee shall, for the conservation, and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance and operation of such facilities and comply with such reasonable modifications of the project structures and operation as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the Alaska Department of Fish and Game, after notice and opportunity for hearing and upon findings based on substantial evidence that such facilities and modifications are necessary and desirable, reasonably consistent with the primary purpose of the project, and consistent with the provisions of the Act.

Article 28. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of Licensee's lands and interest in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be prescribed by the Commission, reasonably consistent with the primary purpose of the project, in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provision of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

Article 29. The Licensee shall commence the construction of the Lake Whitman Project No. 2328 within one year of the effective date of this license, shall thereafter and in good faith and with due diligence prosecute such construction, shall complete construction of such project works within two years

from the effective date of this license, and shall prosecute such construction so as to include the following:

1. Construction of the new facilities of the Lake Whitman project as described herein.

2. Repairs and modifications to the existing concrete arch dam in order to provide a safe and adequate structure for the life of the project.

3. Removal of the debris in the reservoir and general area of Lake Whitman.

4. Removal of the abandoned pipeline, powerhouse, and other related facilities.

5. Restoration of the public lands occupied by the abandoned facilities to a condition deemed satisfactory to the agency having supervision over the lands.

Article 30. The Licensee shall install additional capacity or make other economically sound and in the public interest to do so, after notice and opportunity for hearing.

Article 31. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other power systems and in such manner as the Commission may direct in the interest of power and other beneficial uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

Article 32. Timber on lands of the United States, cut, used, or destroyed in the construction and maintenance of the project works, or in the clearing of said lands, shall be paid for and the resulting slash and debris disposed of in accordance with the requirement of the agency of the United States having jurisdiction over said lands. Payment for merchantable timber will be at current stumpage rates, and payment for young growth timber below merchantable size will be at current damage appraisal value. However, the agency of the United States having jurisdiction may sell or dispose of the merchantable timber to others than the Licensee, with the provision that timber so sold or disposed of will be cut and removed from the area prior to or without undue interference with clearing operations of the Licensee and in coordination with his project construction schedules. Such sale or disposal to others will not relieve the Licensee of the responsibility for the clearing and disposing of all slash and debris from project lands.

Article 33. The Licensee shall do everything reasonably within its power and shall require its employees, contractors, and employees of contractors to do everything reasonably within their power, both independently and upon the request of officers of the agency concerned to prevent, make advance preparations for suppression, and suppress fires on the lands to be occupied or used under the license. The Licensee shall be liable for and pay the costs incurred by the United States in suppressing fires caused from the construction, operation, or maintenance of the project works or of the work appurtenant or accessory thereto under the license.

Article 34. The Licensee shall be responsible for and shall minimize soil erosion and siltation on lands adjacent to the stream resulting from construction and operation of the project. The Commission upon request, or upon its own motion, may order the licensee to construct and maintain such preventive works to accomplish this purpose and to revegetate exposed soil surface as the Commission may find to be necessary after notice and opportunity for hearing.

Article 35. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and recreational purposes, including fishing and hunting, and shall allow to a reasonable extent for such purposes the construction of access roads, wharves, landings, and other facilities on its lands the occupancy of which may in appropriate circumstances be subject to payment of rent to the Licensee in a reasonable amount: Provided, that the Licensee may reserve from public access, such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property and Provided further, that the Licensee's consent to the construction of access roads, wharves, landings, and other facilities shall not, without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities. These facilities are in addition to the facilities that the Licensee may construct and maintain as required by the license.

Article 36. The Licensee shall construct, maintain and operate or shall arrange for the construction, maintenance and operation of such recreational facilities including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities and utilities, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or interested State agencies, after notice and opportunity for hearing and upon findings based upon substantial evidence that such facilities are necessary and desirable, and reasonably consistent with the primary purpose of the project. The Licensee shall within one year from the date of issuance of the license, file with the Commission for approval its proposed recreational use plan for the project. The plan shall be prepared after consultation with appropriate Federal, State and local agencies, and shall include recreational improvements which may be provided by others in addition to the improvements the Licensee plans to provide.

Article 37. No lease of the project or any part thereof whereby the lessee is granted the occupancy, possession, or use of the project, or any part thereof, shall be made without prior written approval of the Commission; and the Commission may, if in its judgment the situation warrants, require that all the conditions of the license, of the Act and of the rules and regulations of the Commission shall be applicable to such property so leased to the same extent as if the lessee were the Licensee: Provided, that the provisions of this article shall not apply to leases of land or buildings or other property while not required to achieve the purposes of the license.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of the license for the project.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313 (a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

Commissioner Ross will set forth his individual views in an order granting another license application shortly to be issued. While not stated at this time in order to allow the immediate issuance of this license, the views to be expressed are nevertheless applicable to this license. See 30 FPC 1338 at 1341.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

A. J. INDUSTRIES, INC., PROJECT NO. 2307

ORDER ISSUING LICENSE (MAJOR)

(Issued October 24, 1963)

Application was filed on February 19, 1962, and supplemented on May 20, 1963, by A. J. Industries, Inc. (Applicant) of Los Angeles, California, for a license under the Federal Power Act (Act), for constructed Project No. 2307, located on Salmon and Annex Creeks, First Judicial Division, Alaska, and affecting lands of the United States within the Tongass National Forest and other lands of the United States.

Applicant has paid charges through the year 1963 for use of lands of the United States utilized by the project pursuant to the provisions of a Joint Final Power Permit (02879) issued January 24, 1918 by the Secretary of Agriculture and the Secretary of the Interior, as amended. In this proceeding, Applicant claims no rights with respect to the Permit, which was issued to a prior owner of the project works, and we do not pass on its validity. (See 32 Ops. Att'y Gen. 525.)

Applicant estimates the original cost of the existing facilities of the project, exclusive of the transmission lines, as being $1,699,039.39, and the cost of the two transmission lines as $7,635.73 and $7,034.47, respectively.

Inspection of the Salmon Creek and Annex Creek dam structures by Commission staff and a consultant engaged by Applicant disclosed that the structures are in need of considerable repairs and modifications. Applicant estimates that repairs and modifications of the structures can be accomplished at a cost of about $339,000, of which structural repairs will require about $236,000. We are hereinafter including as a special article a rehabilitation schedule for completion of such repairs and modifications.

Applicants requests a 50-year license to authorize the continued operation of the project comprising the Salmon Creek and Annex Creek developments totalling 15,000 installed horsepower capacity. Although the licensee will be required to make substantial repairs and modifications to the project, it appears that a 25-year license will be ample for this project which, as shown above, has been in operation for many years.

The Secretary of the Army and the Chief of Engineers, in reporting on the Application, advised that special terms and conditions in the interest of navigation are not necessary.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license issued for the project, special conditions in the interest of fish and wildlife resources.

The Department of Agriculture, in reporting on the application advised that the project, if licensed, will not interfere or be inconsistent with the purposes for which the Tongass National Forest was created or acquired, provided any such license include, among other things, certain conditions for the protection of the Tongass National Forest.

The State of Alaska Department of Fish and Game, in reporting on the application, advised that the project has not been injurious to the fish and game resources of the area affected, and, therefore, had no recommendations to make concerning the project.

The Commission finds:

(1) Applicant is a corporation organized under the laws of the State of West Virginia, is duly qualified to do business in the State of Alaska, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effect the purposes of a license for the project.

(2) The project affects lands of the United States within the Tongass National Forest and other lands of the United States.

(3) Public notices of the application has been given. No protests have been received. There is no conflicting application before the Commission.

(4) The project does not affect a Government dam.

(5) The issuance of a license for the project will not interfere or be inconsistent with any reservation or with the purposes for which the Tongass National Forest was created or acquired.

(6) The issuance of a license for the project will not affect the development of any water resources for public purposes which should be undertaken by the United States.

(7) The project will be best adapted to a comprehensive plan for improving and developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes, upon compliance with the terms and conditions hereinafter imposed.

(8) The installed horsepower capacity of the project for the purpose of computing the capacity component of the administrative annual charge is 12,100 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(9) The amount of annual charges to be paid under the license for the use, occupancy and enjoyment of lands of the United States by the project should be determined at a later date as hereinafter provided.

(10) The transmission facilities described in paragraph (B) below, which were included in the application for license, are parts of the project within the meaning of Section 3 (11) of the Act and should be included in the license for the project.

(11) The exhibits designated and described in paragraph (B) below, which were filed as part of the application for license, conform to the Commission's rules and regulations to the extent that they show location and overall construction of the project, and should to that extent be approved as part of the license for the project.

The Commission orders:

(A) This license is hereby issued to A. J. Industries, Inc. (Licensee) under Section 4 (e) of the Act for a period of 25 years, effective as of September 1, 1963, for the continued operation and maintenance of Project No. 2307, affecting lands of the United States within the Tongass National Forest and other lands of the United States, subject to the terms and conditions of the Act which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2307 consists of:

(a) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interests in such lands necessary or appropriate for the purpose of the project, whether

such lands or interests therein are owned or held by the applicant or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit J: (FPC No. 2307–1) Hydro-Electric Facilities, Primary Transmission System;

Exhibit K: (FPC No. 2307–2) Salmon Creek, Conduit & Power House Sites;

(FPC No. 2307–3) Salmon Creek, Reservoir and Capacity—Area Curves;

(FPC No. 2307–4) Salmon Creek, Reservoir;

(FPC No. 2307–5) Salmon Creek, Transmission Line;

(FPC No. 2307–6) Tramway;

(FPC No. 2307–7) Salmon Creek—Annex Creek Transmission Line, Salmon Creek to Juneau;

(FPC No. 2308–8) Salmon Creek—Annex Creek, Transmission Line Inside Juneau City Limits;

(FPC No. 2307–9) Salmon Creek—Annex Creek, Transmission Line, Juneau to Thane;

(FPC No. 2307–10) Annex Creek Transmission Line, Thane to Annex Creek;

(FPC No. 2307–11) Annex Creek, Conduit & Power House Site;

(FPC No. 2307–12) Annex Creek, Power House Site;

(FPC No. 2307–13) Annex Creek Reservoir; and

(FPC No. 2307–14) Annex Creek Reservoir and Dam.

(b) Project works consisting of:

Salmon Creek No. 2—A concrete arch dam 170 feet high with a 648-foot crest including the spillway, creating a reservoir of 19,000 acre-feet capacity and having a surface area of 210 acres at maximum elevation of 1,177 feet; a steel pipe conduit 4477 feet long to Powerhouse No. 2, containing 2–1400 kw generators and other appurtenances.

Salmon Creek No. 1—A wood flume 9,876 feet long from the tailrace of Powerhouse No. 2 to a timber forebay; two riveted steel penstocks 1,625 feet long from the forebay to Powerhouse No. 1, containing 2–1400 kv generators; a 12,500-foot tramway (between Powerhouses No. 1 and No. 2; a 4,500-foot aerial tramway between Powerhouse No. 2 and the dam; and other appurtenances.

Annex Creek—A wood frame buttress dam 25 feet high and 115 feet long on Upper Annex Creek creating a reservoir of 23,400 acre-feet capacity with surface area of 264 acres; a tunnel 1,418 feet long, the lower 250 feet of which is lined; 7,112 feet of steel pipe to a powerhouse containing 2–1,750 kw generators and other appurtenances; and

Transmission Facilities—The 23 kv transmission lines from the three powerhouses described above are all interconnected at a common switchyard located near the old steam generating plant of A. J. Industries, Inc., and consists of: (1) the 1.89 mile line between Powerhouse No. 2 and Powerhouse No. 1; (2) the 4.17-mile line between Powerhouse No. 1 and "A" millsite and old steam plant regulating station, together with the spare line between Powerhouse No. 1, along the shore line of Gastineau Channel to Juneau thence across millsite "A" and old steam plant regulating station; (3) the 16-mile line from the Annex Creek powerhouse to millsite "A" via Thane together with the spare line; (4) the transmission facilities at "A" millsite; and (5) the step-up transformers at each of the project plants and appurtenant facilities.

The location, nature and character of the above described developments together with all other appurtenant facilities not specifically mentioned herein are more specfically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also formed part of the application for license and which are designated and described as follows:

Exhibit L: (FPC No. 2307–15) Annex Creek Power House, General Arrangement;

(FPC No. 207–16) Annex Creek Water Conduits;

(FPC No. 2307–17) Salmon Creek Power House No. 1, General Arrangement;

(FPC No. 2307–18) Salmon Creek Power House No. 1, General Assembly—Unit No. 2;

(FPC No. 2307–19) Salmon Creek Power House No. 2, General Arrangement;

(FPC No. 2307–20) Salmon Creek Arch Dam;

(FPC No. 2307–21) Salmon Creek Arch Dam, Spillway & Intake Details; and

Exhibit M: Five typewritten sheets entitled, "General Description of Equipment" filed in the Commission February 19, 1962.

(c) All other structures, fixtures, equipment, or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as a part of the project is approved or acquiesced in by the Commission; also all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L–1, December 15, 1953, entitled "Terms and Conditions of License for Constructed Major Project Affiecting lands of the United States" (14 FPC 562), which terms and conditions designated as Articles 1 through 23, are attached hereto and made a part hereof, except for Articles 11, 12, 16 and 21 thereof; and subject to the following special conditions set forth herein as additional articles:

Article 24. The Licensee shall pay for all timber on lands of the United States cut, used or destroyed in the construction and maintenance of the project works, and in the clearing of such lands, the resulting slash and debris shall be disposed of in accordance with the requirements of the agency of the United States having jurisdiction over such lands. Payments for merchantable timber will be at current stumpage rates, and payment for young growth timber below merchantable size will be at current damage appraisal value. However, the agency of the United States having jurisdiction may sell or dispose of the merchantable timber to others than the licensee, with the provision that timber so sold or disposed of will be cut and removed from the area prior to or without undue interference with clearing operations of the licensee and in coordination with the project construction schedules. Such sale or disposal to others will not relieve the licensee of the responsibility for the clearing and disposing of all slash and debris from project lands.

Article 25. The Licensee shall do everything reasonably within its power and shall require its employees, contractors, and employees of contractors to do everything reasonably within their power, both independently and upon request of officers of the agency concerned to prevent, make advance prepara-

tions for suppression, and suppress fires on the lands to be occupied or used under the license. The licensee shall be liable for and pay the costs incurred by the United States in suppressing fires caused from the construction, operation, or maintenance of the project works or of the work appurtenant or accessory thereto under the license.

Article 26. The Licensee shall consult with Forest Service representatives and within one year from the effective date of this license, submit revised Exhibits F, J and K to define the final project boundary and area in accordance with the rules and regulations of the Commission.

Article 27. The Licensee shall consult with Forest Service representatives and shall within one year from the date of issuance of this license submit for Commission approval, a plan for relocating the existing transmission line now located on the north side of Glacier Highway in the vicinity of the Forest Service Juneau Administration Site.

Article 28. The Licensee shall, for the conservation and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance and operation of such facilities and comply with such reasonable modifications of the project structures and operations, as may be ordered by the Commission upon its own motion or upon recommendations of the Secretary of the Interior or the Alaska Department of Fish and Game, after notice and opportunity for hearing and upon findings based on substantial evidence that such facilities and modifications are necessary and desirable, reasonably consistent with the primary purpose of the project and consistent with the provisions of the Act.

Article 29. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of Licensee's lands and interests in lands, reservoirs, waterways and project works as may be reasonably required to complete such fish facilities or such improvements thereof. In addition, after notice and opportunity for hearing the Licensee shall notify the project operation as may be prescribed by the Commission, consistent with the primary purpose of the project, in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provision of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish handling facilities or to relieve the Licensee of any obligation under this license.

Article 30. The Licensee shall install additional capacity or make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so, after notice and opportunity for hearing.

Article 31. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

Article 32. The Licensee shall construct, maintain and operate or shall arrange for the construction, maintenance and operation of such recreational facilities including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities and

utilities, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or interested State agencies, after notice and opportunity for hearing and upon findings based upon substantial evidence that such facilities are necessary and desirable, and reasonably consistent with the primary purpose of the project. The Licensee shall within one year from the date of issuance of the license, file with the Commission for approval its proposed recreational use plan for the project. The plan shall be prepared after consultation with appropriate Federal, State and local agencies, and shall include recreational improvements which may be provided by others in addition to the improvements the Licensee plans to provide.

Article 33. So far as is consistent with proper operation of the project the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and recreational purposes, including fishing and hunting, and shall allow to a reasonable extent for such purposes the construction of access roads, wharves, landings, and other facilities on its lands the occupancy of which may in appropriate circumstances be subject to payment of rent to the Licensee in a reasonable amount: Provided, that the Licensee may reserve from public access, such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property and Provided further, that the Licensee's consent to the construction of access roads, wharves, landings and other facilities shall not, without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities. These facilities are in addition to the facilities that the Licensee may construct and maintain as required by the license.

Article 34. The Licensee shall pay to the United States the following annual charges, effective as of January 1, 1964:

(i) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, one (1) cent on the authorized installed capacity (12,100 horsepower) plus two and one-half (2-1/2) cents per 1,000 kilowatt-hours of gross energy generated during the calendar year for which the charge is made; or such other amounts as may hereafter be determined as necessary to reimburse the United States for the costs of administration.

(ii) For the purpose of recompensing the United States for the use, occupancy and enjoyment of its lands exclusive of those used for transmission line right-of-way an amount to be hereafter determined by the Commission.

(iii) For the purpose of recompensing the United States for the use, occupancy and enjoyment of its lands for transmission line right-of-way purposes only, an amount to be hereafter determined by the Commission.

Article 35. Licensee shall repair and modify the Salmon Creek and Annex Creek developments to make the structures safe and adequate and restore the following schedule, the period to begin as of the effective date of the license:

First Year

1. Installation of air vent in blowoff line at outlet of Annex Creek Dam.

2. Initiation of a program for the repair and modification of the generating equipment and appurtenant facilities of the Salmon Creek and Annex Creek developments.

3. Completion of the repairs and modifications to the generating equipment and appurtenant facilities of the project.

Second Year

1. General cleanup around Salmon Creek dam and in and around Salmon Creek Reservoir.
2. Scale downstream face of Salmon Creek dam.
3. Replacement of supports for Salmon Creek penstock No. 1.
4. Initiation of the rehabilitation of the Salmon Creek flume.
5. Continuation of the program for the repair and modification of generating equipment.

Third Year

1. Drill and grout Salmon Creek dam.
2. Repair saddle dams at Upper Annex Creek Lake.
3. Replacement of supports for Salmon Creek penstock No. 1.
4. Continuation of the rehabilitation of the Salmon Creek flume.
5. Clean and paint valves of outlet at Annex Creek dam.
6. Continuation of the program for the repair and modification of generating equipment.

Fourth Year

1. Gunite and waterproof upstream face of Salmon Creek dam.
2. Continuation of the rehabilitation of the Salmon Creek flume.
3. Check the plate thickness of all penstocks.

Fifth Year

1. Repair tailrace concrete at Annex Creek power plant.
2. Completion of the rehabilitation of the Salmon Creek flume.

Article 36. Licensee shall maintain the Salmon Creek reservoir at a level not greater than elevation 1,140 feet until such time as the repairs and modifications to the Salmon Creek Arch dam are completed and approved by the Commission.

Article 37. Licensee shall submit a semi-annual report showing the progress of construction performed pursuant to Article 35.

Article 38. Licensee shall prior to commencement of concrete repairs and grouting of the Salmon Creek dam as outlined in *Article 35* above, submit detailed plans and specifications for these repairs, together with plans for lowering the reservoir level during grouting operations.

Article 39. The Licensee shall make provisions at the Salmon Creek dam for measurement of the deflection of the crown of the dam at its crest; and make monthly readings of the measurements together with simultaneous readings of the water surface elevation and water and air temperatures. The Licensee shall also submit an annual report of such measurements and readwith respect to the condition of the repairs as prescribed in *Article 35.*

Article 40. No lease of the project or any part thereof whereby the lessee is granted the occupancy, possession, or use of the project works, or any part ings together with a report on the overall condition of the dam, particularly thereof, shall be made without prior written approval of the Commission; and the Commission may, if in its judgment the situation warrants, require that all the conditions of the license, of the Act, and of the rules and regulations of the Commission shall be applicable to such property so leased to the same extent as if the lessee were the Licensee: Provided, that the provisions of this article shall not apply to leases of land or buildings or other property while not required to achieve the purposes of the license.

Article 41. The Licensee shall be responsible for and shall minimize soil erosion and siltation on lands adjacent to the stream resulting from con-

struction and operation of the project. The Commission upon request, or upon its own motion, may order the licensee to construct and maintain such preventive works to accomplish this purpose and to revegetate exposed soil surface as the Commission may find to be necessary after notice and opportunity for hearing.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of this license to the extent that they show the location and overall construction of the project.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313 (a) of the Act, and failure to file such an application shall constitute acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Commissioner Ross *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

AMERICAN LOUISIANA PIPE LINE COMPANY, DOCKET NO. CP64-28

FINDINGS AND ORDER PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued October 24, 1963)

On July 26, 1963, American Louisiana Pipe Line Company filed in Docket No. CP64-28 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval of the Commission to abandon a gas purchase measuring station constructed in the Creole Field, Cameron Parish, Louisiana, formerly used for the purchase of gas from Hope Natural Gas Company (Hope) and Mississippi River Fuel Corporation (MRF), all as more fully set forth in the application.

Applicant no longer has any use for the subject facilities inasmuch as the single well of Hope and MRF in the Creole Field proved commercially unproductive in December, 1962, and was shut-in, and the gas purchase contract between Applicant and Hope and MRF was cancelled by an agreement dated March 22, 1963.

The subject facilities were constructed pursuant to "budget-type" certificate authorization issued March 12, 1962, in Docket No. CP62-141 at a cost of $7,730.

Hope and MRF have received permission and approval to abandon the sale of gas on October 11, 1963, in Docket Nos. CP63-336 and CP63-298, respectively, in the consolidated proceeding in Docket No. G-2668, *et al.*

Pursuant to due notice, a public hearing was held in Washington, D.C., on October 15, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30 (c) (1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, American Louisiana Pipe Line Company, a Delaware corporation having its principal place of business in Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore

found by the Commission in its order of October 1, 1954, in Docket No. G-2306, *et al.* (13 FPC 380).

(2) The facilities proposed to be abandoned as hereinbefore described, all as more fully described in the application in this proceeding, are subject to the jurisdiction of the Commission, and the abandonment of said facilities by Applicant is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The abandonment by Applicant as hereinbefore described is permitted by the public convenience and necessity and should be approved as hereinafter ordered.

(4) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Permission for and approval of the abandonment by Applicant, American Louisiana Pipe Line Company, of the facilities hereinbefore described, all as more fully described in the application in this proceeding, be and the same are hereby granted.

(B) Applicant shall advise the Commission of the date of the abandonment within 10 days of the date thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

OTTER TAIL POWER COMPANY, DOCKET NO. E-7126

SUPPLEMENTAL ORDER AUTHORIZING ISSUANCE OF FIRST MORTGAGE BONDS

(Issued October 23, 1963)

By order issued October 4, 1963, in the above-entitled matter, the Commission authorized Otter Tail Power Company (Applicant) to issue and sell at competitive bidding $7,000,000 principal amount of First Mortgage Bonds, subject to the provisions, among others set forth in Paragraph (B) of that order as follows:

(B) The proposed issuance and sale of Bonds at competitive bidding shall not be consummated until:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements and Section 34.2(h) of those Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.

(ii) The Commission, by a further order, shall have approved the price to be received by Applicant for the proposed issuance of Bonds and the interest rate thereof.

Applicant, on October 23, 1963, filed an amendment, pursuant to the requirements of the aforementioned order, in which it states, among other things, that it proposes to accept, as representing the lowest annual cost of money to it, the bid of Halsey, Stuart & Co., Inc. to purchase the proposed issuance of

$7,000,000 principal amount of bonds, at the price of 100.65 of principal amount, with an interest rate of 4⅝% per annum.

The Commission finds:

(1) Applicant has satisfactorily complied with the requirements contained in Paragraph (B) of the Commission's order issued October 4, 1963, in the above-entitled docket; and under the bid it proposes to accept for the issuance of Bonds, the price to be received by Applicant for the Bonds and the interest rate thereof are reasonable.

(2) The proposed issuance and sale of Bonds, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

The Commission orders:

(A) The price to be received by Applicant for the proposed Bonds and the interest rate thereof, are approved as reasonable.

(B) The proposed issuance and sale of Bonds referred to above, upon the terms and conditions, and for the purposes specified in the application, as supplemented by the amendment referred to above, are hereby authorized, subject only to the provisions of Paragraph (C), (D) and (E) of the Commission's order issued October 4, 1963 in the above docket.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP62-161

ORDER GRANTING APPLICATIONS FOR REHEARING

(Issued October 24, 1963)

On August 26, 1963, the Commission issued Opinion No. 401 in the above-entitled proceeding, 30 FPC 560. That Opinion determined that the Commission had jurisdiction over the transportation and sale for resale of natural gas by United Gas Pipeline Company (United) by means of and from its interstate facilities within that part of United's Jackson District located within the Florida Parishes of Louisiana. On September 24 and 25, Applications for Rehearing were filed by various parties to this proceeding.[1] The Applicants contend that various errors of law and fact underlie the Opinion's findings and request rehearing of the issues involved.

In order to consider fully the issues raised, we will grant the Applications for Rehearing for the purpose of further reconsideration on the basis of said applications and such responses as may be filed thereto.

The Commission orders:

The applications for rehearing referred to above are hereby granted for purposes of future consideration.

---

[1] Applications were filed on September 24, by Louisiana Gas Service Co., on September 25, by United, the Louisiana Public Service Commission, and Hammond-Baton Rouge Brick Co., *et al.* On September 24, the State of Louisiana advised by letter that it was adopting the application for rehearing filed by the Louisiana Public Service Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP64-31

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 24, 1963)

On July 29, 1963, United Gas Pipe Line Company (Applicant) filed in Docket No. CP64-31 an application pursuant to Section 7 (c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1964 and the operation of field facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers in the general area of Applicant's existing transmission facilities, at a total cost not to exceed a maximum of $1,600,000, with no single project to exceed a cost of $400,000, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in producing areas generally coextensive with said system.

Pursuant to due notice, a public hearing was held in Washington, D.C., on October 10, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30 (c) (1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 10, 1942, in Docket No. G-232 (3 FPC 863).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit, pursuant to Section 2.58 (c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization granted hereinafter, a statement showing by projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects constructed pursuant to the authorization hereinafter granted, (d) the location of said project or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing, metering and appurtenant facilities, and

(f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate authorizations.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1964 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $1,600,000, with no single project to exceed a cost of $400,000.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30 (c) (1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, United Gas Pipe Line Company, to construct during the calendar year 1964, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit pursuant to Section 2.58 (c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization herein granted, a statement showing by projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects that have been constructed pursuant to the authorization herein granted, (d) the location of said project or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing, metering and appurtenant facilities, and (f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate authorizations.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1964, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $1,600,000, with no single project to exceed a cost of $400,000.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP64-40

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 24, 1963)

On August 14, 1963, United Gas Pipe Line Company (Applicant) filed in Docket No. CP64-40 an application pursuant to Section 7(c) of the Natural

Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of approximately 0.0076 mile of 2-inch pipeline and a meter station with appurtenant facilities near Milepost 55.37 on Applicant's 4-inch Amite lateral in Section 23, Township 5 South, Range 7 East, Tangipahoa Parish, Louisiana, all as more fully set forth in the application.

The proposed facilities will be used for the sale and delivery of natural gas to the Board of Commissioners of Gas Utility District No. 1 of Livingston Parish, Louisiana, for resale and distribution through the customer's proposed distribution system in Tangipahoa Parish.

Natural gas is not presently available to residents in the area.

Applicant estimates the cost of the facilities to be $8,214.00 and that during the first three years of operation Applicant will deliver natural gas to the said Board in the following amounts (Mcf at 14.9 psia):

Year	*Annual*
1	16,648
2	18,182
3	20,340

Pursuant to due notice, a hearing was held on October 15, 1963 respecting the matters involved in and the issues presented by the application herein. No protest or petition to intervene has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30 (c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware Corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce for resale, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The above finding with respect to jurisdiction is subject to our final determination on the petition for rehearing now pending in United Gas Pipe Line Company Docket No. CP62–161.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(7) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of

record and, not having been denied by the Commission, is granted pursuant to Section 1.30 (c) (1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, United Gas Pipe Line Company, to construct and operate facilities and to sell natural gas in interstate commerce for resale as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission Regulations, within 90 days from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP64-41

FINDINGS AND ORDER PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued October 24, 1963)

On August 14, 1963, United Gas Pipe Line Company (Applicant) filed in Docket No. CP64-41 an application pursuant to Section 7(b) of the Natural Gas Act for authority to abandon and remove the following described facilities: Positive meter and regulating station, formerly serving Leggett Lumber Company, located at Milepost 224.7 on the Refugia-Sterlington 30" main line in the Elisha Stephens Survey, Polk County, Texas.

Applicant states that for some time it has been serving the customer, above named, natural gas for use in the dry kiln located in Polk County, Texas and that on August 1, 1963, the purchase contract for gas service terminated thereby ending the usefulness of the facilities.

Applicant proposed to remove the said facilities and to use them elsewhere on its system when required.

The removal of this metering and regulating station will not affect natural gas service to any customer being served by Applicant.

Pursuant to due notice, a public hearing was held in Washington D.C., on October 15, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) United Gas Pipe Line Company is a "natural-gas company" within the meaning of the Natural Gas Act as found by the Commission in its order of November 10, 1942, in Docket No. G-232 (3 FPC 863) and the facilities

above described are a part of its interstate pipeline system, subject to the Commission's jurisdiction.

(2) The facilities to be abandoned, as hereinbefore described and as more fully described in the application, as supplemented, in this proceeding, are subject to the jurisdiction of the Commission and abandonment of such facilities by Applicant is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) Such abandonment, as hereinbefore described, is permitted by the public convenience and necessity and an order authorizing and approving same should be issued as hereinafter ordered.

(4) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Applicant be and is hereby permitted to abandon, dismantle and remove the facilities heretofore described, as more fully described in the application.

(B) Applicant shall advise the Commission of the date of removal of the facilities within 10 days thereafter.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

ALABAMA-TENNESSEE NATURAL GAS COMPANY, DOCKET NO. CP63-254; TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP64-2

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 25, 1963)

On March 11, 1963, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) filed in Docket No. CP63-254 an application, and on September 18, 1963, an amendment thereto, pursuant to Section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing Alabama-Tennessee to construct and operate certain natural gas facilities for the transportation and sale of natural gas in interstate commerce.

The facilities to be constructed and operated by Alabama-Tennessee as proposed in its original application consist of approximately 21.4 miles of 12¾ inch main line and approximately 3 miles of 10¾ inch main line to be constructed parallel to its main line facilities in Colbert, Lawrence, and Madison Counties, Alabama.

The facilities to be constructed and operated by Alabama-Tennessee, as proposed in the amendment to its application, consist of 1.65 miles of additional 10¾ inch main line extending from the end of the 3 miles of 10¾ inch line already constructed under temporary authorization granted in said Docket No. CP63-254 to the city gate of Huntsville, Alabama.

Alabama-Tennessee shows that the additional facilities proposed in its original application are required in order to provide additional capacity needed for estimated growth in requirements of the several communities presently served by it. It estimates that 4,650 additional space heating users will be attached by the distribution systems prior to the commencement of the

1963–64 heating season. Its estimated peak day and annual requirements as shown by its original application are as follows:

Year	Peak-day (Mcf)	Annual (Mcf)
1963	87, 354	17, 955, 500
1964	92, 980	18, 973, 900
1965	98, 660	19, 217, 700
1966	102, 785	19, 464, 900

These requirements include 27,350 Mcf per day for the City of Huntsville.

Following the issuance by the Commission of notice of application and date of hearing herein, the City of Huntsville, which purchases its entire natural gas requirements under a Gas Sales Contract dated June 14, 1962, from Alabama-Tennessee, filed a petition for leave to intervene claiming that it needs an estimated 33,450 Mcf per day based on a degree day deficiency of 55 degrees, whereas Alabama-Tennessee has included only 27,350 Mcf per day for it in its application herein. Huntsville states that it has advised Alabama-Tennessee of its willingness to execute a service agreement for a maximum daily quantity of 33,450 Mcf.

Huntsville further states in its petition that the authorization granted in Docket No. CP63–247 to Tennessee Gas Transmission Company, Alabama-Tennessee's sole supplier of natural gas, to increase its natural gas service to Alabama-Tennessee was insufficient to meet the estimated maximum day requirements of Huntsville of 33,450 Mcf. This was due, Huntsville claims, to Alabama-Tennessee's failure to seek the required supply from Tennessee for Huntsville, and in minor part due to the fact that Tennessee's request in Docket No. CP63–247 for gas service to Alabama-Tennessee was based on a 50 degree day deficiency instead of the 55 degree day deficiency Alabama-Tennessee and its customers now employ because of their experience of the winter of 1962–63.

Huntsville also points out that the application [1] of Tennessee in Docket No. CP64–2 makes no provision for the supply by Tennessee of an additional 6100 Mcf per day for Huntsville, although said application makes up the variance in estimates [2] due to temperature adjustment.

In addition, Huntsville states that it needs an assured minimum delivery pressure of 100 pounds, for which Alabama-Tennessee's application fails to provide. Huntsville recites in its petition that it and Alabama-Tennessee have attempted to reach a mutual agreement on the provisions of a new Gas Sales Contract to give effect to Huntsville's request for additional volumes of natural gas over and above those proposed to be provided by Alabama-Tennessee in its original application herein. Although Alabama-Tennessee has been willing to agree to a delivery pressure of 100 pounds, Huntsville states, Alabama-Tennessee has insisted on qualifying that assurance in a manner that fails to provide assurance of deliveries at a minimum pressure of 100 lbs.

After the filing of said petition of the City of Huntsville to intervene, Alabama-Tennessee filed an amendment to its application requesting authority to construct and operate the necessary additional facilities and deliver to Huntsville the total volume of 33,450 Mcf of natural gas per day which it requests, provided Huntsville executes a service agreement in standard form for a period extending to November 1, 1982, which is the termination date of Alabama-Tennessee's service agreement with its supplier and the Commission authorizes such deliveries and sales. In the alternative, Alabama-

[1] Before amendment.
[2] Over that applied for in Docket No. CP63–247.

Tennessee requests the Commission to authorize the delivery and sale of 27,350 Mcf per day to Huntsville as proposed in its original application.

On July 3, 1963, Tennessee Gas Transmission Company (Tennessee) filed in Docket No. CP64–2 an application, pursuant to Section 7 of the Natural Gas Act, for a certificate of public convenience and necessity authorizing Tennessee to sell and deliver an additional 5,720 Mcf of natural gas per day to Alabama-Tennessee, in order to enable Alabama-Tennessee to meet its estimated natural gas requirements, commencing with the 1963–64 winter heating season. Tennessee alleges that Alabama-Tennessee has advised it that it desires to increase its maximum daily contract quantity from 87,860 Mcf to 93,580 Mcf. The required annual average day delivery capacity associated with this increase in maximum daily contract would be 329 Mcf.

Pursuant to due notice, a public hearing was held in Washington, D.C., on September 26, 1963, respecting the matters involved in and the issues presented by the applications herein. No petition to intervene or protest to the granting of the application has been received other than the petition of the City of Huntsville, Alabama, for leave to intervene, described above.

After convening the hearing, the presiding examiner recessed the hearing to permit the parties to confer in an effort to settle some of the issues.

Following the recess, Tennessee amended its application to conform to the amendment filed by Alabama-Tennessee to state that Alabama-Tennessee has advised Tennessee that it desires to increase its maximum daily contract quantity from 87,860 Mcf to 99,680 Mcf. Tennessee's amendment included the changing of its Exhibit XI to its application to show in column (3), Proposed Additional Maximum Contract Quantity, the figure 11,820[3] instead of 5,720. Similarly in column (4) of said exhibit, Proposed Long-Term Maximum Contract Quantity, the figure, 93,580 was changed to 99,680.

Tennessee presented testimony showing that Tennessee will have available sufficient unallocated annual average day capacity in its pipeline system to provide these increased volumes of gas requested by Alabama-Tennessee.

Tennessee shows that in Docket No. CP63–247, Tennessee was authorized to increase its annual average day delivery capacity to 2,840,000 Mcf at 14.73 psia. This volume included 11,536 Mcf per day of unallocated capacity. Subsequent to this authorization, the Commission authorized additional service in Docket No. CP63–328, requiring 4,963 Mcf per day of annual average day capacity and in Docket No. CP62–196, requiring 1,339 Mcf per day of annual average day capacity, thereby reducing Tennessee's unallocated capacity by 6,302 Mcf per day from 11,536 Mcf per day to 5,234 Mcf per day. This volume of unallocated capacity is more than sufficient to provide the 329 Mcf per day additional annual average day capacity required to provide the increased requirements requested by Alabama-Tennessee.

Tennessee further shows that it is willing to provide this increased service and that it will not impair in any way Tennessee's ability to render adequate service to its existing customers.

During the recess granted by the presiding examiner, Alabama-Tennessee and the City of Huntsville arrived at an agreement and settlement of the issues in this proceeding. It was agreed between them that the following changes be made in the language of the Geneva Service Gas Sales Contract, Exhibit XI, attached to Alabama-Tennessee's amendment to its application. Article I, paragraph 3, will be amended to read as follows:

[3] Pressure base, 14.73 psia.

3. (a) Whenever it shall become apparent to Seller that, notwithstanding the exercise of due diligence it will be unable to provide for Buyer's increased requirements for each of the next two heating seasons, Seller immediately shall notify Buyer to that effect. In such event, Buyer shall have the right to purchase additional natural gas from any other source, or to install and use storage, propane-air equipment or other manufacturing devices to provide additional gas in sufficient quantities to meet the estimated additional maximum demand, provided that the Buyer shall have the right at any time to use propane-air or manufactured gas of any kind (except natural gas) to supply volumes of gas on any day in excess of the maximum volumes of gas specified in Paragraph 2 of this Article I without giving the notice provided for by Paragraph 4 of this Article I.

3. (b) Notwithstanding the limitation imposed by Seller on Buyer in Paragraph 3(a) of this Article I with respect to operation of propane-air equipment, Buyer may use its propane-air facilities, on any day during which this gas sales contract may be in effect, to provide all volumes required by its distribution system on an hourly basis in excess of 4.5 percent of the contract maximum demand obligation specified in Paragraph 2 of this Article I; provided, however, it is understood and agreed that as a result of the operation of said propane-air facilities Buyer will not reduce its total purchases from Seller in any one day below 95 percent of the said contract maximum demand obligation.

Article IV will be amended by inserting an Arabic No. 1, at the beginning of Article IV, which now consists of one paragraph, the language of which will remain the same. In addition, it was agreed that a paragraph to be numbered "2" be added, which will read as follows:

2. As long as Seller's supplier maintains a delivery pressure of at least 600 pounds per square inch gauge at supplier's Delta-Portland line delivery point to Seller and the volume of gas delivered to Buyer during the most recent twenty-four (24) hour period does not exceed Seller's maximum daily obligation to Buyer, Seller will maintain delivery pressure to Buyer of not less than 100 pounds per square inch gauge.

Mr. Morton D. Prouty, Jr., Vice President and Secretary of Alabama-Tennessee, testified that in his official capacity he was authorized to state the position of the Company with respect to the use of the above language in its gas sale contracts generally. He said Alabama-Tennessee would be able to make these provisions available to any of its other customers who are buying gas from it under general service gas sales contracts, provided those customers desire and request such provisions be made available to them.

Mr. Karl A. Woltersdorf, general manager of utilities, testified upon behalf of the City of Huntsville, which owns and operates electric, gas, and water utilities systems. Mr. Woltersdorf explained that Huntsville's requested increase in gas supply from 19,500 Mcf to 33,450 Mcf maximum daily delivery, plus an assurance that delivery of that supply would be at a minimum pressure of 100 pounds per square inch gauge, was necessary for two reasons. One reason was the modification of design temperature on the Alabama-Tennessee system from 50 degree day deficiency to 55 degree day deficiency; the other reason was because of the extremely rapid growth of Huntsville's operations, due chiefly to the continuing expansion of operations at the Redstone Arsenal, which is adjacent to the city limits of Huntsville.

The estimated requirements of 33,450 Mcf are based on a design temperature of 55 degree day deficiency and do not contemplate the use of propane-air plants. Huntsville has at present one propane-air plant capable of pro-

ducing 4500 Mcf per day of 1400 Btu gas, and it is constructing a second plant which will be capable of producing about 3000 Mcf per day of 1400 Btu gas. Huntsville plans to use its propane-air plants if its load exceeds its maximum daily contract quantities or because the temperature drops below the design temperature, or in the event their operation is necessary to maintain pressures on Huntsville's distribution system.

Huntsville's evidence shows that the present assured minimum delivery pressure of 50 psig is inadequate to enable Huntsville to meet the requirements of its customers and 100 psig is needed.

Huntsville's witness stated that with the addition of the proposed amendments to the service agreement which were agreed to by the parties as hereinabove set forth, he would recommend to the city council the execution of a new agreement.

Huntsville also showed that in order to improve its own distribution system it had expended approximately $150,000 in constructing parallel mains and looping mains. In addition, it has a new propane-air plant under construction which will cost approximately $275,000.

At the close of the evidence, counsel for Alabama-Tennessee moved orally at the hearing that the intermediate decision procedure be omitted, and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Alabama-Tennessee Natural Gas Company, a Delaware corporation having its principal place of business in Florence, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued July 2, 1948, in Docket No. G–585 (7 FPC 251).

(2) Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued August 1, 1947 (6 FPC 122).

(3) The facilities hereinbefore described, and as more fully described in the application and amendment thereto in Docket Nos. CP63–254, are proposed to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Alabama-Tennessee and the transportation and sale of natural gas by Tennessee Gas Transmission Company, as proposed in Docket No. CP64–2, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provision of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(5) The construction and operation of the proposed facilities by Alabama-Tennessee Natural Gas Company and the proposed transportation and sale of natural gas by Tennessee Gas Transmission Company are required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

(6) Public convenience and necessity require that the certificates issued hereinafter and the rights granted thereunder be conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(4) and (e) of Section 157.20 of said Regulations.

(7) A request having been made by counsel for Alabama-Tennessee for omission of the intermediate decision procedure, and all requirements of the provisions of Sections 1.30(c)(1) [18 CFR 1.30(c)(1)] of the Commission's Rules of Practice and Procedure having been satisfied, sufficient cause exists for the Commission forthwith to render its final decision in the instant proceeding.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Alabama-Tennessee Natural Gas Company to construct and operate the proposed facilities, as hereinbefore described, all as more fully described in the application in Docket No. CP63–254, as amended, upon the terms and conditions of this order.

(B) A certificate of public convenience and necessity be and the same is hereby issued authorizing Tennessee Gas Transmission Company to sell and deliver an additional 11,820 Mcf of natural gas per day to Alabama-Tennessee Natural Gas Company, thereby increasing Alabama-Tennessee's maximum daily contract quantity from 87,860 Mcf to 99,680 Mcf, as hereinbefore described, all as more fully described in the application in Docket No. CP64–2, as amended, upon the terms and conditions of this order.

(C) The certificates issued by paragraphs (A) and (B) above and the rights granted thereunder are conditioned upon applicants' compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (c)(4) and (e) of Section 157.20 of said Regulations. In addition, said certificates are conditioned upon the filing by Alabama-Tennessee Natural Gas Company within 15 days of the date of this order of four revised tariff sheets to its filed FPC Gas Tariff, Original Volume No. 1. Sheet No. 23, 8. Pressures shall be revised to read as follows:

Seller shall deliver natural gas to Buyer at Seller's line pressure at the Point of Delivery designated in the executed Service Agreement between Seller and Buyer, but the minimum pressure shall be as agreed upon by Buyer and Seller in the executed Service Agreement. The pressure shall not be less than 50 pounds per square inch, as long as the volume of gas delivered during the most recent 24 hour period does not exceed Seller's maximum daily obligation to deliver to Buyer; provided that as long as Seller's supplier maintains a delivery pressure of at least 600 pounds per square inch gauge at supplier's Delta-Portland line delivery-point to Seller, and the volume of gas delivered to Buyer during the most recent twenty-four (24) hour period does not exceed Seller's maximum daily obligation to Buyer, Seller shall maintain delivery pressure to Buyer of not less than 100-pounds per square inch gauge, unless buyer shall agree to delivery at a lower pressure.

Sheet No. 32, General Service Gas Sales Contract, Article IV, Pressure shall be revised to read as follows:

The gas to be delivered hereunder shall be delivered by Seller into the pipe line of Buyer at the pressure in Seller's main line, but not less than _____ pounds per square inch gauge as long as the volume of gas delivered during the most recent twenty-four hour period does not exceed Seller's maximum daily obligation to deliver to Buyer; provided that as long as Seller's supplier maintains a delivery pressure of at least 600 pounds per square inch gauge at supplier's Delta-Portland line delivery point to Seller and the volume of gas delivered to Buyer during the most recent twenty-four (24) hour period does not exceed Seller's maximum daily obligation to Buyer, Seller shall

maintain delivery pressure to Buyer of not less than ——pounds per square inch gauge.

Sheets No. 30 and 31, General Service Gas Sales Contract, Quantity of Gas, Article I, 3. shall be revised to read as follows:

3. (a) Whenever it shall become apparent to Seller that, notwithstanding the exercise of due diligence it will be unable to provide for Buyer's increased requirements for each of the next two heating seasons, Seller immediately shall notify Buyer to that effect. In such event, Buyer shall have the right to purchase additional natural gas from any other source, or to install and use storage, propane-air equipment or other manufacturing devices to provide additional gas in sufficient quantities to meet the estimated additional maximum demand, provided that the Buyer shall have the right at any time to use propane-air or manufactured gas of any kind (except natural gas) to supply volumes of gas on any day in excess of the maximum volumes of gas specified in Paragraph 2. of this Article I without giving the notice provided for by Paragraph 4 of this Article I.

3. (b) Notwithstanding the limitation imposed by Seller on Buyer in Paragraph 3(a) of this Article I with respect to operation of propane-air equipment, Buyer may use its propane-air facilities, on any day during which this gas sales contract may be in effect, to provide all volumes required by its distribution system on an hourly basis in excess of 4.5 percent of the contract maximum demand obligation specified in paragraph 2 of this Article I; provided, however, it is understood and agreed that as a result of the operation of said propane-air facilities Buyer will not reduce its total purchases from Seller in any one day below 95 percent of the said contract maximum demand obligation.

Said certificates are further conditioned upon the filing by Alabama-Tennessee Natural Gas Company within 30 days of the date of this order of a superseding service agreement with the City of Huntsville, Alabama, in accordance with said revised FPC Gas Tariff and acceptable to the Commission for the sale and delivery to Huntsville of a maximum of 33,450 Mcf of natural gas per day, and also of superseding, service agreements with any of its other customers desiring to avail themselves of the new pressure and storage and propane-air provisions described herein.

(D) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G–13221, ET AL.; CABOT CORPORATION, DOCKET NOS. CI60–414 AND CI60–499; MICHEL T. HALBOUTY, DOCKET NO. CI60–700; MAGNA OIL CORPORATION, DOCKET NO. CI61–44; FALCON SEABOARD DRILLING COMPANY, (OPERATOR), ET AL., DOCKET NO. CI61–433; STATE EXPLORATION COMPANY, DOCKET NO. CI62–326; HUMBLE GAS TRANSMISSION COMPANY, DOCKET NOS. CP61–290 AND CP62–27

ORDER SEVERING PROCEEDINGS, CONDITIONALLY APPROVING SETTLEMENT AGREEMENT AND CONDITIONALLY ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 25, 1963)

Motions for severance, for approval of settlement proposals and issuance of certificates of public convenience and necessity in their respective dockets were

filed in the above-captioned proceedings on August 5, 1963, by Cabot Corporation (Cabot); August 19, 1963, by Falson Seaboard Drilling Company (Operator), *et al.*, (Falcon Seaboard); August 29, 1963, by Magna Oil Corporation (Magna); September 9, 1963, by Michel T. Halbouty (Halbouty), State Exploration Company (State) and Humble Gas Transmission Company (Humble).

The settlement proposals are similar to those previously approved by the Commission [1] and provide for the following: [2]

(1) The issuance of certificates at the reduced rate of 20.625¢ per Mcf [3] for the sales [4] under Cabot's Rate Schedule No. 55, Halbouty's Rate Schedule No. 8, Magna's Rate Schedule No. 8, Falcon Seaboard's Rate Schedule No. 8, State's Rate Schedule No. 1, and Humble's Rate Schedule No. F–11. The proposed effective date of the rate reductions is April 1, 1963, in all cases except Cabot's and Falcon Seaboard's. The latter two applicants propose August 1, 1963, as the effective date.

(2) The issuance of certificates for the sales under Humble's Rate Schedule No. F–10 at the initial rate of 19.5¢ per Mcf and under Cabot's Rate Schedule No. 51 at the initial rate of 20.0¢ per Mcf.

(3) Continuation of the collection of the increased rate now effective subject to refund in Docket No. RI61–208.[5]

(4) Withdrawal of the rate increase filing presently suspended in Docket No. RI61–509.[6]

(5) A five-year moratorium on rate increase filings (except as provided in paragraph (8) below) from April 1, 1963 through March 31, 1968, inclusive, in the proposals of Halbouty, Magna, State and Humble; and from August 1, 1963 through July 31, 1968, inclusive, in the proposals of Cabot and Falcon Seaboard.

(6) Extention of make-up periods for take-or-pay gas to 4 years in all contracts with lesser make-up periods.

(7) Refunds of all amounts above the amounts that would have been paid under the settlement proposals collected since the effective dates of the rate reduction.

(8) The applicants may make rate increase filings (1) prior to the end of the moratorium periods to the extent that the maximum suspension period under Section 4(e) of the Natural Gas Act may be extended beyond 5 months or the Commission may hereafter be authorized to lengthen such suspension period, and (2) at any time for reimbursement of one-half the amount increased State or Federal taxes or payments in lieu thereof, provided that such increase does not exceed the reimbursement to which the applicant is entitled by contract.

None of the temporary certificates under which the sales are presently being made contain refund conditions and applicants do not propose to make refunds except as noted above.

As noted above, the proposed effective date of the rate reductions and the beginning of the moratorium periods under Cabot's and Falcon Seaboard's pro-

[1] See *e.g.*, orders issued August 7, 1963, and October 9, 1963, in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, 30 FPC 456 and 979 respectively.

[2] See Appendix for further details.

[3] All rates expressed inclusive of applicable tax reimbursement and all volumes expressed at 15.025 psia.

[4] The provisions apply to gas "delivered" under the respective rate schedules as do the provisions under other settlements approved by the Commission. In the context of the proposals we have interpreted the term to include gas required to be taken but paid for and not taken. Our approval of these proposals is also conditioned upon such interpretation.

[5] Related to Cabot's Rate Schedule No. 51 (CI60–414).

[6] Related to Falcon Seaboard's Rate Schedule No. 8 (CI61–433).

posals is August 1, 1963. In other settlement orders emanating from the Union consolidated proceeding[7] we have required that the effective date be April 1, 1963, in order to eliminate any possible advantage accruing to applicants who file their proposals later than others. In accordance with such announced policy, we shall approve these settlements upon condition that the effective dates for the rate reductions in Cabot's and Falcon Seaboard's proposals be April 1, 1963, and that the moratoria extend through March 31, 1968.

In keeping with our present policy we shall require that the applicants pay interest on the amounts to be refunded at 7 percent per annum, such interest to accrue through the last day of the month in which the respective motions and offers of settlement were filed.

The settlement provisions for adjustments in rates according to our order or orders in Area Rate Proceeding, Docket No. AR61–2, seek to anticipate in part the nature of our final determinations in that matter. It is clear that we shall make no determinations in this matter which will control our conclusions in Docket No. AR61–2. The settlement proposals also provide that adjustments in price growing out of the Area Rate Proceeding, Docket No. AR61–2, should go into effect upon conclusion of judicial review of our final order. However, we cannot now commit the Commision to conditionally staying the effectiveness of its final order in Docket No. AR61–2. These matters should be decided at the conclusion of that proceeding and our approval of the settlements will be so conditioned.

No party has filed an answer to any of these motions, and we find these settlement proposals, as herein modified, in the public interest.

In accordance with the above we shall sever these individual dockets for the consolidated proceeding Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*, omit the intermediate decision in regard to these dockets[8] and issue certificates of public convenience and necessity in accordance with the applications, settlement proposals and conditions of this order.

With the exception noted below, the pipeline purchasers (shown in the Appendix) which will receive refunds and whose overall purchased gas costs will be affected substantially by these settlements will pass on the refunds and adjust their rates in accordance with the requirements of the Commission's latest rate orders concerning such purchasers.

The flow through provisions of our orders in the recent Southern Natural Gas Company rate case[9] do not refer specifically to Docket No. CI60–449. Therefore, in order to avoid a situation in which a pipeline obtains and keeps the benefits of refunds and a reduction in gas purchase costs even though it may be, in the absence of such refunds and reductions in gas purchase costs, earning a reasonable rate of return on invested capital, we shall require Southern to report to the Commission the amount of refund and interest that it receives as a result of this settlement, the estimated annual reductions in purchased gas costs, the proposed disposition of the refunds and the proposed rate adjustments, if any, to reflect the reduction in gas purchase costs. We shall require Southern to hold the refunds and amounts equal to the reductions in purchased gas costs which will accrue as a result of the settlement of Docket No. CI60–499 in a special account subject to further orders of the Commission.

---

[7] See orders issued August 23, 1963 and October 9, 1963, in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, 30 FPC 456 and 979 respectively.

[8] The hearings in the Union Texas Petroleum, *et al.* consolidated proceeding concluded July 25, 1963.

[9] *Southern Natural Gas Company*, Docket No. G–20509, *et al.*, Opinion No. 379, issued February 18, 1963, 29 FPC 323, Opinion No. 379–A, issued April 19, 1963, 29 FPC 779.

The Commission finds:

(1) Each of the applicants herein is a "natural-gas company" within the meaning of the Natural Gas Act, and is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(2) The proposed sales of natural gas are subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Each of the applicants herein is able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, are required by the public convenience and necessity and are in the public interest upon the conditions set forth below, and certificates should be issued as ordered below.

(5) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

(6) No party has opposed the waiver of the intermediate decisions in these proceedings.

(7) It is in the public interest and it is appropriate in carrying out the provisions of the Natural Gas Act that Southern be required to submit the reports and to account for the refunds, interest and purchased gas cost reductions as ordered below.

The Commission orders:

(A) The motions for waiver of the intermediate decisions are granted.

(B) The matters in Docket Nos. CI60–414, CI60–499, CI60–700, CI61–44, CI61–433, CI62–326, CP61–290 and CP62–27 are hereby severed from the consolidated proceeding, Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*

(C) Certificates of public convenience and necessity are hereby issued upon the conditions set forth herein to the applicants for the sales of natural gas in interstate commerce for resale as proposed and as modified by the settlement proposals and this order, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in the applications and settlement proposals herein.

(D) The certificates issued by paragraph (C) above, are granted upon the express condition that the applicants comply fully with the terms of the settlement proposals which settlements are expressly approved, as modified by this order and upon the express condition that applicants make refunds of all amounts above the amounts that would have been paid under the settlements proposals as approved, collected since the effective dates of the rate reductions. Interest on all amounts to be refunded shall accrue through the last day of the month in which the respective proposals were fixed, August 31 in the cases of Cabot, Magna and Seaboard, and September 30, 1963 in the cases of Halbouty, State and Humble.

(E) The certificates issued to Cabot and Falcon Seaboard are issued upon the express condition that the effective date of the rate reductions and commencement of the moratorium periods under their respective rate schedules covered thereby shall be April 1, 1963.

(F) Within 30 days after making the refunds required by the terms and conditions of this order and the settlement proposals the applicants shall report to the Commission, in triplicate, the amount of the refunds made to each pipeline purchaser, showing separately the amount of principal and interest so paid and the bases used for such determinations, together with releases from the purchasers showing receipt of the refunds in conformity to the settlements and the conditions of this order.

(G) Upon full compliance of the applicants with all the terms of this order and of the settlement proposals as modified, the applicants shall be relieved of any further refund obligations in these certificate proceedings and said proceedings shall terminate.

(H) The certificate herein issued are not transferable and shall be effective only so long as the applicants continue the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(I) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or Part 154 of the Regulations thereunder; *Provided, however,* That the 30-day notice provision of Part 154.94(b) and the detailed submittal requirements of Part 154.94(f) are hereby waived insofar as they apply to the filing of reductions in rates as required by this order and the settlement proposals.

(J) The grant of certificates herein and approval of the settlement proposals is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the applicants, particularly any proceeding under Section 5 of the Natural Gas Act and is without prejudice to claims or contentions which may be made by the Commission, applicants, the Commission staff, or any affected party herein in any other proceeding.

(K) Within 15 days from the date of receipt of refunds and interest required by this order, Southern shall submit a report to the Commission and serve a copy on its jurisdictional customers, and the various state utility commissions wherein it does business, setting forth the amount of refund and interest received, and the estimated annual reduction in purchased gas costs due to the rate reductions herein, and the proposed disposition of such refunds and interest and the propsed rate adjustments to reflect the reductions in gas purchase costs. Pending Commission action and further orders respecting such proposed dispositions and adjustments, Southern shall hold such refunds, interest and amounts equal to the reduction in purchased gas costs which accrue as a result of the settlement in Docket No. CI60–499 in a special account (without interest obligation).

APPENDIX

Applicant	Rate schedule No.	Docket No.	Purchaser	Present rate (cents/Mcf)	Settlement rate (cents/Mcf)
Michel T. Halbouty	8	CI60–700	Am. La. Pipe Line Co	21.5	20.625
State Exploration Co	1	CI62–326	Trunkline Gas Co	21.25	20.625
Humble Gas Trans. Co	F–10	CP61–290	United Fuel Gas Co	19.5	19.5
Humble Gas Trans. Co	F–11	CP62–27	Florida Gas Trans Co	21.5	20.625
Magna Oil Corp	8	CI61–44	Texas Gas Trans. Corp	20.75	20.625
Falcon Seaboard Drilling Co. (Operator), *et al.*	8	CI61–433	Am. La. Pipe Line Co	[1] 21.5	20.625
Cabot Corp	51	CI60–411	United Gas Pipe Line Co	[2] 22.0	20.0
Cabot Corp	55	CI60–499	Southern Natural Gas Co	23.25	20.625

[1] Falcon Seaboard proposes to withdraw the rate increase filing now suspended in docket No. RI61–509.
[2] This rate now in effect subject to refund in docket No. RI62–208, and according to Cabot's settlement proposal; this rate will continue in effect subject to refund.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G-13221, ET AL., TEXACO INC., DOCKET NOS. G-16994, G-17779, G-20251, CI60-518, CI61-60, CI61-955, CI61-962, CI61-969, CI61-1416, CI61-1420, CI61-1438, CI61-1463, CI61-1713, CI62-16, CI62-407, CI63-449, AND CI63-756

ORDER SEVERING PROCEEDINGS, CONDITIONALLY APPROVING SETTLEMENT AGREEMENT AND CONDITIONALLY ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 25, 1963)

Texaco Inc. (Texaco) and certain interested interveners,[1] submitted on April 26, 1963, a settlement agreement and a motion for severance of the seventeen Texaco dockets listed above from the consolidated certificate proceeding, Union Texas Petroleum, *et al.*, Docket No. G-13221, *et al.* The motion also requested the expeditious issuance of permanent certificates of public convenience and necessity according to the applications as modified by the settlement agreement in agreement in twelve of the dockets. The agreement proposed that the sales in Docket Nos. CI61-1416, CI61-1420, CI61-1438, CI63-449, and CI63-756 continue under temporary authorization.

Answers in opposition to this motion were filed on May 6, 1963, by the Pennsylvania Public Utility Commission (Pennsylvania), and the Memphis Gas, Light and Water Division of the City of Memphis, Tennessee (Memphis). The Public Service Commission of New York (PSC) on May 14, 1963, filed a response in opposition to the motion. Because of the opposition by parties and without passing on the merits of the settlement proposal, on May 21, 1963, we issued an order denying the motion.[2]

On May 31, 1963, Memphis filed a withdrawal of objection and on July 31, 1963, Pennsylvania filed an "Amended Answer" to the Texaco, *et al.*, motion withdrawing its objection.

On July 23, 1963, Texaco filed a motion for reconsideration of our order of May 21, 1963, denying the Texaco, *et al.*, motion for severance and a "Notice of Modification of Settlement Agreement." This modification resulted in the elimination of all objections.[3] On August 2, 1963, the interveners listed in footnote 1 *supra* filed a response urging approval.

The settlement agreement as now modified is similar to the settlement approved for Humble Oil & Refining Company[4] and provides the following:[5]

(1) In respect to the Texaco Rate Schedules listed in paragraphs (2), (3) and (4) below, a moratorium on rate increase filings from April 1, 1963, through March 31, 1968; except that such filings may be made (1) prior to

[1] The Brooklyn Union Gas Company, Consolidated Edison Company of New York, Inc., Philadelphia Gas Works Division of the United Gas Improvement Company, Public Service Electric and Gas Company, South Jersey Gas Company, The United Gas Improvement Company, the New England distributors group (consisting of 41 distributors), the East Ohio Gas Company, Hope Natural Gas Company, Lake Shore Pipe Line Company, New York State Natural Gas Corporation, The Peoples Natural Gas Company, and The River Gas Company.

[2] *Texaco Inc., et al.*, Docket No. G-14967, *et al.*, "Order Denying Motion for Severance, for Approval of Settlement Agreement and for Issuance of Permanent Certificates and Request for Prompt Determination."

[3] PSC did not formally withdraw its objections but the modification eliminated the bases for them.

[4] See order issued August 7, 1963, in *Union Texas Petroleum, et al.*, Docket No. G-13221, *et al.*, 30 FPC 456.

[5] See Appendix attached hereto for further details.

April 1, 1968, to the extent that the maximum statutory suspension period under Section 4(e) of the Natural Gas Act may be extended beyond 5 months or the Commission may hereafter be authorized to lengthen such suspension period, and (2) at any time for reimbursement of one-half the amount of increased State or Federal taxes or payments in lieu of taxes, provided that such increase does not exceed the reimbursement to which Texaco is entitled by contract.

(2) Permanent certification at settlement rates of 20.625¢ per Mcf[6] inclusive of applicable tax reimbursement, for gas delivered[7] pursuant to Texaco's Rate Schedules Nos. 209 (G–20251), 217 (CI60–518), 221 (CI61–60), 223 (CI61–962), 236 (CI61–1420), 237 (CI61–1463), 238 (CI61–1438), 239 (CI61–1416), 240 (CI61–1713), 243 (CI62–16), 250 (CI62–407), 295 (CI61–969), 306 (CI63–449 and 308 (CI63–756).[8]

(3) Permanent certification at the contractual initial rate of 19.05¢ per Mcf inclusive of tax reimbursement for gas delivered pursuant to Texaco's Rate Schedule No. 278 (G–17779).

(4) Permanent certification at contractual initial rates of 20.25¢ per Mcf, inclusive of tax reimbursement, for gas delivered pursuant to Texaco's Rate Schedules Nos. (G–16994) and 231 (CI61–955).

(5) Prospective upward or downward adjustment of settlement rates according to any applicable area rate or rates determined in Area Rate Proceeding, Docket No. AR61–2.

(6) Collection of the increased rates now in effect subject to refund in Docket Nos. RI62–309,[9] and RI61–419,[10] to be continued, subject to further orders of the Commission in those suspension dockets.

(7) Extension of the make-up period for gas paid for but not taken to 4 years in any case where the contract provides a lesser make-up period.

(8) Full refunds with interest at 7% per annum accruing through March 31, 1963, to be paid on all amounts collected by Texaco in excess of the proposed settlement rate of 20.625¢ per Mcf for gas purchased under Texaco's Rate Schedules Nos. 233 (CI62–962), 237 (CI61–1463) and 240 (CI61–1713). In each instance the sales are being made under temporary authorizations subject to refund of amounts above the rate required by public convenience and necessity.

(9) Full refunds of all amounts above the settlement rates collected by Texaco since April 1, 1963, the effective date of the rate reductions.

In keeping with our present policy we shall require that Texaco pay interest on all amounts to be refunded, including those amounts collected for gas delivered since April 1, 1963, above the settlement rates. Such interest shall accrue through July 31, 1963, the last day of the month in which the revised settlement agreement was filed.

The settlement provisions for adjustments in rates according to our order or orders in Area Rate Proceeding, Docket No. AR61–2, seek to anticipate in part the nature of our final determinations in that matter. It is clear that we shall make no determinations in this matter which will control our conclusions in Docket No. AR61–2. The settlement proposal also provides that adjustments

---

[6] All volumes expressed at 15.025 psia.

[7] The term "delivered" is used in the proposals as in other proposals approved by us. In the context of the proposals we interpreted the term to include gas required to be taken during the moratorium periods but paid for and not taken. Our approval of these settlements is also conditioned upon such interpretation.

[8] As amended on July 15, 1963 (to add acreage).

[9] Related to Supplement No. 4 to Texaco's F.P.C. Gas Rate Schedule No. 189.

[10] Related to Supplement No. 1 to Texaco's F.P.C. Gas Rate Schedule No. 231.

in price growing out of the Areat Rate Proceeding, Docket No. AR61–2, should go into effect upon conclusion of judicial review of our final order. However, we cannot now commit the Commission to conditionally staying the effectiveness of its final order in Docket No. AR61–2. These matters should be decided at the conclusion of that proceeding and our approval of the settlement will be so conditioned.

We find the settlement proposal as modified to be in the public interest. Accordingly, we shall sever the above-captioned Texaco dockets from the consolidated proceedings in Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*, omit the intermediate decisions in regard to these dockets[11] and conditionally issue certificates of public convenience and necessity.

The Commission finds:

(1) Texaco Inc. is a "natural-gas company" within the meaning of the Natural Gas Act, and is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(2) The proposed sales of natural gas are subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Texaco is able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed sales together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, are required by the public convenience and necessity and are in the public interest upon the conditions set forth below, and certificates should be issued as ordered below.

(5) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

(6) No party opposes the waiver of the intermediate decision in these proceedings.

The Commission orders:

(A) The motion for waiver of the intermediate decision is granted.

(B) The matters in the Texaco dockets listed in the caption to this order are hereby severed from the consolidated proceeding, Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*

(C) Certificates of public convenience and necessity are hereby issued upon the conditions set forth herein to Texaco Inc. for the sales of natural gas in interstate commerce for resale as proposed and as modified by the settlement proposal and this order, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefore, as more fully described in Texaco's applications and settlement agreement as modified herein.

(D) The certificates issued by paragraph (C) above, are granted upon the express condition that Texaco comply fully with the terms of the settlement agreement as modified which settlement is expressly approved under the conditions of this order.

[11] The hearings in the Union Texas Petroleum, *et al.*, consolidated proceeding concluded July 25, 1963.

(E) Within 30 days after making the refunds required by the terms and conditions of this order and the settlement proposal as modified, Texaco shall report to the Commission, in triplicate, the amount of the refunds made to its pipeline purchasers, showing separately the amount of the principal and interest so paid and the bases used for such determination, together with releases from the purchasers showing receipt of the refunds in conformity to the settlement as approved.

(F) Upon full compliance of Texaco with all the terms of this order and of the settlement proposal as modified, Texaco shall be relieved of any further refund obligations in these certificate proceedings and said proceedings shall terminate.

(G) The certificates herein issued are not transferable and shall be effective only so long as Texaco continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(H) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or Part 154 of the Regulations thereunder; *Provided, however,* that the 30-day notice provision of Part 154.94(b) and the detailed submittal requirements of Part 154.94(f) are hereby waived insofar as they apply to the filing of reductions in rate as required by this order and the settlement proposal.

(I) The grant of certificates herein and approval of the settlement proposal is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Texaco, particularly any proceeding under Section 5 of the Natural Gas Act, and is without prejudice to claims or contentions which may be made by the Commission, Applicant, the Commission staff, or any affected party herein in any other proceeding.

(J) Interest on amounts to be refunded to the pipeline purchasers shall accrue through the last day of the month in which the final settlement agreement was filed, July 31, 1963.

APPENDIX

TEXACO INC.

Certificate docket No.	Rate schedule No.	Purchaser	Current rate	Proposed settlement rate
G-16994	189	United Gas Pipe Line Co	22.25	[1] 20.25
G-20251	209	Hope Natural Gas Co	23.55	20.625
CI60-518	217	Tennessee Gas Trans Co	23.60	20.625
CI61-60	221	Tennessee Gas Trans. Co	22.8333	20.625
CI61-955	231	United Gas Pipe Line Co	23.30	[1] 20.25
CI61-962	233	Texas Gas Trans. Corp	23.25	20.625
CI61-1420	236	Florida Gas Trans. Co.[2]	21.25	20.625
CI61-1463	237	Tennessee Gas Trans. Co	20.80	20.625
CI61-1438	238	Florida Gas Trans. Co.[2]	21.25	20.625
CI61-1416	239	Florida Gas Trans. Co.[2]	21.25	20.625
CI61-1713	240	Tennessee Gas Trans. Co	22.80	20.625
CI62-16	243	United Gas Pipe Line Co	21.25	20.625
CI62-407	250	Transco Gas Pipe Line Corp	21.25	20.625
G-17779	278	Transco Gas Pipe Line Corp	19.05	19.05
CI61-969	295	Transco Gas Pipe Line Corp	21.15	20.625
CI63-449	306	United Fuel Gas Co	20.7	20.625
CI63-756	308	United Fuel Gas Co	20.7	20.625

[1] The offer of settlement provides for permanent certification at the initial contract rate of 20.25 per Mcf with the provision that the 4(e) rates in docket Nos. RI62-307 (RS-189) and RI61-419 (RS-231) remain in effect pending the outcome of the suspension proceedings.

[2] Formerly Coastal Transmission Corp.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

AREA RATE PROCEEDING, ET AL., DOCKET NO. AR61-2, ET AL.

ORDER UPON APPEALS, AFFIRMING PRESIDING EXAMINER'S RULING IN PART, TERMINATING STAY, FIXING DATE FOR FURNISHING DATA, GRANTING IN PART MOTION REQUESTING WITHDRAWAL OF DOCUMENTS, AND OTHER RELIEF

(Issued October 28, 1963)

On October 11, 1963, Cities Service Oil Company, Continental Oil Company, Gulf Oil Corporation, Humble Oil & Refining Company, Marathon Oil Company, Pan American Petroleum Corporation, Phillips Petroleum Company, Skelly Oil Company, Socony-Mobil Oil Company, Inc., Sunray DX Oil Company, Texaco Inc., Texaco-Seaboard, Inc., Union Oil Company of California, and Union Texas Petroleum (Cities Service, *et al.*) tendered for filing herein a pleading entitled "Appeal From Rulings of Presiding Examiner Directing Disclosure of Confidential Federal Income Tax Data." Cities Service, *et al.*, allege that the appeal, filed pursuant to Section 1.28 of the Rules of Practice and Procedure, is from rulings by the presiding examiner at the prehearing conference herein on October 2 and 3, 1963. These rulings dealt with the granting of requests made by the Municipal Distributors Group, a group of municipality interveners in the proceedings, for certain Federal Income Tax data. While the presiding examiner ordered the producer respondents involved to furnish the requested data, he denied the requests of Respondents Hunt Oil Company, Sun Oil Company and Superior Oil Company (Hunt, *et al.*) that they be given copies of the data furnished to the Municipal Distributors Group. On October 14, 1963, Hunt, *et al.*, filed a pleading entitled "Joint Appeal From Rulings of Presiding Examiner", in which they support the appeal of Cities Service, *et al.*, but, in addition, request a reversal of the presiding examiner's rulings denying the requests of Hunt, *et al.*, for copies of the data.

Section 1.28(a) of the Commission's Rules of Practice and Procedure provides that rulings of presiding officers may not be appealed from during the course of hearings except in extraordinary circumstances where prompt decision by the Commission is necessary to prevent detriment to the public interest and in such instance the matter shall be referred forthwith by the presiding officer to the Commission for determination. Responding to requests by Cities Service, *et al.*, and Hunt, *et al.*, to do so, the presiding examiner refused to certify this matter to the Commission.

Cities Service, *et al.*, among other things, urge that compliance with the Presiding Examiner's ruling would make confidential tax data available for public examination. They claim that no showing of relevance or materiality of the data has been made. Irreparable injury allegedly would flow from the examiner's rulings resulting from the public disclosure and availability of the data for use under circumstances unrelated to the proceeding and beyond the control of the presiding examiner or the Commission.

On numerous occasions the Commission has held that appeals from interlocutory rulings by a presiding examiner would not be entertained by the Commission. However, in this instance it would appear from the allegations made by Cities Service, *et al.*, that extraordinary circumstances may exist which call for a prompt decision by the Commission. If, as Cities Service, *et al.*, allege, the presiding examiner was in error in his rulings, the damage, if any,

resulting from the public disclosure of the data would not be cured if, some time later, when a final decision is rendered by the Commission, it is found that the presiding examiner acted erroneously. Accordingly, we are ruling on these appeals at this time.

The Commission's experience in numerous rate proceedings involving pipelines and independent producers has shown that income tax information is essential in considering individual company costs in connection with a determination of the justness and reasonableness of rates in existence or proposed. In fact, with respect to pipelines, Section 154.63 of the Regulations issued under the Natural Gas Act calls for such income tax data as a part of any rate filing. Although in area rate proceedings individual company cost of service presentations may not be made, some of the parties or interveners may wish to present a composite cost of service in which a position would necessarily have to be taken on Federal Income Taxes. If in the development of such a position, relevant data in the possession of certain parties are required, such data should be made available for examination and possible use. The Municipal Distributors Group's request apparently seeks such data and it has not been demonstrated that the data requested would be irrelevant or immaterial.

Urged as support of the claim that the material in question is of a confidential nature, Cities Service, *et al.*, contend that the Natural Gas Act and the Internal Revenue Code so provide. Examination of these Acts in the light of the instant factual situation and the nature of the pending proceedings fails to show any provisions thereof which would be breached or would sustain the contention of Cities Service, *et. al.*

It may be noted, as stated by Cities Service, *et al.*, that during the prehearing conference at which the ruling in question was made, it was proposed that a stipulation be entered into by all parties which would have had the effect of eliminating Federal Income Taxes as an issue in the proceeding. The stipulation was agreed to by all parties, including the Municipal Distributors Group and the Commission's staff, with the exception of Hunt, *et al.*, who indicated that they were unable to enter into such a a stipulation at that time. While such a stipulation, entered into by all parties, would be dispositive of this matter, the failure of Hunt, *et al.*, to agree thereto leaves the Commission no alternative but to affirm the presiding examiner's ruling insofar as it directs Cities Service, *et al.*, to supply the requested Federal Income Tax data.

Although we have determined that the data requested by the Municipal Distributors Group are relevant and should be furnished, we have considered the manner in which the data should be handled, preserving confidentiality to the degree possible, consonant with the carrying out of the Commission's functions. To this end, we shall require that the data be furnished to the Commission staff and that a composite of such data shall be prepared by the staff and made available for examination by the parties in the Office of Public Information. Thereafter, the underlying data shall be made available for examination only upon written application to the presiding examiner made by the counsel of record for the party, setting forth the basis for requesting the data, the use proposed to be made of the same, and the names of authorized representatives of the party who would have access to such information. Upon a finding by the presiding examiner that good cau e has been shown, the under-

lying data shall be made available in the offices of the Commission to the counsel of record of the party involved and to its authorized representatives.

The disposition we have made of the appeal of Cities Service, *et al.*, is dispositive of the appeal filed by Hunt, *et al.* Upon a proper showing to the presiding examiner, the underlying data will be made available as above set forth. Accordingly, their appeal is dismissed.

On October 11, 1963, Cities Service, *et al.*, filed a motion requesting, among other things, withdrawal from the Commission's Public Reference Room and from the public files of the Commission of the documents entitled "Schedule Q" to the Appendix B questionnaires filed by Cities Service, *et al.*, pursuant to the Commission's order herein of May 25, 1962. The Schedule Q data, along with the rest of the original Appendix B filings, were heretofore placed in the Office of Public Information in compliance with the Commission's said order. In view of our disposition of the appeal by Cities Service, *et al.*, we shall order withdrawal of the Schedule Q filings from the Office of Public Information but such filings shall be retained in the files of the Commission and shall be available for examination on the same basis as the tax data required to be furnished to the staff by this order.

Concurrently with the filing of the motion respecting the Schedule Q data, the movants also moved for a stay of the effectiveness of certain rulings by the presiding examiner in these proceedings dealing with the data requests of the group of municipality interveners. The movants had tendered for filing an appeal from the presiding examiner's rulings. The stay was requested pending action by the Commission on the appeal and on the motion relating to the Schedule Q data. The Commission on October 18, 1963, ordered stay of the presiding examiner's rulings pending action taken with respect to the filed appeal. The Commission in disposing of the appeal is terminating the stay. With the action taken on the motion relating to the Schedule Q data, the motion for a stay is being denied.

The Commission orders:

(A) The appeal of Cities Service, *et al.*, is accepted for filing and the ruling of the presiding examiner requiring Cities Service, *et al.*, to furnish certain tax data is affirmed. Cities Service, *et al.*, are directed by November 4, 1963, to furnish such data to the Commission staff which shall prepare a composite of such data by November 14, 1963, and make such composite available for examination in the Commission's Office of Public Information.

(B) The underlying data furnished by Cities Service, *et al.*, and utilized by the staff in preparation of the composite shall be available to the parties on the basis hereinabove set forth.

(C) The appeal of Hunt, *et al.*, is accepted for filing and is dismissed.

(D) The motion filed by Cities Service, *et al.*, for withdrawal of documents and for other relief is granted to the extent hereinabove set forth, and otherwise is denied.

(E) The stay of operation and effectiveness of the rulings of the presiding examiner directing disclosure of income tax data issued by the Commission October 18, 1963, is terminated and the motion for a stay filed by Cities Service, *et al.*, on October 11, 1963, is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G–13221, ET AL.; GRARIDGE CORPORATION (OPERATOR), ET AL., DOCKET NO. G–19246, ET AL.; SINCLAIR OIL & GAS COMPANY, DOCKET NOS. G–17917, CI61–390, CI61–1257 & CI63–463; SINCLAIR OIL & GAS COMPANY (FORMERLY JOSEPH M. RAULT, JR., INC.), DOCKET NO. CI61–670

ORDER SEVERING PROCEEDINGS, CONDITIONALLY APPROVING SETTLEMENT AGREEMENTS AND CONDITIONALLY ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 28, 1963)

On May 1, 1963, Sinclair Oil & Gas Company (Sinclair) and certain interested intervenors[1] filed a settlement agreement and motion for severance of four of the above-captioned Sinclair dockets from the consolidated proceeding, Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*, (hereafter referred to as the Union Texas Proceeding), for severance of Docket No. CI63–463 from the consolidated proceeding, Graridge Corporation (Operator), *et al.*, Docket No. G–19246, *et al.*, (hereafter referred to as the Graridge Proceeding); for approval of the attached settlement agreement and for the expeditious issuance of certificates of public convenience and necessity in each of the Sinclair dockets.

On May 8, 1963, the Pennsylvania Public Utility Commission (Pennsylvania) filed an answer in opposition to the Sinclair, *et al.*, motion. In view of the expressed opposition, we denied the Sinclair, *et al.*, motion by order issued in the above-captioned proceedings on May 23, 1963. On June 18, 1963, Sinclair filed a motion for reconsideration of our order denying the motion for severance. The motion for reconsideration was denied by order issued July 15, 1963. In denying the motion for severance and the motion for reconsideration, the Commission did not pass on the merits of the settlement agreement. On July 31, 1963, Pennsylvania withdrew its opposition to the motion for severance and settlement agreement and subsequently, on August 1, 1963, Sinclair filed a motion for further reconsideration of our order denying motion for severance filed by Sinclair, *et al.*, noting that the only opposition had been withdrawn.

On September 9, 1963, Joseph M. Rault, Jr., Inc. (Rault) filed an offer of settlement in Docket No. CI60–670 proposing that Rault's sale in Docket No. CI61–670 be settled on the same terms and conditions as proposed by Sinclair in Docket No. CI61–670 because, effective August 1, 1963, Rault had sold the property to Sinclair and Rault's F.P.C. Gas Rate Schedule No. 1 has been superseded by Sinclair's F.P.C. Gas Rate Schedule No. 235. Thus, Rault and Sinclair request that Sinclair be substituted as Applicant and that a certificate be issued to Sinclair in accordance with the settlement agreement.

[1] The Brooklyn Union Gas Company, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, Philadelphia Gas Works Division of the United Gas Improvement Company, Public Service Electric and Gas Company, South Jersey Gas Company, The United Gas Improvement Company, the New England distributors group (consisting of 41 distributors), the East Ohio Gas Company, Hope Natural Gas Company, Lake Shore Pipe Line Company, New York State Natural Gas Corporation, The Peoples Natural Gas Company, and the River Gas Company.

In general the terms of the proposed settlements conform to previously approved settlements emanating from the Union Texas Proceeding [2] and provide for a maximum initial service rate of 20.625¢ per Mcf,[3] a five year moratorium on rate increase filings (subject to the usual exceptions), extension of make-up periods to four years and refunds of amounts above the settlement rates collected for gas delivered since the proposed effective date of the rate reductions, April 1, 1963.[4]

The temporary authorization issued to Sinclair in Docket No. CI61–1257 on May 12, 1961 (R.S.–213) contains an express refund condition and Sinclair proposes to make refunds to the purchaser in that docket, Trunkline Gas Company, together with interest of 7% per annum to accrue through March 31, 1963. This is the only temporary authorization issued to Sinclair which requires refunds.[5]

The settlement initial rate in Docket No. CI61–670 (Rault R.S.–1 and Sinclair R.S.–235) is the contractual initial rate of 20.50¢ per Mcf.

Sinclair's Docket No. CI63–463 (R.S.–236) concerns an application to continue the sale previously authorized for Sinclair's predecessor in interest and is consolidated in the Graridge Proceeding. The total initial rate of Sinclair's predecessor, Earl G. Bateman, d/b/a Bateman Drilling Company in Docket No. G–15141 (certificate issued August 7, 1959) was 20.75¢ per Mcf. Sinclair has agreed to a settlement initial rate for this sale of 20.625¢ per Mcf, effective April 1, 1963.

The proposals of Sinclair and Rault are generally in the public interest and we shall approve them subject to the following reservations and conditions.

In the context of the proposals we interpret the term "delivered" as used in Paragraph 1. of the agreement to include gas required to be taken during the moratorium period but paid for and not taken and our approval is conditioned upon such interpretation.

We shall require that interest on the amounts to be refunded accrue through the last day of the month in which the settlement agreement was filed.

The settlement provisions for adjustments in rates according to our order or orders in Area Rate Proceeding, Docket No. AR61–2, seek to anticipate in part the nature of our final determinations in that matter. It is clear that we shall make no determinations in this matter which will control our conclusions in Docket No. AR61–2. The settlement proposal also provides that adjustments in price growing out of the Area Rate Proceeding, Docket No. AR61–2, should go into effect upon conclusion of judicial review of our final order.

---

[2] See orders issued August 7, 1963, (Humble Oil & Refining Company) and October 9, 1963, (Gulf Oil Corporation and Socony Mobil Oil Company, Inc.) in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, 30 FPC 456 and 979 respectively.

[3] All rates expressed inclusive of applicable tax reimbursement and all volumes expressed at 15.025 psia.

[4] See Appendix for further details.

[5] Our order conditionally approving Sinclair's general rate settlement, in Docket No. G–9291, *et al.*, issued July 1, 1963, required Sinclair to reduce its rates under all of the instant rate schedules to 21.25¢ per Mcf effective as of the date of that order. The July 1 order also required that Sinclair be liable for refunds of amounts collected above the rates determined to be proper in the Union Texas Proceeding for gas delivered since July 1, 1963. Sinclair has not yet complied with these requirements but since Sinclair proposes an effective date of April 1, 1963, in the instant settlement proposal, the above described requirements of the July 1, 1963, order have lost their effectiveness.

However, we cannot now commit the Commission to conditionally staying the effectiveness of its final order in Docket No. AR61–2. These matters should be decided at the conclusion of that proceeding and our approval of the settlement will be so conditioned.

As shown in the appendix the purchasers are Southern Natural Gas Company (Southern), Trunkline Gas Company (Trunkline), United Gas Pipe Line Company (United) and Tennessee Gas Transmission Company (Tennessee).

The flow through provisions of our orders in the recent Southern rate case[6] do not refer specifically to Docket Nos. CI61–390, or CI63–463. Therefore, in order to avoid a situation in which a pipeline obtains and keeps the benefits of refunds and reductions in gas purchase costs even though it may be, in the absence of such refunds and reductions in gas purchase costs, earning a reasonable rate of return on invested capital, we shall require Southern to report to the Commission the amount of refund and interest that it receives as a result of this settlement, the estimated annual reductions in purchased gas costs, the proposed disposition of the refunds and the proposed rate adjustments, if any, to reflect the reduction in gas purchase costs. We shall require Southern to hold the refunds and amounts equal to the reductions in purchased gas costs which will accrue as a result of the settlement of Docket Nos. CI61–390 and CI63–463 in a special account subject to further orders of the Commission.

Trunkline, the purchaser under Rate Schedule No. 213 (Docket No. CI61–1257) should be subject to the same holding and reporting requirements for the same reasons. As noted above, the temporary authorization issued in this docket on May 12, 1961, contains an express refund condition.

United, the purchaser under Rate Schedule No. 172 (Docket No. G–17917) has a rate case, in Docket No. RP63–1, presently pending before the Commission. Any adjustments necessary to reflect Sinclair's reduced rate will be effected in that proceeding.

The rate under Rate Schedule No. 235 (Docket No. CI61–670) in which Tennessee is the purchaser will remain 20.50¢ per Mcf.

In accordance with the above we shall sever Docket Nos. G–17917, CI61–390, CI61–1257 and CI61–670 from the consolidated proceeding, Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*, sever Docket No. CI63–463 from the consolidated proceeding, Graridge Corporation (Operator), *et al.*, Docket No. G–19246, *et al.*, omit the intermediate decision in regard to these dockets[7] and issue certificates of public convenience and necessity in accordance with the applications, settlement proposals and conditions of this order.

The Commission finds:

(1) Sinclair Oil & Gas Company is a "natural-gas" company within the meaning of the Natural Gas Act, and is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(2) The proposed sales of natural gas are subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

---

[6] *Southern Natural Gas Company*, Docket No. G–20509, *et al.*, Opinion No. 379, issued February 18, 1963, 29 FPC 323, Opinion No. 379–A, issued April 19, 1963, 29 FPC 779.

[7] The hearings in the Union Texas Petroleum, proceeding concluded July 25, 1963, and the hearing in the Graridge proceeding concluded May 14, 1963.

(3) Sinclair is able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, are required by the public convenience and necessity and are in the public interest upon the conditions set forth below, and certificates should be issued as ordered below.

(5) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

(6) It is in the public interest and it is appropriate in carrying out the provisions of the Natural Gas Act that Southern and Trunkline be required to submit the reports and account for the refunds, interest and purchased gas cost reductions as ordered below.

(7) No party has opposed the waiver of the intermediate decisions in these proceedings.

The Commission orders:

(A) The motion for waiver of the intermediate decisions is granted.

(B) The matters in Docket Nos. G–17917, CI61–390, CI61–1257 and CI61–670 are hereby severed from the consolidated proceeding, Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*, and the matters in Docket No. CI63–463 are hereby severed from the consolidated proceeding Graridge Corporation (Operator), *et al.*, Docket No. G–19246, *et al.*

(C) Certificates of public convenience and necessity are hereby issued upon the conditions set forth herein to Sinclair Oil & Gas Company for the sales of natural gas in interstate commerce for resale as proposed and as modified by the settlement proposal and this order, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in Sinclair's applications and settlement proposal herein.

(D) The certificates issued by paragraph (C) above, are granted upon the express condition that Sinclair comply fully with the terms of the settlement proposal as modified, which settlement is expressly approved, under the conditions of this order.

(E) The refunds required by the settlement proposal and this order, together with interest thereon computed at a rate of 7% per annum and accruing through May 31, 1963, shall be paid within 45 days from the date of issuance of this order.

(F) Within 30 days after making the refunds required by the terms and conditions of this order and the settlement proposal as modified, Sinclair shall report to the Commission, in triplicate, the amount of the refunds made to its pipeline purchasers, showing separately the amount of principal and interest so paid and the basis used for such determination, together with releases from the purchasers showing receipt of the refunds in conformity with the settlement as approved.

(G) Upon full compliance of Sinclair with all the terms of this order and of the settlement proposal, Sinclair and Rault shall be relieved of any further refund obligations in these certificate proceedings and said proceedings shall terminate.

(H) The certificates herein issued are not transferable and shall be effective only so long as Sinclair continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(I) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or Part 154 of the Regulations thereunder; *Provided, however,* that the 30-day notice provision of Part 154.94(f) are hereby waived insofar as they apply to the filing of reductions in rate as required by this order and the settlement proposal.

(J) The grant of certificates herein and approval of the settlement proposal is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Sinclair or Rault, particularly any proceeding under Section 5 of the Natural Gas Act and is without prejudice to claims or contentions which may be made by the Commission, Applicant, the Commission staff, or any affected party herein in any other proceeding.

(K) Within 15 days from the date of receipt of refunds and interest required by this order, Southern and Trunkline shall each submit a report to the Commission and serve a copy on its jurisdictional customers and the various state utility commissions wherein each does business, setting forth the amount of refund and interest received, the estimated annual reduction in purchased gas costs due to Sinclair's rate reductions, its proposed disposition of such refunds and its proposed rate adjustments to reflect the reduction in gas purchase costs. Pending Commission action and further orders respecting such proposed disposition and adjustments, Southern and Trunkline shall each hold such refunds, interest and amounts equal to the reductions in purchased gas costs which accrue as a result of this settlement in a special account (without interest obligation).

APPENDIX

Rate schedule No.	Docket No.	Purchaser	Present rate [1] (cents/Mcf)	Proposed rate [1] (cents/Mcf)
172	G-17917 [2]	United Gas Pipe Line Co.	22.25	20.625
202	CI61-390	Southern Natural Gas Co.	22.05	20.625
213	CI61-1257	Trunkline Gas Co.	[3] 21.80	20.625
213- Supp. No. 2	CI61-1257	Trunkline Gas Co.	[4] 21.25	20.625
235	CI61-670	Tennessee Gas Transmission Co.	20.50	20.50
236	CI63-463	Southern Natural Gas Co.	20.75	20.625

[1] All rates at 15.025 psia.
[2] As amended on Mar. 8, 1961 (additional acreage).
[3] Temporary authorization for sales from original acreage (issued May 12, 1961) contains refund condition.
[4] As it pertains to deliveries under added acreage supplement (No. 2).

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP63-345

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 29, 1963)

On June 14, 1963, as supplemented on June 20, 1963, Cities Service Gas Company (Applicant) filed in Docket No. CP3-345 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of approximately 24.97 miles of pipeline loop, and the construction and operation of metering and regulating facilities together with several transmission line taps for the transportation and sale of volumes of natural gas to The Gas Service Com-

pany (Gas Service) for resale to four communities in the State of Missouri, all as more fully set forth in the application.

Applicant seeks authority specifically to (1) loop approximately 9.87 miles of its Welda-Ottawa 20-inch pipeline with 30-inch pipeline, located in Franklin County, Kansas, (2) loop approximately 7.10 miles of its Ottawa-Sedalia 12-inch pipeline with 20-inch pipeline, located in Miami County, Kansas, and Cass County, Missouri, (3) loop approximately 8 miles of its Marshall 6-inch pipeline with 10-inch pipeline, located in Lafayette and Saline Counties, Missouri, (4) tap its existing Marshall 6-inch pipeline and construct a meter setting with appurtenant regulator equipment for the sale of natural gas through such facilities to Gas Service for initial distribution and resale in and about the City of Slater, Missouri, (5) tap the above mentioned Marshall 6-inch pipeline and install the necessary metering and regulating equipment for the sale of natural gas to Gas Service for initial distribution and resale in and around the City of Mt. Leonard, Missouri, (6) tap its existing East Kansas City 20-inch pipeline and construct the necessary metering and regulating equipment for the sale of natural gas to Gas Service for initial distribution and resale in and about the City of Lake Lotawana, Missouri, and (7) tap its existing Independence 12-inch pipeline and install metering and regulating equipment for the sale of gas to Gas Service for initial distribution and resale in and about the Town of Raymore, Missouri.

The proposed construction on Applicant's Ottawa-Welda and Ottawa-Sedalia pipelines is required in order to deliver the 1963–1964 peak-day requirements of its existing customers on the pipelines extending north and east of Applicant's Ottawa pipeline junction, serving primarily those customers residing in the greater Kansas City area and also the requirements of the customers in the aforementioned communities. Applicant's experience on the peak-day of January 23, 1963, revealed that the peak-day firm demands for this area exceeded its 1962–1963 peak-day estimates by approximately 38,000 Mcf. The 1962–1963 firm peak-day demands served in this area increased 50,000 Mcf over the 1961–1962 peak-day demands. This increase in demands was greater than the estimated firm peak-day increase for Applicant's entire system, and was the second consecutive year an increase of this magnitude was experienced. As a result, Applicant revised its estimates of demands for the peak-day of 1963–64, 1964–65, and 1965–66. Applicant states that the new Ottawa-Welda and Ottawa-Sedalia pipeline facilities will enable it to deliver the estimated peak-day resale demands of 733,639 Mcf @ 14.73 psia in 1963–64 necessary for the greater Kansas City area.

Gas Service will construct and operate transmission and distribution facilities required to render service to the communities of Slater, Mt. Leonard, Lake Lotawana and Raymore. Gas Service has received appropriate authorization from the Missouri Public Service Commission and has obtained franchises from these communities.

The estimated peak-day and annual requirements during the third year of service for the communities proposed to be served are as follows:

	Mcf at 14.73 psia	
	Peak-day	*Annual*
Slater	1,535	140,000
Mt. Leonard	80	5,400
Lake Lotawana	2,550	196,800
Raymore	200	12,805

Applicant estimates the total cost of its proposed facilities to be $1,544,141, which will be financed from treasury cash.

Temporary certificate authorization for the construction and operation proposed under this application was issued to Applicant on October 8, 1963.

Pursuant to due notice a public hearing was held in Washington, D.C., on October 17, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Cities Service Gas Company, to construct and operate the proposed facilities and to sell and transport natural gas as hereinbefore described, all as more fully described in the application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the sale and transportation of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date on which this order issues.

OPINION NO. 407

MORRIS MIZEL, ET AL., DOCKET NO. RI63-205

MEMORANDUM OPINION AND ORDER ADOPTING EXAMINER'S ORDER

(Issued October 29, 1963)*

Syllabus

1. Commission *rejects* contention that favored-nation clause in contract was triggered by gas "purchased" pursuant to farm-out agreement. P. 1104.
2. Differences between a farm-out agreement and standard gas purchase contract *discussed*. P. 1104.
3. Even if buyer's action could be considered "a purchase" of gas as required by contract, quantities taken were insufficient to initiate escalation. P. 1104.
4. Commission *denies* Producer's request for substitution of corrected billing statement in proceeding under Sections 4 and 16 of the Natural Gas Act. PP. 1104; 1120.

Lambert McAllister, Francis J. Walsh and *Max G. Cohen* for Morris Mizel and Sam Mizel.

Ray W. Richards for Henderson Trusts

Francis J. Gilmore for the Staff of the Federal Power Commission

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

O'CONNOR, *Commissioner:*

The basic issue in this case is whether the favored-nation clause in the contract of Morris and Sam Mizel (Mizel) with the Frank C. and Elizabeth P. Henderson Trusts No. 2 (Trusts) was "triggered" by a "purchase" of gas by Trusts pursuant to a farmout agreement between Trusts and Edwin W. Pauley (Pauley).

The contract between Mizel and Trusts provided for the purchase by Trusts from Mizel of the maximum allowable gas production from certain wells in Hutchison County, Texas, at a price of 11 cents per Mcf, with the additional provision that if Trusts "shall purchase gas from any well located in Hutchison County, Texas, in quantities of 100,000 cubic feet daily, or more, for which it pays more than eleven cents (11¢)" per Mcf, Trusts "shall increase the price provided for herein to equal the price so paid."

The farmout agreement between Trusts and Pauley provided for Pauley to transfer interests in oil and gas leaseholds covering certain tracts in Hutchison County to Trusts. Trusts was required to drill wells on the tracts at its own expense, and operate the wells. If the wells proved productive, Trusts was to be reimbursed for its expense out of the gas or oil produced. Pauley retained an overriding royalty interest until one-half the cost of a well had been recovered; thereafter the gas was divided between the two parties, with Pauley being entitled to payment for its porportionate share of the gas produced. Although nowhere was a price of 15 cents per Mcf set forth in the contract, the amounts to be paid Pauley, both on its royalty and on its later ownership of part of the gas produced, were such that it can be mathematically calculated that the full compensation to Pauley would be a proportionate share of a price of 15 cents per Mcf.

*Initial decision appears on p. 1105. Rehearing denied, 30 FPC 1652.

Mizel now contends that the Pauley-Trusts farmout agreement constituted a "purchase" sufficient to activate the price escalation clause in the contract with Trust. In the absence of any provision in the Mizel-Trusts contract to the contrary, we must assume the word "purchase" is used as it is commonly employed in the industry, *i.e.*, in reference to the standard gas purchase contract. The farmout agreement is decidedly different. First, unlike the ordinary gas purchase contract, it is not primarily a marketing device; it is primarily an exploration and development device utilized when an owner or lessee is either unable or unwilling to develop his property. In these cases, the owner or lessee, retaining an overriding royalty, "farms out" his interest to another, who, at his own risk, attempts to establish production. Secondly, farmout agreements contemplate the assignor and assignee having at any point in time, respective overriding royalty rights and working interests rights in the gas produced. Under the standard gas purchase contract, however, once gas is sold to the vendee no such rights are reserved by a vendor. Thirdly, as control over the aspects of production lies with the operator of the lease, gas purchase contracts and farmout agreements again differ markedly. Under the former, control lies with the vendor; under farmout agreements, however, control lies with the assignee. Fourthly, farmout agreements are often brought into being because a formidable risk factor makes it impracticable for the assignor to drill. This risk is thus "farmed out" to the assignee-operator who thereupon incurs drilling expenses that may result in only negligible production. This possibility of expensive efforts producing no returns is absent in the standard gas purchase contract wherein the purchaser is assured of a specific quantity and quality of gas. Accordingly, it is clear to us that the price escalation clause was not triggered by a "purchase" as required by the contract.[1]

Even if we were to hold otherwise, it is clear that insufficient quantities of gas were taken by Trusts prior to June 7, 1954 to initiate escalation. The contract provides for escalation only if Trusts "purchases gas from any well * * * in quantities of 100,000 cubic feet daily, or more, for which it pays more than eleven cents (11¢) per one thousand cubic feet. * * * "During the twenty-six day period pointed to by Mizel as activating the clause, Pauley had only a 35/256 interest in produced gas. This proportionate share of the gas was in excess of 100,000 cubic feet from any one well on only four days. We conclude that such sporadic excesses are not the type envisioned by the "daily" requirement, and are insufficient to trigger the escalation clause.

The Commission finds:

(1) Henderson Trusts did not purchase gas in quantities of 100,000 cubic feet daily, or more, on or prior to June 7, 1954, under the Pauley-Trusts farmout agreement.

(2) The escalation clause in the Mizel-Trusts contract was not triggered on or prior to June 7, 1954.

(3) The correct rate, effective as of June 7, 1954, for the sale of natural gas by Mizel to Henderson Trust under Morris Mizel, *et al.*, FPC Gas Rate Schedule No. 2, is eleven cents (11¢) per Mcf, as reflected in the original billing statement filed by Mizel with the Commission on December 6, 1954.

The Commission orders:

(A) The presiding examiner's order in the above-entitled proceeding is hereby adopted as the order of the Commission.

(B) Mizel's exceptions to the presiding examiner's order are hereby denied.

[1] *Cf., Pure Oil Company*, 25 FPC 383, aff'd. 290 F. 2d 370 (7th Cir. 1962) and *Shell Oil Company*, 29 FPC 498, Opinion No. 382.

INITIAL DECISION
OF THE PRESIDING EXAMINER UPON A HEARING TO DETERMINE THE CORRECT RATE EFFECTIVE JUNE 7, 1954

(Issued May 8, 1963)

ZWERDLING, *Presiding Examiner:* This proceeding arises upon a corrected billing statement filed with the Commission by Morris and Sam Mizel (Mizel), with a request that the Commission issue an order making such substitute billing statement effective to reflect a price of 15 cents per Mcf as the correct price as of June 7, 1954 for gas sold to the Frank C. and Elizabeth P. Henderson Trusts No. 2 (Trusts) in Hutchinson County, Texas under Morris Mizel FPC Gas Rate Schedule No. 2.

Pursuant to Section 154.92(a) of Regulations under the Natural Gas Act, Mizel on December 6, 1954 filed with the Commission its said FPC Gas Rate Schedule No. 2, covering the sale of gas in Hutchinson County, Texas (Railroad Commission District No. 10) by Mizel to Trusts pursuant to a December 31, 1953 contract.[1] The December 6, 1954 filing was accompanied by an October 1954 billing statement reflecting a price of 11 cents per Mcf for all gas sold and purchased under that contract as of June 7, 1954.

On July 21, 1959 Mizel filed with the Commission a revised and corrected billing statement reflecting a price of 15.0016 cents per Mcf as the correct price due and payable as of June 7, 1954 for such gas. In an attached Statement of Reasons supporting such corrected billing statement, Mizel alleged that a favored-nation provision in its contract with Trusts had been activated on May 11, 1954 by virtue of the fact that on that date Trusts had commenced the purchase of gas from Well No. 1, Tract No. 3, and Well No. 1, Tract No. 1, in Hutchinson County, Texas, from Edwin W. Pauley at a rate of 15.0016 cents per Mcf under a contract dated January 28, 1954 between Edwin W. Pauley, Seller, and Trusts as Buyer.[2] Trusts filed a protest to such revised billing statement in which it contended, among other things, that the favored nations clause in the Mizel contract had not been activated prior to June 7, 1954 because Pauley's interest in the production from the wells covered by the Pauley-Trusts agreement was not sufficient to meet the 100,000 cubic feet minimum daily volume requirement contained in the Mizel escalation clause.

By letter dated August 20, 1959 the Commission rejected Mizel's submittal of such revised and corrected billing statement, on the basis that the volume data submitted did not constitute proof of the alleged triggering of the favored-nation escalation clause in the Mizel contract.

No further filing was made with the Commission until three years later, on July 3, 1962, when Mizel submitted a new corrected billing statement for May 1954, reflecting a price of 15 cents per Mcf for the gas sold under its contract with Trusts, in substitution for the originally filed October 1954 billing statement which had reflected a price of 11 cents per Mcf. In this document, entitled "Request for Substitution of Corrected Billing Statement to Reflect the Effective Contract Price as of June 7, 1954", Mizel alleged that the favored-nation provision in its contract with Trusts was activated by virtue of the purchase by Trusts on May 11, 1954 of 469,000 cubic feet of gas at a price of 15 cents per Mcf from Well No. 1, Tract No. 3 under the Pauley-Trusts agreement, *supra*, and by virtue of the further fact that for the period from

[1] A copy of this contract is attached as Exh. C to the Stipulation of Facts, Exh. 1 in this proceeding.

[2] Edwin W. Pauley, Jr., FPC Gas Rate Schedule No. 1, attached as Exh. D to the instant Stipulation of Facts.

May 11 through May 31, 1954 Trusts purchased a daily average quantity of 491,381 cubic feet from the said well. In both its 1959 filing of a revised billing statement and in its 1962 filing Mizel alleged that it was not aware of the alleged triggering until early in 1959.

On July 20, 1962 Trusts again filed a protest to Mizel's most recent corrected billing statement. The Commission thereupon by order issued November 23, 1962 directed that a hearing be held concerning the issues connected with Mizel's July 3, 1962 tender of its corrected billing statement. The Commission noted that Mizel's proposed correction, if approved, would change its legally effective June 7, 1954 rate for the sales under its contract with Trusts from 11 cents per Mcf to 15 cents per Mcf, increasing Trusts' purchased gas costs by approximately $36,822 annually, based upon the volume sold in May 1954.

Pursuant to such order, a prehearing conference was held before this Examiner on December 17 and 18, 1962, followed by a hearing which opened on February 26 and concluded on February 27, 1963. The prehearing conference culminated in a detailed Stipulation of Facts, which was agreed to on the record by all parties and received in evidence as Exh. 1. In addition certain other evidence was offered at the hearing, some of which was received and some excluded, as will be noted in more detail at a later point.

The sole parties to the instant proceeding consist of Mizel, Trusts and the Commission Staff. Final briefs were filed by April 22, 1963 and the matter is now ready for decision.

The single issue to be resolved in this proceeding is whether the favored-nation escalation provision in the Mizel-Trusts contract of December 31, 1953 was activated, or "triggered", on or prior to June 7, 1954, with the result that the legally effective rate as of that date was 15 cents per Mcf, as claimed by Mizel. The resoluition of this question in turn requires a determination as to the proper meaning of the Mizel escalation provision, and the proper construction and effect of the Pauley-Trusts agreement of January 28, 1954.

The favored-nation escalation provision in the Mizel-Trusts contract appears in Article VII, Section 7.01, which provides as follows:

> As the full consideration for the gas and all components thereof delivered by Seller to Buyers hereunder, the price shall be eleven cents (11¢) per one thousand cubic feet, measured as herein provided. If Buyer shall purchase gas from any well located in Hutchinson County, Texas in quantities of 100,000 cubic feet daily, or more, for which it pays more than eleven cents (11¢) per one thousand cubic feet, measured herein provided, then Buyer shall increase the price provided for herein to equal such price so paid.

In order to place this case in its proper context, it is important to note at the outset that the actual price being paid by Trusts under the Mizel contract on June 7, 1954, and since that time, has been 11 cents per Mcf. It is also of interest to note, as already indicated, that it was not until July 1959, some 4-1/2 years after Mizel filed 11 cents per Mcf with the Commission as its legally effective rate, that Mizel for the first time made the contention, in its Corrected Billing Statement filed July 21, 1959, that its legally effective rate under this contract was actually 15 cents per Mcf. It is also pertinent to note, as already indicated, that after the Commission rejected this 1959 filing as not be sufficient to sustain the burden of proof, Mizel waited another three years before filing its final Corrected Billing Statement of July 3, 1962.

It is true that it is well established that the question of an independent producer's legally effective rate as of June 7, 1954 is not necessarily governed by

the actual price which was being paid on that date, but is to be determined on the basis of the price which the purchaser was legally obligated to pay to the seller under the terms of the contract at that time.[3] However, in so holding the Courts certainly did not contemplate that the price being paid and collected by the parties to the contract as of June 7, 1954 would be casually ignored and would give way to a totally different price proposed years later in a self-serving effort by the seller, based upon a fanciful and strained interpretation devised by the seller for a totally different contract, to which he was not even a party. Yet that is precisely the type of situation presented to us in the instant proceeding.

It is concluded that the flavor of this entire proceeding is such as to impose a very heavy burden of proof upon Mizel to establish that *any one* of its many differing and inconsistent theories as the proper construction to be given to the Pauley-Trusts agreement, and to the escalation clause in the Mizel-Trusts agreement, should be adopted here.

Before proceeding to summarize the various shifting positions and theories which have been presented by Mizel at various stages of the instant proceeding, it will be useful to review the factual background which gave rise to these theories. The Mizel position that the escalation clause in the Mizel-Trusts agreement was triggered on or prior to June 7, 1954 rests entirely upon its contention (1) that the Pauley-Trusts agreement constituted a *gas purchase contract* and therefore the delivery of gas into Trusts' gathering lines from these wells constituted purchases of gas by Trusts from Pauley within the meaning of the Mizel escalation clause; (2) that Trusts purchased gas under the Pauley-Trusts agreement at a price of 15 cents per Mcf, in quantities of 100,000 cubic feet daily, or more, prior to June 7, 1954.

The total volume of gas produced and delivered into Trusts' gathering lines from Well No. 1, Tract No. 3 prior to June 7, 1954 was 13,347 Mcf (measured from 7:00 a.m. to 7:00 a.m.), or an average daily volume of 494,300 cubic feet; while the total volume from Well No. 1, Tract No. 1 was 2,271 Mcf, or an average daily volume of 454,200 cubic feet (3:188–9; Exhibit A attached to Stipulation of Facts, Exhibit No. 1).

Par. XIII, Art. I, Sec. 1.01 of the Pauley-Trusts agreement provides that:

> Seller agrees to sell and deliver to Buyer and Buyer agrees to purchase and receive from Seller at the prices and on the terms and conditions herein set forth, *Seller's proportionate part* of the maximum allowable production of said wells . . . . [Emphasis supplied.]

Under the assignment of the oil and gas leases covering Tracts No. 1 and 3, executed by Pauley to Trusts on January 28, 1954 pursuant to the contract, and made a part of the contract by reference,[4] there was reserved to Pauley, as an overriding royalty interest, an undivided 5/32nds of 7/8ths (or 35/256ths) of the total production of oil and gas, casinghead gas and casinghead gasoline produced, saved, and marketed from such leases. The assignment further provided that when Trusts

> * * * shall have been repaid, out of the net working interest herein assigned and conveyed to Assignees, certain cost and expense of developing and equipping wells drilled upon the above described lands, the overriding royalty interest herein reserved by Assignor shall be converted into and shall thereupon become a working interest in and to the above-described oil and gas leases equal to 105/256ths of the total production of oil and

---

[3] *Phillips Petroleum Co.* v. *F.P.C.*, 258 F. 2d 906 (CA10, 1958); also *Kerr-McGee Oil Industries, Inc.* v. *F.P.C.*, 260 F. 2d 602 (CA10, 1958).

[4] Exh. G attached to Stipulation of Facts, Exh. No. 1.

gas, casinghead gas and casinghead gasoline produced, saved and marketed from the lands described in said leases.

On the face of the Pauley-Trusts agreement and the concurrent assignment referred to above, it appears that until termination of the cost-reimbursement period Pauley's "proportionate part" of production was 35/256ths. Furthermore, it is clear that the cost-reimbursement period had not been terminated on or prior to June 7, 1954. Par. XI of the Pauley-Trusts agreement provided that 4.717 cents per Mcf of gas marketed from each well was to be assigned to the reimbursement of 1/2 of the cost of such well. The record shows that the cost of drilling and completing Well No. 1, Tract No. 3 amounted to $27,897.30, and the cost of drilling and completing Well No. 1, Tract No. 1 amounted to $30,641.42. Pursuant to the contract, Trusts paid these costs in the first instance. Since a total of only 13,347 Mcf. of gas was produced from the well on Tract No. 3 prior to June 7, 1954, and a total of 2,271 Mcf was produced from the well on Tract No. 1 during the same period, it is clear that prior to June 7, 1954 Trusts had been reimbursed to the extent of only $620.57 (4.717 cents x 13,347 Mcf) of the costs applicable Well No. 1, Tract No. 3, and $107.12 (4.717 cents x 2,271 Mcf) of the costs applicable to Well No. 1, Tract No. 1. (1:188-9) Thus, it is beyond dispute that Trusts had not been reimbursed for 1/2 of the costs applicable to either of the above wells on or prior to June 7, 1954. Mizel counsel in fact conceded this, stating:

> Anybody can take the total number of Mcfs of gas produced from the times the wells started producing until June 7th and say that there wasn't enough gas to pay off half the gas well—[3:224.]

Accordingly, if we were to assume *arguendo* that the deliveries of gas from these wells into Trusts' gathering lines did constitute purchase of gas by Trusts from Pauley, and if it were concluded that Pauley's proportionate part of the total production from these wells was only 35/256ths, it would follow that the *average daily volume* of gas "purchased" by Trusts *from Pauley* prior to June 7, 1954 from Well No. 1, Tract No. 3 was only 67,580 cu. ft. (35/256ths x total average daily volume of 494,300 cu. ft.), and 62,098 cu. ft. from Well No. 1, Tract No. 1 (35/256ths x 454,200 cu. ft.) — substantially lower than the 100,000 cu. ft. minimum daily volume requirement of the Mizel escalation clause.

In the context of these facts the shifting theories and positions espoused by Mizel have taken the following course from the inception of this proceeding:

(1) In its original Corrected Billing Statement filed July 31, 1959, Mizel contended that Pauley had a 0.13671875 interest *i.e.*, 35/256ths) "in all gas produced" under the Pauley-Trusts agreement, as follows:

> . . . Edwin W. Pauley has a 0.13671875 interest in all gas produced under Edwin W. Pauley FPC Gas Rate Schedule No. 1 . . . [p. 4 of Statement.]
>
> * * * * * * *
>
> These two assignments by Edwin W. Pauley to Edwin W. Pauley, Jr., reiterate the fact that Edwin W. Pauley retained and reserved to himself an overriding interest equal to 5/32nds of a 7/8ths interest[5] in the lands and leases assigned by Edwin W. Pauley to the Henderson Trust . . . [p. 6 of Statement.]

Throughout this Statement, Mizel made no contention or reference whatsoever to any Pauley interest greater than 35/256ths.

(2) Trusts subsequently filed a protest to the Corrected Billing Statement, contending that if Pauley's fractional interest of 35/256ths were applied to the total volumes of gas produced from these wells prior to June 7, 1954,

[5] *i.e.*, 35/256ths.

Pauley's proportional interest in such production volumes clearly fell far short of the minimum daily volume required to trigger the Mizel escalation clause. The Commission thereupon rejected this Mizel filing on August 20, 1959, on the ground that it did not sustain the burden of showing that the minimum volume requirement of the Mizel escalation clause had been satisfied.

(3) It was only *thereafter*, in its second Corrected Billing Statement filed on July 3, 1962, that Mizel *for the first time* made the contention that Pauley had an interest of 105/256ths from the inception of the Pauley-Trusts agreement. If this theory were adopted, of course, 105/256ths of the 494,300 cu. ft. average daily volume produced from Well No. 1, Tract No. 3, prior to June 7, 1954 would have amounted to 202,700 cu. ft., or substantially in excess of the 100,000 cu. ft. minimum daily volume requirement of the Mizel escalation clause.

(4) In addition, in the Corrected Billing Statement of July 3, 1962 Mizel for the first time advanced the alternative theory that the Pauley-Trusts agreement was a *joint venture*, with Trusts in an individual capacity agreeing to purchase from the joint venture all jointly owned production from these wells—so that Trusts allegedly was "purchaser" of the entire gross production from these wells.

(5) In a still further evolution of its theory in this case, Mizel's initial brief states:

> Thus, after the execution of the Assignment, Pauley retained legal and equitable title to 35/256ths of the production, which was labeled as an overriding royalty, *together with an equitable title to 70/256ths of the production*, associated with the 161/256ths of the production for reimbursement of well costs. [top of p. 13; emphasis supplied.]

However, bewilderingly, at the bottom of the very same page of its initial brief Mizel states:

> In short, Pauley at all times had 105/256ths interest in the production, but during the period of reimbursement for the costs of the wells, Pauley's interest was divided into 35/256ths legal title *and 105/256ths equitable title*, 70/256ths of legal title having been assigned as collateral. [emphasis supplied.]

Similarly, at pages 16 to 17 of its initial brief Mizel states:

> . . . Pauley has always had *an equitable title of 105/256ths* in the production in addition to the 35/256ths which, during the period of reimbursement was an overriding royalty. [emphasis supplied.]

In its second Corrected Billing Statement filed July 3, 1962, Mizel put its position as follows:

> Pauley's interest and that of Henderson has always remained the same under the contract—105/256ths for Pauley and 91/256ths for Henderson Trusts, but however with Pauley during the period of drilling and development receiving 35/256ths in cash from the proceeds of sale of gas and assigning 70/256ths of his working interests to the cost of the wells. When the cost of the wells is fully paid, Pauley's cash receipts from the proceeds of sale of gas automatically revert to 105/256ths . . . No words or argument can destroy that fact.[6]

(6) To add to the confusion, Mizel counsel at the hearing attempted to present still another theory as to the nature and extent of Pauley's proportionate interest, in the proposed testimony of witnesses Rorschach and Lepley. (Exhs. 2 and 3) This testimony was excluded by ruling of the Presiding Examiner, on the ground that it represented an improper attempt to vary the

[6] Similarly, see pp. 15–16 of Mizel's initial brief.

unambiguous terms of the Pauley-Trusts contract by extrinsic parole evidence. However, it is of interest and quite appropriate to note that in witness Rorschach's proposed testimony he stated:

> The cost of each well was to be repaid by crediting Pauley's account with 1/2 of the proceeds derived from the sale of gas from the net working interest, or 1/2 of the 161/256, and in addition thereto, Pauley received an overriding royalty interest of 35/256, which together with the proceeds derived from the gas amounted to *115.5/256* of the total gross production in oil and/or gas. [Exh. 2, p. 4; emphasis supplied.]
>
> * * * * * * *
>
> . . . when Pauley's part of the oil or gas production coming from the well had retired the cost of the well, then Pauley's interest in the returns to him decreased *from 115.5/256 to 105/286.* [Exh. 2, p. 5; emphasis supplied.]

Similarly, witness Lepley's proposed testimony included the following statement:

> During the payout period, it is thus apparent from an accounting basis that Pauley's interest in the gas purchased from each of the wells in question was *115.5/256* (one-half (1/2) of 161/256 plus 35/256). [Exh. 3, p. 9; emphasis supplied.]

This proposed testimony by Mizel witnesses Rorschach and Lepley that Pauley's interest during the cost-reimbursement period amounted to *115.5/256ths* is completely at variance and inconsistent with the various theories advanced in Mizel's two Corrected Billing Statements of 1959 and 1962, and in Mizel's initial brief, *supra.*

(7) In its initial brief (pp. 5–6) Mizel contends that even if it should be concluded that Pauley's proportionate interest was only 35/256ths, with the result that Pauley's proportionate part of the total production from Well No. 1, Tract No. 3, prior to June 7, 1954, exceeded the minimum volume requirement of the Mizel escalation clause on only four days during that entire period, nevertheless this was sufficient to satisfy the said minimum volume requirement.

It is of interest to note that no such contention was made by Mizel in either of its two Corrected Billing Statement filings in July 1959 and July 1962. In the July 3, 1962 Corrected Billing Statement, Mizel summed up its total position (at p. 7) as follows: (1) that the Pauley-Trusts agreement constituted a *joint venture,* with Trusts in an individual capacity agreeing to purchase *all* production jointly owned under the joint venture; (2) that in the alternative, if it were assumed *arguendo* that Trusts merely purchased Pauley's interest of 105/256ths, that fractional interest when applied to the total daily average production exceeded the 100,000 cubic feet minimum daily volume requirement.

At the prehearing conference in the instant proceeding on December 17, 1962, the question was expressly raised as to whether Mizel counsel took the position that Trusts' purchases from Pauley at volumes exceeding the minimum volume requirement on only three or four days out of the entire period would be sufficient to trigger the Mizel escalation clause. At that point, Mizel counsel stated: "Three or four days would trigger." (1:17) At a somewhat later point, when the Presiding Examiner requested an explanation as to why Mizel counsel had not taken any such position in its Corrected Billing Statements, Mizel counsel replied as follows:

> But the contract is so clear with respect to the major amounts that we were not relegated to a point where we were forced to rely on this minimus of three or four days as they appeared up to June 7. [1:29.]

A substantial portion of the effort made by Mizel counsel throughout this entire proceeding has been directed toward raising all manner of alleged doubts, uncertainties and complexities with respect to the nature, purpose and effect of the Pauley-Trusts agreement. The result was to create the impression at times that a truly simple case, invloving a simple limited issue, was enmeshed in complications rivaling those of a major rate proceeding. This approach provided no solution to the heavy burden of proof which rests upon Mizel here to establish that the 11-cent price which it filed with the Commission in December 1954 as its alleged legally effective rate as of June 7, 1954 was in fact erroneous, and that its correct legally effective rate was 15 cents per Mcf.

Although by far the biggest portion of the hearing and of the briefs filed by all parties has been devoted to the problems outlined above, it is concluded that these questions are actually quite irrelevant for the reason that the Pauley-Trusts agreement was in fact *not* a *gas purchase contract* at all; that the deliveries of gas under that contract into Trusts' gathering lines did *not* constitute *purchases of gas* by Trusts from Pauley, within the meaning of the Mizel escalation clause; and that accordingly the Mizel escalation clause was not "triggered" by anything which occurred under the Pauley-Trusts agreement.

Before proceeding to develop this point, it is of interest preliminarily to note that the Mizel briefs have devoted major attention to arguing that the Pauley-Trusts agreement constituted a joint venture, or a "mining partnership". This position was developed by Mizel as a foundation for one of its alternative theories—*i.e.*, that Trusts in an individual capacity agreed to purchase from the joint venture all jointly owned production from these wells, and that accordingly Trusts was "purchaser" of the entire gross production from these wells. If this theory were adopted, there would of course be no problem as to the Trusts "purchases" satsifying the minimum daily volume requirement of the Mizel escalation clause. In order to rebut this theory, Trusts and Staff have devoted equal energy in their briefs to arguing that the Pauley-Trusts agreement did *not* constitute a joint venture.

This would appear to be much ado about nothing, because even if we were to agree *arguendo* that the Pauley-Trusts agreement *did* constitute a joint venture and that Trusts *did* "purchase" gas from Pauley under that agreement, the very provisions of the contract upon which Mizel relies to support its theory of "purchase" (*i.e.*, Par. XIII, Arts I, VI, and X) expressly provide that Trusts shall "purchase" only *Pauley's "proportionate part"* of the gas produced by these wells. This is totally and fatally inconsistent with the Mizel theory that Trusts in an individual capacity agreed to purchase from the joint venture *all jointly owned production* from the wells.[7]

It is concluded here that Pauley's proportionate interest on and prior to June 7, 1954 was 35/256ths, and no more; that this is clear from the express and unambiguous provisions of the Pauley-Trusts agreement and the concurrent assignment; and that the various shifting theories advanced by Mizel to establish a greater interest are fanciful and unsupported by the contract. On the basis of Pauley's 35/256ths interest, the alleged "purchases" of gas by Trusts from Pauley reached the level of 100,000 cubic feet per day

[7] Furthermore, since the opening paragraph of the contract defines Edwin W. Pauley as "Seller", it is difficult to see how Mizel can seriously contend here that Trusts agreed to "purchase" gas "from the joint venture". (Mizel initial brief, p. 16.)

on only four days out of the total 26-day period that Well No. 1, Tract No. 3 was producing prior to June 7, 1954. It is concluded that the term "daily", in the "100,000 cubic feet daily" minimum volume requirement of the Mizel escalation clause, connotes consistency on a day after day basis; that it was utilized to avoid the possibility of triggering by mere sporadic production in execess of 100 Mcf per day; that accordingly in order for triggering to occur under the Mizel contract it was necessary for Trusts to purchase gas for a sustained period of time at levels in excess of 100 Mcf per day; and that this requirement was not satsified by "purchases" which in terms of Pauley's interest met the level of 100 Mcf on only 4 days out of the 26-day period.

However, entirely apart from these difficulties, it is concluded that the fatal defect in Mizel's entire case is that the Pauley-Trusts agreement in fact did *not* constitute a standard gas purchase contract, of such comparability as to trigger the escalation clause in the Mizel-Trusts gas purchase contract; that it instead represented a *sharing arrangement*, under which various considerations and obligations flowed from each of the parties, in return for which they agreed to divide up the proceeds from the operation in a stated manner.

"Sharing arrangements" are discussed in *Oil and Gas Law*, Williams and Meyers (1959), Vol. 2, Sec. 433, pp.490–1, as follows:

> The term "sharing arrangements," as in the case of so many other terms employed in the oil and gas industry, is used in a variety of ways. Included among the relationships which have been described by this term are those arising from a joint venture, a purchase letter, a carried interest arrangement, a net profits interest, a farm-out agreement, and a checker-boarding arrangement. The essential feature of a so-called sharing arrangement is that one party makes a contribution to the acquisition, exploration or development of an oil and gas property for which contribution he is given some share of the gross or net production from the property to which the contribution is made. The contribution may be of acreage, money, goods or services; the share of production transferred to the contributor may be in the form of a share of the working interest, a carried, net profits or per cent interest, an over-riding royalty or an oil payment.

For the purpose of our instant analysis it is not necessary or important to determine whether the Pauley-Trusts agreement represented the particular type of sharing arrangement involving *partnership aspects* of a joint venture or mining partnership. It is sufficient for our purpose here to conclude, as we do, that the general nature of the Pauley-Trusts agreement was that of a sharing arrangement, rather than that of a gas purchase contract. However, an examination of the various key provisions of the contract amply supports the Trusts contention that the agreement constituted "a farmout contract, primarily for exploration and development purposes". (initial brief, p. 12)

"Farm-out agreements" are described as follows in *Oil and Gas Law*, *supra*, Vol. 2, Sec. 432, pp. 487–9:

> A farm-out agreement is a contract to assign oil and gas lease rights in certain acreage upon the completion of drilling obligations and the performance of any other covenants and conditions therein contained.
>
> * * * * * * *
>
> The primary characteristic of a farm-out is the obligation of the assignee to drill one or more wells on the assigned acreage as a prerequisite to

the completion of the transfer to him. The benefit of such covenant to drill made by the contracting assignee may be all the consideration desired by the assignor for one of several reasons. * * * Frequently, however, the assignor will retain, as additional consideration for the transfer, an overriding royalty, an oil payment, and undivided share of the working interest * * * or an option to acquire some interest in the assigned premises.

The basic and controlling facts with respect to the Pauley-Trusts agreement are as follows:

(1) Pauley owned certain oil and gas leases in Hutchinson County, Texas.

(2) Trusts owned a gas gathering system, together with necessary pipe line equipment for the marketing of natural gas in Hutchinson County.

(3) Pauley and Trusts entered into an agreement to exploit this resource, under which their respective contributions and obligations were spelled out in detail.

(4) Pauley assigned the leaseholds to Trusts.

(5) Trusts undertook to drill and develop wells on these leases, and to market the gas produced from such wells, using the facilities of its gas gathering system.

(6) Pauley and Trusts were to share the costs of the wells equally, in the sense that Trusts was to apply the sum of 4.717 cents for each 1,000 cubic feet of gas marketed from such wells to the reimbursement of 1/2 of the cost of such well.

(7) In return for Pauley's respective contribution, he retained a 35/256ths overriding royalty interest until the cost-reimbursement period was completed, with such interest to be converted into a 105/256ths working interest thereafter.

(8) Pursuant to this division, 35/256ths of the contemplated proceeds from the marketing of the gas produced by these wells was to go to Pauley during the cost reimbursement period, and 105/256ths thereafter. In short, the Pauley-Trusts agreement constituted a sharing arrangement under which Pauley provided the leaseholds, Trusts was to undertake the drilling of the wells, plus production and marketing of the gas, and the proceeds therefrom were to be split between Pauley and Trusts on the basis and in the manner outlined above.

The basic relevant provisions of the contract are set forth below:

(1) The purpose and intent of the contract is expressed in the preamble (p. 1) as follows:

> WHEREAS, Seller owns and holds or is negotiating for certain oil and gas mining leases covering lands located in Hutchinson County, Texas; * * *
>
> WHEREAS, Buyer has a gas gathering system, together with the necessary pipe line and equipment for the marketing of natural gas in Hutchinson County, and whereas Seller desires to avail itself of the marketing facilities of Buyer, and the Buyer desires to acquire an interest in the said leases and the merchantable natural gas that may be produced from the properties above referred to in the manner and to the extent hereinafter provided,
>
> NOW, THEREFORE, in consideration of the premises and the sum of One Dollar ($1.00) paid by Seller to the Buyer, receipt of which is here acknowledged, and of the other payments and covenants hereinafter set out, and subject to the terms, conditions, royalties, reservations hereinafter set out, Edwin W. Pauley, the Seller, hereby sells and agrees to

convey and assign unto the Buyer the outstanding oil and gas leases covering Tracts 1, 3 and 5 described in Exhibit 'A' attached hereto and made a part hereof by reference, which assignment shall be upon the form (and subject to the same reservations and conditions contained in) Exhibit 'B' attached hereto and incorporated herein by reference, * * *

(2) As a part of the consideration, Trusts agreed to drill initial wells for the production of oil or gas on Tracts No. 1 and 3, and also on other tracts not here involved. (Par. I and III) Provision was also made for the drilling of additional wells by Trusts at its election. (Par. VI)

(3) Operation of the leaseholds was to be by Trusts, "for the joint account of Seller and Buyer and the costs of operation shall be borne equally between Seller and Buyer as hereinafter provided * * *" (Par. V)

(4) The cost of each well was to be recovered from production from that well, except that the cost of dry holes was to be spread over all producing wells. As to each producing well, Trusts was to apply an agreed amount (161/256ths in the case of oil wells, and 4.717¢ per Mcf in the case of gas wells, less production taxes, occupation taxes, pipeline and gathering taxes) to the reimbursement of 1/2 of the cost of the well plus operating costs, plus the proper portion of any dry hole costs. (Par. XI and VII)

(5) Pursuant to the terms of the agreement Pauley on the same date executed an assignment to Trusts of the oil and gas leases covering Tracts No. 1 and 3.[8] The parties stipulated that the oil and gas leaseholds thus assigned to Trusts "were valuable undeveloped leasehold estates prior to and on January 28, 1954, and have continued to be valuable leasehold estates subsequent to development". (Stipulation of Facts, Exh. 1, p. 5) The assignment contained the following provision:

> *There is expressly excepted from this assignment and reserved unto Assignor, his heirs and assigns, as an overriding royalty interest, an undivided 5/32nds of 7/8ths of the total production of oil and gas, casinghead gas and casinghead gasoline produced, saved and marketed from the lands described in and covered by the above-described oil and gas leases,* or under the terms of any renewals or extensions of said oil and gas leases, which overriding royalty interest shall be in addition to the royalty and overriding royalty interests reserved by the lessors in said oil and gas leases and shall be free and clear of all costs of development, equipment and operation except taxes which may be levied or assessed upon said overriding royalty interest herein reserved, or upon the production allocable thereto.
>
> Contemporaneously with the execution and delivery of this assignment Assignor and Assignees have entered into the Agreement referred to above, of even date herewith, to the provisions of which Agreement reference is made for all purposes. Under the terms of said Agreement, *when Assignees, their successors or assigns, shall have been repaid, out of the net working interest herein assigned and conveyed to Assignees, certain costs and expense of developing and equipping wells drilled upon the above described lands, the overriding royalty interest herein reserved by Assignor shall be converted into and shall thereupon become a working interest in and to the above-described oil and gas leases equal to 105/256ths of the total production of oil and gas, casinghead gas and casinghead gasoline produced, saved and marketed from the lands described in said leases.* [Emphasis supplied.]

[8] Exh. G, attached to Stipulation of Facts, Exh. No. 1

(6) Par. XIII of the Pauley-Trusts agreement, entitled "Marketing of Gas", set forth the obligation of Trusts to market the gas from completed gas wells, and the manner and extent to which Pauley should be compensated from the proceeds of such marketing.

The opening paragraph provided:

> In event any well is completed as a gas well under the terms of this contract then Buyer shall be obligated to lay at its sole expense the necessary gathering and transmission lines for the delivery of the gas from said well or wells into its Sanford Plant gas system and shall gather and deliver said gas from said well or wells and market the same in accordance with the following provisions:

Art. 1 of Par. XIII provided:

> 1.01 Seller agrees to sell and deliver to Buyer and Buyer agrees to purchase and receive from Seller at the prices and on the terms and conditions herein set forth, Seller's proportionate part of the maximum allowable production of said wells as the same may be established from time to time by the Texas Railroad Commission.

Art. VI provided:

> The full consideration to be paid Seller for Seller's proportionate part of the gas and all components thereof delivered from each gas well into the pipe line of Buyer shall be 2.051¢ multiplied by the gross number of MCF's of gas removed from each gas well, during the period in which Buyer is receiving reimbursement for its well costs as provided for in Paragraph VII and Paragraph XI. When Buyer shall have received reimbursement for a particular well then the price to be paid Seller for Seller's proportionate part of the gas marketed thereafter from such well shall be 6.153¢ multiplied by the gross number of MCF's of gas removed from said well for the balance of the term herein provided.

It is important to note here, as will be explained shortly in detail, that at the time of the Pauley-Trusts agreement the parties understood and contemplated that the gas to be marketed from these wells was to be purchased by Colorado Interstate Gas Company *at a price of 15¢ per Mcf.* Accordingly Art. VI, *supra*, set forth Pauley's proportionate share of the proceeds to be derived from marketing of the gas as 2.051¢ per Mcf during the cost-reimbursement period, *being 35/256ths (or Pauley's fractional share) of the purchase price to be paid by Colorado Interstate.* Similarly, Art. VI provided that Pauley's proportionate share of the proceeds *subsequent* to termination of the cost-reimbursement period should be 6.153¢ per Mcf, *being 105/256ths of the purchase price to be paid by Colorado Interstate.*

The marketing of the instant gas to Colorado Interstate at a price of 15¢ per Mcf was brought about by two contracts, executed in early 1953—(1) a contract dated January 29, 1953 between Henderson Trusts and Combined Carbon Company;[9] and (2) a contract dated January 30, 1953 between Combined Carbon Company as Seller and Colorado Interstate as Buyer.[10] The nature, purpose and effect of these transactions is helpfully summarized in a statement filed by Trusts with the Commission on December 31, 1958, as Supplement No. 7 to Trusts' FPC Gas Rate Schedule No. 1. It is rec-

[9] Item C by reference, being Supplement No. 1 to Henderson Trusts FPC Gas Rate Schedule No. 1.

[10] Item F by reference, being United Carbon Company, Inc. (Maryland), FPC Gas Rate Schedule No. 1. United Carbon Company, Inc. is successor to Combined Carbon Company.

ognized that this particular statement is not a part of the record in the instant proceeding. However, the facts set forth therein, which will be outlined below, are evident from the face of the two contracts referred to above, which *are* a part of the instant record.

Trusts had for many years been the owner of a natural gas processing plant located in Hutchinson County, Texas, being the Sanford Gasoline Plant. It purchased gas from producers, extracted the liquids therefrom, and sold the residue gas in natural gas markets. (3:191, 206–7) On January 29, 1953, and for some time prior thereto, a controversy had existed between Trusts and Combined Carbon as to the respective rights of the latter with regard to the residue gas at the outlet of Trusts' gasoline plant. The total volumes of raw gas entering that plant included gas produced from lands in Hutchinson County, Texas as to which Combined Carbon asserted dedicatory rights and claims under former contracts with Trusts.

An opportunity arose in the early part of 1953 for the sale to Colorado Interstate, over a long period of time, of the total quantities of gas available at the outlet of the gasoline plant—such sale to be made at a price of 15¢ per Mcf for the first 5-year period, and 16¢ per Mcf for the second 5-year period. Trusts and Combined Carbon decided to enter into such an agreement for sale of the residue gas to Colorado Interstate, and it was agreed that the differences between them should be adjusted through a division of the sums to be paid by Colorado Interstate for such gas, in the following manner. Out of the total 15¢ price to be paid by Colorado Interstate for gas delivered during the first 5-year period, it was agreed that Trusts should receive 9¢ per Mcf and Combined Carbon 6¢ per Mcf on all deliveries up to 10,950,000 Mcf per year, and that Trusts should receive the full purchase price of 15¢ per Mcf for all additional gas delivered. It was further agreed that out of the total 16¢ price to be paid by Colorado Interstate for gas delivered during the second 5-year period, Trusts should receive 10¢ per Mcf for all gas originating from sources on which Combined claimed dedicatory rights, up to 10,950,000 Mcf per year; but that Trusts should receive the full purchase price of 16¢ per Mcf for all gas which it might dedicate to this contract thereafter.

Although the parties undertook to achieve the results outlined above in the form and mechanics of two separate contracts (*i.e.*, the January 29, 1953 Combined Carbon-Trusts agreement, and the January 30, 1953 Combined Carbon-Colorado Interstate agreement), these two contracts together represented, in fact, a sale by Trusts and Combined Carbon to Colorado Interstate at a price of 15¢ per Mcf for the first 5-year period and 16¢ per Mcf for the second 5-year period, plus a division of the proceeds of such sale between Combined Carbon and Trusts in the manner indicated. By such arrangement for division of the proceeds, Trusts and Combined Carbon undertook to settle their existing differences.

It is clear that when the Pauley-Trusts agreement was executed one year later on January 28, 1954 the parties were operating in the context of a situation where they understood and contemplated that the gas produced from the instant wells would be marketed to Colorado Interstate at a price of 15¢ per Mcf, as a result of the two contracts referred to above; and that such gas *was* in fact subsequently delivered to Colorado Interstate at that price. It is sufficient to note the following in this connection:

(1) The January 29, 1953 contract between Combined Carbon and Trusts provided, Art. II, Sec. 2.02:

> Henderson agrees at all times to make available to Combined for delivery to Interstate under and according to the terms of said Sales Contract[11] all the gas produced from wells located in Hutchinson County, Texas, classified as follows:
>
> (a) Wells on lands or leases owned or controlled by Henderson; * * *

Art. VI provided:

> * * * Henderson may at its option at any time during the term of said Sales Contract, dedicate to the performance thereof any gas leases, gas wells or gas purchase contracts hereafter obtained by it.

(2) The January 30, 1953 contract between Combined Carbon and Colorado Interstate provided, Art II, Sec. 2.01:

> Seller agrees to sell and deliver to Buyer, and Buyer agrees to purchase and receive from Seller * * * a minimum quantity of residue gas during each 6-month period * * * equal to all casinghead gas processed through the Henderson Trust Gasoline Plant. * * *

(3) The Pauley-Trusts agreement itself provided that the gas from these wells should be delivered, via Trusts' gathering lines, into its Sanford Plant gas system, whence it should be marketed after processing. (Par. XIII of contract; also see 3:206–7)

(4) Trusts witness Dickinson testified as follows:

> Q. What disposition was made by Henderson Trusts of the gas produced prior to June 7, 1954 from the two wells described in your original testimony?
>
> A. It was delivered to United Carbon Company, Inc. (Maryland) under contract between the Henderson Trusts and Combined Carbon Company, Inc., (now United Carbon Company, Inc. (Maryland) dated January 29, 1953, * * * and was delivered by United to Colorado Interstate Gas Company under a contract dated January 30, 1953 between Combined Carbon Company, Inc. * * * and Colorado Interstate Gas Company, ratified by the Henderson Trusts * * *. [3:190–1.]
>
> * * * * * * *
>
> THE WITNESS: . . . The gas from the gasoline plant after it has been processed is delivered to the compressor station of Colorado Interstate Gas Company where it is sold under contract between United Carbon Company and Colorado Interstate Gas Company. [3:207.]

It is thus clear that at the time when the Pauley-Trusts agreement was executed the anticipated proceeds of the venture (here found to be a sharing arrangement) were known to the parties, in the sense that it was understood that the gas from these wells was to be marketed to Colorado Interstate at a price of 15¢ per Mcf. Under these circumstances it was not necessary to state Pauley's share of the proceeds in terms of a fractional interest in an unknown amount, but the parties were able instead to identify Pauley's share as 2.051¢ per Mcf during the cost-reimbursement period, derived by applying his 35/256ths fractional interest to the 15¢ purchase price to be paid by Colorado Interstate.[12]

---

[11] The term "Sales Contract" was used here to refer to the concurrent contract between Combined Carbon and Colorado Interstate.

[12] It is recognized that although this gas was to be marketed to Colorado Interstate at a price of 15¢ per Mcf, the Combined Carbon-Trusts contract provided that Trusts was actually to receive only 9¢ per Mcf out of this amount on all deliveries up to 10,950,000 Mcf per year, with Combined Carbon to retain the remaining 6¢ per Mcf.

[Footnote continued on page 1118.]

For the reasons set forth above, it is concluded that the Pauley-Trusts agreement was not a *gas purchase contract* at all; that instead it was a sharing arrangement under which the proceeds were to be split on the basis of 35/256ths going to Pauley during the cost-reimbursement period; that Pauley's share of the 15¢ price at which this gas was to be marketed to Colorado Interstate was accordingly stated in Par. XIII as 2.051¢ per Mcf.

However, even if we were to assume *arguendo* that there was a "purchase" of this gas by Trusts from Pauley, in view of the "purchase" and "sale" terminology used in Par. XIII, there is no basis whatsoever for Mizel's contention that "purchase price" paid by Trusts to Pauley was 15¢ per Mcf.

Mizel concedes, of course, that the Pauley-Trusts agreement nowhere expressly mentions a price of 15¢ per Mcf. However, Mizel's entire case rests upon the theory that the parties nevertheless truly contemplated and intended that the price *would* be 15¢ per Mcf, but that for mysterious reasons of their own they carefully avoided referring to any such figure on the face of the agreement. This conspiratorial theory was suggested by Mizel counsel during the prehearing conference on December 18, 1962, as follows:

> Mr. McAllister: As a matter of fact, through a witness, if it is not stipulated, I propose to offer to prove that they had 15 cents and these various derivatives of 15 cents to hide the fact that they were paying 15 cents for this. I don't think the trustees or anybody who formulated this contract will be able to say under oath that it is not a fact.
>
> * * * * * * *
>
> I wouldn't expect him to agree that it was devised to hide it. That is the way they got at it. That is what Pauley said, we must have 15 cents, and I don't care how you spell it out.
>
> * * * * * * *
>
> Presiding Examiner: You made certain suggestions. I want to make sure I don't misunderstand you. Are you suggesting that trust said something to Pauley of this type, that 'We have a contract to purchase gas from Mizel at 11 cents and that contract has an escalation clause which says if we buy gas in volumes of 100,000 cubic feet daily or more at a price of (higher than) 11 cents, we will then pay you that higher price under the escalation, pay Mizel that higher price,' and the trust said to Pauley, 'I want to buy some gas from you for 15 cents per Mcf and we don't want Mizel to find out about it,' and the trust said to Pauley, 'Let's work out a complicated contract which will look as if I am not buying gas from you at 15 cents, but instead you are assigning leaseholds to me because you want me to be the operator because I have the gathering lines and experience and so on and will make the contract read in terms of your having 35/256 interest until the cost are reimbursed, and then will reconvert to 105/256'?
>
> Mr. McAllister: That is a plain, ordinary fantasy. They had to have 15 cents in mind. Every fact they have there is a derivative of 15 cents. I am not saying why they did it, but they did do it.
>
> Presiding Examiner: You made a couple of statements yesterday——
>
> Mr. McAllister: I may have said they were paying 15 cents for that gas. I never said it was an attempt to defraud anybody. I don't know

[Footnote continued from page 1117.]
However, this represented simply an arrangement between Combined Carbon and Trusts, designed for settlement of their long-standing controversy. Pauley was not involved in any way in that controversy, and had no interest in the settlement formula between Combined Carbon and Trusts. Accordingly, Pauley's share of the proceeds was expressed in terms of a fractional interest of the total 15¢ price at which the gas was to be marketed to Colorado Interstate.

why they did it. I do say that this contract and agreement on its face definitely shows a purpose to pay 15 cents for that but to conceal it in the contract by the way the terms are set up.

Why, I don't know. I don't propose to try to find that out. * * * [2:116–118.]

Similarly, the Mizel reply brief states:

* * * as respects Henderson Trusts' obligation to take the gas from the Pauley-Henderson Trusts wells as therein specified, it is as clear and distinct as any gas purchase contract could be, *except as to price, which is not stated as forthrightly as it might have been.* However, as to price, Henderson Trusts knew at all times what price was being paid for the gas taken from the Pauley-Henderson Trusts wells and that such price was 15¢ per Mcf. [P. 36; emphasis supplied.]

It is Mizel's theory that the hidden and carefully concealed 15¢ price can be ferreted out and deduced from the fact that the 2.051¢ per Mcf price set forth in Par. XIII, Art. VI of the Pauley-Trusts agreement is actually 35/256ths *of 15¢—and not of any other figure.*

It certainly could not be denied that the sum of 2.051¢ is in truth 35/256ths of 15¢. However, it is not suggested how this establishes that the unmentioned and anonymous figure of 15¢ represented a price to be paid *by Trusts to Pauley.* Fortunately, there is no need to speculate here as to what the 15¢ figure *did* represent, since as already explained above it admittedly constituted the price to be paid *by Colorado Interstate* for the gas to be marketed from these wells—and when Pauley and Trusts executed their agreement of January 28, 1954 they were operating in the context of a situation where they understood and contemplated that this was to be the case.

It is concluded that the Mizel theory is completely fanciful; that it is unsupported by anything in the express terms of the Pauley-Trusts agreement; and that it does not make any sense whatever in the context of what the parties were doing. In order to adopt the Mizel theory here, it would be necessary to conclude that Trusts had some reason for desiring to purchase this gas from Pauley at a price of 15¢ per Mcf, despite the fact that it was contemplated that the gas would subsequently be marketed to Colorado Interstate for the same price. It would have to further be concluded that Trusts recognized that such a pointless purchase of this gas from Pauley at a price of 15¢ per Mcf would trigger its 11¢ contract with Mizel, and accordingly undertook to avoid this risk by camouflaging the price payable to Pauley in Par. XIII, Art. VI, as a 2.051¢ price. The mere statement of this theory is enough to discredit it.

Acutally, to the extent that we may regard Par. XIII *arguendo* as providing for a "purchase" of this gas by Trusts from Pauley, this portion of the agreement is similar in nature to a standard percentage-type casinghead gas contract, under which the price to be paid by the plant-purchaser to the producer-supplier is expressed as a stated percentage of the plant operator's ultimate gross realization from the resale of the residue gas at the tail-gate of the plant. The only difference here is that, at the time of the instant contract, the proceeds to be derived from the marketing of this gas were already known, in the sense that the gas was to be marketed to Colorado Interstate at a price of 15¢ per Mcf. Accordingly, instead of merely providing that Pauley should receive 35/256ths of the ultimate gross realization from the marketing of this gas by Trusts, the parties were able to spell out the return to Pauley in terms of 35/256ths of the 15¢ marketing price, or 2.051¢ per Mcf.

Certainly under a standard percentage-type casinghead gas contract, providing that the seller was to receive X% of the ultimate gross realization, if the residue gas were ultimately marketed by the plant operator for 15¢ per Mcf no one would seriously contend that the price payable to the producer-supplier by the plant operator was the 15¢ ultimate gross realization. Similarly here it is obvious that, to the extent we are to regard the instant situation as involving a "purchase" of gas by Trusts from Pauley, the price paid by Trusts to Pauley was *not* the ultimate gross realization of 15¢ per Mcf, but rather the 2.051¢ per Mcf expressly set forth in Par. XIII, Art. VI—being Pauley's 35/256ths proportionate share of the 15¢ ultimate gross realization.

FINDINGS AND CONCLUSIONS

Upon consideration of the entire record in this proceeding, the evidence adduced and the briefs filed, the Presiding Examiner *finds and concludes*, in addition to the findings and conclusions hereinbefore stated, that:

(1) Henderson Trusts did not purchase gas in quantities of 100,000 cubic feet daily, or more, at a price of 15¢ per Mcf on or prior to June 7, 1954 under the Pauley-Trusts agreement.

(2) The escalation clause of the Mizel-Trusts contract was not triggered on or prior to June 7, 1954.

(3) The correct rate, effective as of June 7, 1954, for the sale of natural gas by Mizel to Henderson Trusts under Morris Mizel, *et al.*, FPC Gas Rate Schedule No. 2, is 11¢ per Mcf, as reflected in the original billing statement filed by Mizel with the Commision on December 6. 1954.

ORDER

WHEREFORE, IT IS ORDERED, subject to review by the Commission on appeal, or upon its own motion as provided in the Commission's Rules of Practice and Procedure, that:

(A) Mizel's "Request for Substitution of Corrected Billing Statement" is denied.

JOSEPH ZWERDLING,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

NEW ENGLAND POWER COMPANY, PROJECT NO. 2323

ORDER ISSUING LICENSE (MAJOR)

(Issued October 29, 1963)

Application was filed on October 1, 1962 by New England Power Company (Applicant) of Boston, Massachusetts, for license under Section 4(e) of the Federal Power Act (Act) for constructed major Project No. 2323, known as the Deerfield River Project, located on the Deerfield River between river miles 69.8 and 11 in Berkshire and Franklin Counties, Massachusetts, and Bennington and Windham Counties, Vermont.

The project was constructed by Applicant between 1911 and 1927, and since that time there have been no major changes in the project works. The total installed generating capacity of the project is 74,200 kilowatts, and the energy generated thereby is delivered to Applicant's transmission system sold for public utility purposes.

The Secretary of the Army and the Chief of Engineers, in reporting on the application, have advised that the plans of the project structures affecting navigation are considered satisfactory. The plans of the structures affecting navigation were approved pursuant to Section 4(e) of the Act.

The Department of the Interior, in reporting on the application, has recommended, for inclusion in any license issued for the project, two special conditions for the protection of fish and wildlife.

Applicant proposes to increase the flood storage and spillway capacity of the Harriman and Sherman dams. The crest of the earth embankment of Harriman dam would be raised 9.5 feet, and that of Sherman dam, 10 feet. The Sherman dam spillway channel would be excavated to the extent indicated as desirable by laboratory model studies. These modifications would assure the stability and safety of these structures. We are hereinafter approving the proposed modifications and are including herein a special condition relating to the operation of the Somerset Reservoir, upstream from Harriman and Sherman dams, also in the interest of stability and safety of the latter two dams.

The Deerfield River, second largest tributary of the Connecticut River, is about 72 miles in length running from north to south. The upstream 30 miles of the river is in Vermont and the lower-most 42 miles is in Massachusetts. The total drainage area of Deerfield River is 655 square miles, 348 of which are in Massachusetts with 307 square miles in Vermont.

According to available records, both above and below the uppermost project reservoir, Somerset, there have been log drives on the Deerfield River and its tributaries, and in the Searsburg and Wilmington, Vermont area. Logs were floated down the North Branch of Deerfield River to the Kent and Davis Mill where they were cut into "chair stock" and shipped to factories in Massachusetts. Canoeing has occurred from Monroe Bridge at mile 40.8 to Shelbourne Falls at mile 16.3 in the State of Massachusetts.

Before the advent of railroads, Cheapside, at about mile 1.4 being the head of "fall boat" navigation on the Deerfield, then known as Pocomptuck, was a place of considerable trade. Deerfield River flows into the Connecticut River, a navigable water of the United States from its mouth to points above the mouth of Nulhegan River at mile 344, a tributary of the Connecticut. *Connecticut River Power Co.*, Docket No. E-6346, August 14, 1951 (10 FPC 1255, 1257).

The reservoirs and hydroelectric plants comprising Project No. 2323 operate as parts of one complete project and such operation affects the stage of the Deerfield River at Cheepside, the head of historic "fall boat" navigation on the Deerfield River, and the stage of the Connecticut River into which the Deerfield flows.

For the reasons set forth in Opinion No. 357 pertaining to Public Service Company of New Hampshire's Project No. 2288 (27 FPC 830, 834), the license herein granted shall have an effective date of Aril 1, 1962, and a termination date of December 31, 1963.

The Commission finds:

(1) The Deerfield River and its tributaries from points upstream from the Somerset Reservoir to its confluence with the Connecticut River constitute navigable waters of the United States. The Deerfield River Project is located upon navigable waters of the United States.

(2) The interests of interstate or foreign commerce are affected by the project.

(3) Applicant is a corporation organized under the laws of the State of Massachusetts, is qualified to do business in the States of New Hampshire and Vermont, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effect the purposes of a license for the project.

(4) Public notice of the filing of the application has been given. No protest has been received. No conflicting application is before the Commission.

(5) The issuance of a license for the project will not affect the development of water resources for public purposes which should be undertaken by the United States.

(6) Except as recited in finding (7) below, the hereinafter described transmission lines included in the application for license are parts of the project within the meaning of Section 3(11) of the Act and should be included in the license for the project.

(7) Applicant included also in the application a single circuit 115 kv line from Sherman Station via Sherman Junction to the Harriman 115 kv substation as part of the project. However, since 1961, more than 90% of the power flow between Sherman Junction and the Harriman 115 kv substation has originated at Yankee Atomic Electric Company's plant. Therefore, only 0.1 mile of the 115 kv line between Sherman Station and Sherman Junction is a part of the project within the meaning of Section 3(11) of the Act and should be included in the license for the project.

(8) Although not included in the application for license, the following described transmission lines are parts of the project within the meaning of Section 3(11) of the Act and should be included in the license for the project:

(a) The double circuit 69 kv line, 36.6 miles long, from Deerfield No. 2 Station to Ware substation;

(b) The double circuit 69 kv line, 16.6 miles long, from Deerfield No. 4 Station to Vernon Station, under Commission license for Project No. 1904; and

(c) The 69 kv line, 3 miles long, from Searsburg to Pole 33.

(9) The project will be best adapted to a comprehensive plan for improving and developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes, upon compliance with the terms and conditions hereinafter imposed.

(10) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charges is 98,900 horsepower, and the amount of anual charges to be paid under the license for the project, based on such capacity, for the purpose of reimbursing the United States for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(11) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of the license for the project.

The Commission orders:

(A) This license is hereby issued to New England Power Company (hereinafter referred to as the Licensee) under Section 4(e) of the Act for a period, effective as of April 1, 1962, and terminating December 31, 1993, for the continued operation and maintenance of Project No. 2323, located on

the Deerfield River, navigable waters of the United States subject to the terms and conditions of the Act, which is incorporated by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) The project consists of:

(i) All lands constituting the project areas and inclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the licensee or by the United States; such project area and project boundary being more specifically shown and described by a certain exhibit which formed part of the application for license and which is designated and described as follows:

Exhibit J: (FPC No. 2323-1) General Map of Deerfield River Project

(ii) Project works consisting of:

Dams, Reservoirs and Powerhouses

Deerfield Plant No. 2—located about 11 miles upstream from the confluence of the Deerfield River and the Connecticut River, consisting of: a concrete gravity dam about 70 feet high and 447 feet long; a pond about 1.5 miles long with a maximum operating elevation of 294.66 feet, U.S.G.S. datum; three steel penstocks 11 feet in diameter and 35 feet long; a steel frame and brick powerhouse containing three hydro-electric units with a generating capacity of 1,600 kw each; and appurtenant mechanical and electrical facilities:

Deerfield Plant No. 3—located upstream from Plant No. 2, consisting of: a concrete gravity dam about 15 feet high and 475 feet long; a pond about 1.3 miles long with a maximum operating elevation of 402.66 feet; a concrete conduit 677 feet long; a paved forebay canal 880 feet long; a concrete intake structure; three steel penstocks 10 feet in diameter and 159 feet long; a steel frame and brick powerhouse containing three hydrolectric units with a generating capacity of 1,600 kw each; and appurtenant mechanical and electrical facilities;

Deerfield Plant No. 4—located just upstream from Plant No. 3, consisting of; a concrete gravity dam about 50 feet high and 510 feet long; a pond about 2 miles long with a maximum operating elevation of 473.66 feet; a brick lined tunnel 1,514 feet long; an earth forebay 12,000 square feet in area and 35 feet deep; a concrete intake structure; three steel penstocks 10 feet in diameter and 154 feet long; a steel frame and brick powerhouse containing three hydroelectric units with a generating capacity of 1,600 kw each; a switchyard; and appurtenant mechanical and electrical facilities;

Deerfield Plant No. 5—located about 19 miles upstream from Plant No. 4, consisting of: a concrete and rock-filled timber crib dam about 40 feet high and 151 feet long; a pond about 0.75 mile long with a maximum operating elevation of 1,027.66 feet; conveyance sections of tunnel, concrete conduit, and canal totaling 16,721 feet; a concrete surge tank 46.5 feet high; three steel penstocks 7 feet in diameter and 535 feet long; a steel frame and brick powerhouse containing three hydroelectric units with a generating capacity of 5,000 kw each; a switchyard; and appurtenant mechanical and electrical facilities:

Sherman Plant—located just upstream from Plant No. 5, consisting of: an earth-fill dam 100 feet high and 875 feet long with a concrete gravity spillway; a pond about 2 miles long with a maximum operating elevation of

1,107.66 feet; a concrete and brick intake structure; a steel penstock 13 feet in diameter and about 240 feet long; a steel frame and brick powerhouse containing one hydroelectric unit with a generating capacity of 7,200 kw; and appurtenant mechanical and electrical facilities;

Harriman Plant—located just upstream from the Sherman Plant, consisting of: an earth-fill dam 206 feet high and 1,250 feet long; a morning glory type spillway; a reservoir about 9 miles long providing 116,075 acre-feet of seasonal storage with a usable drawdown of 92 feet from a maximum operating elevation of 1,497.66 feet; a concrete lined tunnel 12,812 feet long; a steel differential surge tank 34 feet in diameter and 184 feet high; three steel penstocks 9 feet in diameter and 620 feet long; a steel frame and brick powerhouse containing three hydroelectric units with a generating capacity of 11,200 kw each; 2 switchyards; and appurtenant mechanical and electrical facilities;

Searsburg Plant—located just upstream from Harriman Reservoir, consisting of: an earth-fill dam about 50 feet high and 612 feet long with a concrete gravity spillway; a pond about 0.9 mile long with a maximum operating elevation of 1,755.66 feet; a wood stave conduit 8 feet in diameter and 18,412 feet long; a steel differential surge tank 50 feet in diameter and 34 feet high; a steel penstock 6.5 feet in diameter and 495 feet long; a steel frame and brick powerhouse containing one hydroelectric unit with a generating capacity of 4,000 kw; and appurtenant mechanical and electrical facilities;

Somerset Reservoir—located on the East Branch of the Deerfield River about 6.2 miles upstream from Searsburg Dam, consisting of: an earth-fill dam about 104 feet high and 2,101 feet long with a concrete gravity spillway with provisions for 3 feet of flashboards; a spillway channel about 800 feet long, 45 feet wide, and from 6 to 30 feet deep; a regulating reservoir about 5.6 miles long providing 57,345 acre-feet of storage with a usable drawdown of 81.7 feet from the spillway crest elevation of 2,133.58 feet; and appurtenant facilities.

Transmission Lines

1. A double circuit 69 kv steel tower line 3.97 miles long from Deerfield No. 2 to Deerfield No. 4, with a tap to Deerfield No. 3, 0.52 miles long;

2. A double circuit 69 kv steel tower line 14.7 miles long from Deerfield No. 4 to Deerfield No. 5;

3. A single circuit 69 kv wood pole H-frame line 14.3 miles long from Deerfield No. 5 to Searsburg, with a connection to Harriman;

4. A single circuit 115 kv wood pole H-frame line 0.1 mile long from Sherman to Sherman Junction; the location, nature, and character of which are more specifically shown and described by the exhibit hereinbefore cited and by certain other exhibits which also formed part of the application for license and which are designated and described as follows:

Exhibit L1, Sheet 1 of 3 (FPC 2323–2) Deerfield No. 2 Development, General Layout;

Sheet 2 of 3 (FPC No. 2323–3) Deerfield No. 2 Development, Dam and Powerhouse Plan & Elevation;

Sheet 3 of 3 (FPC No. 2323–4) Deerfield No. 2 Development, Sluice Gate and Powerhouse Sections;

Exhibit L2, Sheet 1 of 4 (FPC No. 2323–5) Deerfield No. 3 Development, General Layout;

Sheet 2 of 4 (FPC No. 2323–6) Deerfield No. 3 Development, Dam & Conduit Structures Plan;

Sheet 3 of 4 (FPC No. 2323–7) Deerfield No. 3 Development, Dam & Conduit Structures Sections;

Sheet 4 of 4 (FPC No. 2323–8) Deerfield No. 3 Development, Intake and Powerhouse Section;

Exhibit L3, Sheet 1 of 4 (FPC No. 2323–9) Deerfield No. 4 Development, General Layout;

Sheet 2 of 4 (FPC 2323–10) Deerfield No. 4 Development, Dam, Tunnel & Forebay plans.

Sheet 3 of 4 (FPC No. 2323–11) Deerfield No. 4 Development, Dam, Sluice Gate & Tunnel Sections:

Sheet 4 of 4 (FPC No. 2323–12) Deerfield No. 4 Development, Intake & Powerhouse Section;

Exhibit L–4, Sheet 1 of 5 (FPC No. 2323–13) Deerfield No. 5 Development, General Layout;

Sheet 2 of 5 (FPC No. 2323–14) Deerfield No. 5 Development, Dam & Intake Plan & Sections;

Sheet 3 of 5 (FPC No. 2323–15) Deerfield No. 5 Development, Powerhouse & Vicinity Plan;

Sheet 4 of 5 (FPC No. 2323–16) Deerfield No. 5 Development, Surge Tank Plan & Sections;

Sheet 5 of 5 (FPC No. 2323–17) Deerfield No. 5 Development, Powerhouse Section;

Exhibit L–5, Sheet 1 of 3 (FPC No. 2323–18) Sherman Development, General Layout;

Supplement to Sheet 1 of 3 (FPC No. 2323–33), Sherman Spillway—Proposed Changes in Discharge Channel;

Sheet 2 of 3 (FPC No. 2323–19) Sherman Development, Dam & Spillway Sections;

Supplement to Sheet 2 of 3 (FPC No. 2323–34), Sherman Dam—Proposed Changes in Non-Overflow Structures;

Sheet 3 of 3 (FPC No. 2323–20) Sherman Development, Intake & Powerhouse Sections;

Exhibit L–6, Sheet 1 of 6 (FPC No. 2323–21) Harriman Development, General Layout;

Sheet 2 of 6 (FPC No. 2323–22) Harriman Development, Dam Plan & Sections;

Supplement to Sheet 2 of 6 (FPC No. 2323–36), Harriman Dam—Proposed Change in Non-overflow Embankment;

Sheet 3 of 6 (FPC No. 2323–23) Harriman Development, Spillway Plan & Sections;

Sheet 4 of 6 (FPC No. 2323–24) Harriman Development, Intake Plan & Sections;

Sheet 5 of 6 (FPC No. 2323–25) Harriman Development, Powerhouse & Vicinity Plan;

Sheet 6 of 6 (FPC No. 2323–26) Harriman Development, Powerhouse Plan & Sections;

Exhibit L–7, Sheet 1 of 4 (FPC No. 2323–27) Searsburg Development, General Layout;

Sheet 2 of 4 (FPC No. 2323–28) Searsburg Development, Plan & Section;

Sheet 3 of 4 (FPC No. 2323–29) Searsburg Development, Intake & Spillway Sections;

Sheet 4 of 4 (FPC No. 2323–30) Searsburg Development, Surge Tank & Powerhouse;

737–370—66——74

Exhibit L–8, Sheet 1 of 2 (FPC No. 2323–31) Somerset Reservoir, Dam & Spillway Plan & Sections;

Sheet 2 of 2 (FPC No. 2323–32) Somerset Reservoir Control Structures, Plan & Sections;

Sheet 3 of 3 (FPC No. 2323–35) Somerset Reservoir Spillway Channel, Plan & Profile; and

Exhibit M, Ten typewritten pages, "General Description of Equipment and Appurtenances of the Project," filed in the Commission October 1, 1962.

(iii) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as a part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance and operation of the project.

(C) The license is also, subject to the terms and conditions set forth in Form L–3, December 15, 1953, entitled "Terms and Conditions of License for Constructed Major Project Affecting Navigable Waters of the United States" (17 FPC 385–389), which terms and conditions, designated as Articles 1 through 17, are attached hereto and made a part hereof, except for Articles 7, 15 and the last sentence of Article 11; and subject to the following special conditions set forth herein as additional articles:

Article 18. The Licensee shall pay to the United States the following annual charge:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, one (1) cent per horsepower on the authorized installed capacity (98,900 horsepower) plus two and one-half (2½) cents per 1,000 kilowatt hours of gross energy generated during the calendar year for which the charge is made; or such other amounts as may hereafter be determined as necessary to reimburse the United States for the costs of administration.

Article 19. The Licensee shall for the protection of navigation, construct, maintain, and operate at its own expense such lights and other signals on fixed project structures in or over navigable waters of the United States as may be directed by the Secretary of the Department in which the Coast Guard is operating.

Article 20. The Licensee shall, for the conservation, and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance and operation of such facilities and comply with such reasonable modifications of the project structures and operation as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the Vermont Fish and Game Department or the Massachusetts Division of Fisheries and Game, after notice and opportunity for hearing and upon findings based on substantial evidence that such facilities and modifications are necessary and desirable, reasonably consistent with the primary purpose of the project, and consistent with the provisions of the Act.

Article 21. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of Licensee's lands and interest in lands, reservoirs, waterways and project works as may

be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be prescribed by the Commission, reasonably consistent with the primary purpose of the project, in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provision of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

Article 22. The Licensee shall install additional capacity or make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so, after notice and opportunity for hearing.

Article 23. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

Article 24. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and recreational purposes, including fishing and hunting, and shall allow to a reasonable extent for such purposes the construction of access roads, wharves, landings, and other facilities on its lands the occupancy of which may in appropriate circumstances be subject to payment of rent to the Licensee in a reasonable amount; Provided, that the Licensee may reserve, from public access, such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property, and Provided, further, That the Licensee's consent to the construction of access roads, wharves, landings, and other facilities shall not, without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities. These facilities are in addition to the facilities that the Licensee may construct and maintain as required by the License.

Article 25. The Licensee shall construct maintain and operate or shall arrange for the construction, maintenance and operation of such recreational facilities including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities and utilities, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or interested State agencies, after notice and opportunity for hearing and upon findings based upon substantial evidence that such facilities are necessary and desirable, and reasonably consistent with the primary purpose of the project. The Licensee shall within one year from the date of issuance of the license, file with the Commission for approval its proposed recreational use plan for the project. The plan shall be prepared after consultation with appropriate Federal, State and local agencies, and shall include recreational improvements which may be provided by others in addition to the improvements the Licensee plans to provide.

Article 26. The Licensee shall within one year from the date of issuance of this license, file with the Commission Exhibit F (full detail as to project

lands) and Exhibit K (details maps of properties) in the form required by the Commission's rules and regulations.

Article 27. The Licensee shall commence reconstruction at Harriman and Sherman developments to raise the dams and deepen Sherman spillway channel within one year of the date of acknowledgment of acceptance of this license, shall thereafter in good faith and with due diligence prosecute such construction, and shall complete construction of such project works within two years from the date of acknowledgment of acceptance of this license.

Article 28. The Licensee shall not operate the Somerset Reservoir above the level of the concrete crest of the spillway El. 2133.58 feet U.S.G.S. until the low level outlet conduits are operating at full capacity. The outlets shall remain fully open until the level of the reservoir has receded to concrete crest.

Article 29. The Licensee shall within six months from the date of issuance of this license, file wth the Commission an application for amendment of this license to include the following transmission facilities:

(a) The double circuit 69 kv line, 36.6 miles long, from Deerfield No. 2 Station to Ware substation;

(b) The double circuit 69 kv line, 16.6 miles long, from Deerfield No. 4 Station to Vernon Station (No. 1904); and

(c) The 69 kv line, 3 miles long, from Searsburg to Pole 33.

Article 30. The Licensee shall be responsible for and shall minimize soil erosion and siltation on lands adjacent to the stream resulting from construction and operation of the project. The Commission upon request, or upon its own motion, may order the licensee to construct and maintain such preventive works to accomplish this purpose and to revegetate exposed soil surface as the Commission may find to be necessary after notice and opportunity for hearing.

Article 31. No lease of the project or any part thereof whereby the lessee is granted the occupancy, possession, or use of the project, or any part thereof, shall be made without prior written approval of the Commission; and the Commission may, if in its judgment the situation warrants, require that all the conditions of the license, of the Act, and of the rules and regulations of the Commission shall be applicable to such property so leased to the same extent as if the lessee were the Licensee: Provided, that the provisions of this article shall not apply to leases of land or buildings or other property while not required to achieve the purposes of the license.

(D) The exhibits designated and described in paragraph (B) above are hereby approved.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Commissioner Ross will set forth his individual views in an order granting another license application shortly to be issued. While not stated at this time in order to allow the immediate issuance of this license, the views to be expressed are nevertheless applicable to this license. See 30 FPC 1338 at 1341.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP64-17

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 29, 1963)

On July 19, 1963, Northern Natural Gas Company (Applicant) filed in Docket No. CP64-17 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the delivery through its Peoples Division of 300 Mcf of natural gas per day on a firm basis to Lehigh Sewer Pipe and Tile Company (Lehigh) at its plant in Lehigh, Webster County, Iowa. Estimated annual sales will be 93,800 Mcf, of which 87,300 Mcf will be firm. No additional facilities are required to render the proposed service.

Peoples Division presently serves Lehigh's requirements with interruptible gas. Lehigh desires firm gas due to the high cost of maintaining and operating stand-by facilities. Furthermore, alternative fuels cause defects in the coloration of the products.

Pursuant to due notice, a public hearing was held in Washington, D.C., on October 16, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The proposed transportation and delivery of natural gas hereinbefore described, as more fully described in the application in this proceeding, will be in interstate commerce subject to the jurisdiction of the Commission, and such proposed transportation and delivery is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed transportation and delivery of natural gas by Applicant is required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of

record and, not having been denied by the Commission, is granted pursuant to Section 1.30 (c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Northern Natural Gas Company, to transport and deliver natural gas to Lehigh Sewer Pipe and Tile Company as hereinbefore described, all as more fully described in the Application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of such Regulations.

(C) The transportation and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission Regulations under the Natural Gas Act within 30 days from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G–13221, ET AL.; AMERADA PETROLEUM CORPORATION, DOCKET NOS. G–18346, CI61–727, CI62–216, CI62–525, AND CI62–805; AMERADA PETROLEUM CORPORATION, OPERATOR, ET AL., DOCKET NO. G–20200

ORDER SEVERING PROCEEDINGS, CONDITIONALLY APPROVING PROPOSED SETTLEMENT AND CONDITIONALLY ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 29, 1963)

On August 5, 1963, Amerada Petroleum Corporation (Amerada) filed a motion for severance of the above-entitled Amerada dockets from the consolidated proceeding, Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*, for approval of settlement proposal and issuance of permanent certificates of public convenience and necessity.[1]

The settlement proposal is similar to the Humble Oil & Refining Company settlement conditionally approved by the Commission by order issued August 7, 1963, in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.* and provides the following:[2]

(1) In respect to the Amerada Rate Schedules listed in paragraphs (2), (3) and (4) below, a moratorium on rate increase filings from April 1, 1963, through March 31, 1968; except that such filings may be made (1) prior to April 1, 1968, to the extent that the maximum statutory suspension period under Section 4(e) of the Natural Gas Act may be extended beyond 5 months or the Commission may hereafter be authorized to lengthen such suspension period, and (2) at any time for reimbursement of one-half the amount of increased State or Federal taxes or payments in lieu of taxes, provided that

---

[1] The instant proposal is a modification of a proposal submitted on May 10, 1963, and rejected without consideration of the merits by our order of June 3, 1963, in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.* A motion for reconsideration was denied on July 19, 1963. Several parties had objected to the original proposal.

[2] See Appendix for further details.

such increase does not exceed the reimbursement to which Amerada is entitled by contract.

(2) Permanent certification at settlement rates of 20.625¢ per Mcf[3] inclusive of tax reimbursement, for gas delivered[4] pursuant to Amerada's Rate Schedules Nos. 82 (G–18346), 90 (CI61–727), 91 (CI62–525) and 96 (CI62–216).

(3) Permanent certification at a settlement rate of 19¢ per Mcf, inclusive of reimbursement for payments under Section 6(a)(9) of the Outer Continental Shelf Lands Act,[5] for gas delivered pursuant to Amerada's Rate Schedule No. 98 (CI62–805).

(4) Permanent certification at the contractual initial rate of 19.75¢ per Mcf inclusive of tax reimbursement for gas delivered pursuant to Amerada (Operator), *et al.*, Rate Schedule No. 86 (G–20200).[6]

(5) Prospective upward or downward adjustment of settlement rates according to any applicable area rate or rates determined in Area Rate Proceeding, Docket No. AR61–2.

(6) Collection of the increased rates now in effect subject to refund in Docket No. RI62–505,[7] to be continued subject to further orders of the Commission in that suspension docket.

(7) Extension of the make-up period for gas paid for but not taken to 4 years in any case where the contract provides a lesser make-up period.

(8) Refund of amounts above the settlement rates collected for gas delivered from February 1, 1963, on, under Rate Schedules Nos. 90 (CI61–727), 96 (CI62–216) and 91 (CI62–525) pursuant to the Commission's order conditionally approving Amerada's rate settlement in Docket Nos. G–9385, *et al.*, issued February 1, 1963.

(9) Since payments for gas delivered subsequent to March 31, 1963, under Rate Schedules Nos. 82 (G–18346) and 98 (CI62–805) have been made at rates above the settlement rates, the differences will be refunded.

No party has filed an answer to this motion and settlement proposal and we find the settlement proposal, as herein modified, in the public interest.

In keeping with our present policy we shall require that Amerada pay interest on the amounts to be refunded at 7 per cent per annum, such interest to accrue through the last day of the month in which the settlement proposal was filed, August 31, 1963.

The settlement provisions for adjustments in rates according to our order or orders in Area Rate Proceeding, Docket No. AR61–2, seek to anticipate in part the nature of our final determinations in that matter. It is clear that we shall make no determinations in this matter which will control our conclusions in Docket No. AR61–2. The settlement proposal also provides that adjustments in price growing out of the Area Rate Proceeding, Docket No. AR61–2, should go into effect upon conclusion of judicial review of our final order.

However, we cannot now commit the Commission to conditionally staying the effectiveness of its final order in Docket No. AR61–2. These matters

---

[3] All volumes expressed at 15.025 psia.

[4] The term "delivered" is used in the proposal as in other proposals approved by us. In the context of the proposals we interpreted the term to include gas required to be taken during the moratorium periods but paid for and not taken. Our approval of this settlement is also conditioned upon such interpretation.

[5] 67 Stat. 462.

[6] Includes 50% interest of Newmont Oil Company.

[7] Related to Supplement No. 2 to Amerada's F.P.C. Gas Rate Schedule No. 86 (G–20200).

should be decided at the conclusion of that proceeding and our approval of the settlement will be so conditioned.

With the exception noted below, the pipeline purchasers (shown in the appendix) which will receive refunds and whose overall purchased gas costs will be affected substantially by this settlement will pass on the refunds and adjust their rates in accordance with their latest rate settlements.

Transcontinental Gas Pipe Line Corporation (Transco) the purchaser in Docket No. CI62–805 contended, in the recent Socony and Gulf settlements[8] that the flow through provisions in its settlement in Docket No. RP61–13 do not apply to producer rate schedules not Specifically included in its settlement agreement. Since Amerada's Rate Schedule No. 98 (C162–805) is not specifically referred to therein and in order to avoid a situation in which a pipeline obtains and keeps the benefits of refunds and a reduction in gas purchase costs even though it may be, in the absence of such refunds and reductions in gas purchase costs, earning a reasonable rate of return on invested capital, we shall require Transco to report to the Commission the amount of refund and interest which it receives as a result of this settlement, the estimated amount reductions in purchased gas costs, the proposed disposition of the refunds and the proposed rate adjustments, if any, to reflect the reduction in gas purchase costs. We shall require Transco to hold the refunds and amounts equal to the reductions in purchased gas costs which will accrue as a result of this settlement in a special account subject to further orders of the Commission.

In accordance with the above we shall sever these Amerada dockets from the consolidated proceeding Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*, omit the intermediate decision in regard to these dockets[9] and issue certificates of public convenience and necessity in accordance with the applications, settlement proposal and conditions of this order.

The Commission finds:

(1) Amerada Petroleum Corporation is a natural-gas company within the meaning of the Natural Gas Act, and is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(2) The proposed sales of natural gas are subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Amerada is able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, are required by the public convenience and necessity and are in the public interest upon the conditions set forth below, and certificates should be issued as ordered below.

(5) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

---

[8] See our order of October 9, 1963, in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, *supra*, p. 979.

[9] The hearings in the Union Texas Petroleum, *et al.*, consolidated proceeding concluded July 25, 1963.

(6) It is in the public interest and it is appropriate in carrying out the provisions of the Natural Gas Act that Transco be required to submit the reports and account for the refunds, interest and purchased gas cost reductions as ordered below.

(7) No party has opposed the waiver of the intermediate decision in these proceedings.

The Commission orders:

(A) The motion for waiver of the intermediate decision is granted.

(B) The matters in the Amerada dockets and the Amerada (Operator), *et al.*, docket listed in the caption to this order are hereby severed from the consolidated proceeding, Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*

(C) Certificates of public convenience and necessity are hereby issued upon the conditions set forth herein to Amerada Petroleum Corporation and to Amerada Petroleum Corporation (Operator), *et al.*, for the sales of natural gas in interstate commerce for resale as proposed and as modified by the settlement proposal and this order, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in Amerada's applications and settlement proposal herein.

(D) The certificates issued by paragraph (C) above, are granted upon the express condition that Amerada comply fully with the terms of the settlement proposal as modified which settlement is expressly approved, under the conditions of this order.

(E) Within 30 days after making the refunds required by the terms and conditions of this order and the settlement proposal as modified, Amerada shall report to the Commission, in triplicate, the amount of the refunds made to its pipeline purchasers, showing separately the amount of principal and interest so paid and the bases used for such determination, together with releases from the purchasers showing receipt of the refunds in conformity with the settlement as approved.

(F) Upon full compliance of Amerada with all the terms of this order and of the settlement proposal, Amerada shall be relieved of any further refund obligations in these certificate proceedings and said proceedings shall terminate.

(G) The certificates herein issued are not transferable and shall be effective only so long as Amerada continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(H) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or Part 154 of the Regulations thereunder; *Provided, however*, that the 30-day notice provision of Part 154.94(b) and the detailed submittal requirements of Part 154.94(f) are hereby waived insofar as they apply to the filing of reductions in rate as required by this order and the settlement proposal.

(I) The grant of certificates herein and approval of the settlement proposal is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Amerada, particularly any proceeding under Section 5 of the Natural Gas Act or Section 5(c) of the Outer Continental Shelf Lands Act and is without prejudice to claims or contentions which may be made by the Commission, Applicant, the Commission staff, or any affected party herein in any other proceeding.

(J) The refunds required by the settlement proposal and this order, together with interest thereon computed at a rate of 7% per annum and accruing through August 31, 1963, shall be paid within 45 days from the date of issuance of this order.

(K) Within 15 days from the date of receipt of refunds and interest required by this order, Transco shall submit a report to the Commission and serve a copy on its jurisdictional customers and the various state utility commissions wherein it does business, setting forth the amount of refund and interest received, the estimated annual reduction in purchased gas costs due to Amerada's rate reduction, its proposed disposition of such refunds and its proposed rate adjustments to reflect the reduction in gas purchase costs. Pending Commission action and further orders respecting such proposed disposition and adjustments, Transco shall hold such refunds, interest and amounts equal to the reductions in purchased gas costs which accrue as a result of this settlement in a special account (without interest obligation).

APPENDIX A

Docket No.	Rate schedule No.	Purchaser	Initial contract Rate [1]	Settlement rate
G-18346	82	Coastal Transmission Corp. (now Florida Gas Transmission Co.)	[2] 23.55	20.625
G-20200	86	Coastal Transmission Corp. (now Florida Gas Transmission Co.)	19.75	[3]
CI61-727	90	Texas Gas Transmission Corp	[2] 21.75	20.625
CI62-216	96	American Louisiana Pipeline Co	[2] 21.5	20.625
CI62-525	91	Tennessee Gas Transmission Co	[2] 22.833	20.625
CI62-805	98	Transcontinental Gas Pipe Line Corp	[4] 21.4	19.0

[1] All include tax reimbursement, if any.
[2] Temporary certificates conditioned to a price of 21.25¢ per Mcf.
[3] Increased rate in effect subject to refund in docket No. RI62-505 to remain in effect subject to further orders of the Commission in docket No. RI62-505.
[4] Temporary certificate conditioned to a price of 19.5¢ per Mcf (offshore).

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G-13221, ET AL.; UNION PRODUCING COMPANY, DOCKET NOS. CI60-344 AND CI61-1111

ORDER SEVERING PROCEEDINGS, CONDITIONALLY APPROVING SETTLEMENT PROPOSAL AND CONDITIONALLY ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 29, 1963)

On June 13, 1963, Union Producing Company (Union) filed a motion for severance of the above-captioned Union proceedings from the consolidated proceeding, Union Texas Petroleum, *et al.*, Docket No. G-13221, *et al.*, (hereinafter referred to as the Unon Texas Proceeding) for approval of the attached settlement proposal and for the prompt issuance of certificates of public convenience and necessity.

On July 1, 1963, the Pennsylvania Public Utility Commission (Pennsylvania) filed an answer in opposition to Union's motion. By order issued July 15, 1963, in the above-captioned proceedings the Commission denied Union's motion without passing on the merits of the settlement proposal.

On July 31, 1963, Pennsylvania filed an amended answer to the Union motion, withdrawing its opposition. Subsequently, on August 15, 1963, Union filed a motion for reconsideration of our order denying its motion.

The terms of the Union proposal conform to the other settlements emanating from the Union Texas Proceeding which have been approved by the Commission[1] and provides for an initial rate of 20.625¢ per Mcf[2] for a sale from South Louisiana, (Docket No. CI60–344) and 19.0¢ per Mcf for a sale from the Federal domain offshore Louisiana (Docket No. CI61–1111), both effective April 1, 1963; a five year moratorium on rate increase filings (subject to the usual exceptions); and extension of the make-up period to four years in the rate schedule which provides for a lesser make-up period.[3]

The temporary authorizations under which Union is now selling the subject gas contain no refund conditions and Union does not propose to make refunds of any amounts above the settlement rates collected for gas delivered prior to April 1, 1963, the effective date of the proposed rate reductions.

We find this proposal generally to be in the public interest and shall approve it subject to the following reservations and conditions.

In the context of the proposal we interpret the term "delivered" as used in paragraph 1 of the proposal to include gas required to be taken during the moratorium period but paid for and not taken and our approval is conditioned upon such interpretation.

Our approving this settlement and issuing certificates of public convenience and necessity for these sales shall not in any way be construed as deciding the justness or reasonableness of any of Union's rates or prejudging the questions to be decided in the Section 5(a) proceeding pending in Union Producing Company, Docket No. G–18354.

Since payments for gas delivered subsequent to March 31, 1963, under the instant rate schedules have been made at rates above the settlement rates, we shall require that Union refund the differences. In keeping with our present policy, we shall require that Union pay interest on the amounts to be refunded at a rate of 7 percent per annum, such interest to accrue through the last day of the month in which the settlement proposal was filed, June 30, 1963.

The settlement provisions for adjustments in rates according to our order or orders in Area Rate Proceeding, Docket No. AR61–2, seek to anticipate in part the nature of our final determinations in that matter. It is clear that we shall make no determinations in this matter which will control our conclusions in Docket No. AR61–2. The settlement proposal also provides that adjustments in price growing out of the Area Rate Proceeding, Docket No. AR61–2, should go into effect upon conclusion of judicial review of our final order.

However, we cannot now commit the Commission to conditionally staying the effectiveness of its final order in Docket No. AR61–2. These matters should be decided at the conclusion of that proceeding and our approval of the settlement will be so conditioned.

Transcontinental Gas Pipe Line Corporation, the purchaser in Docket No. CI61–1111, will flow through the refunds and adjust its rates in accordance with the provisions of its rates settlement in Docket No. RP61–13.[4]

[1] See orders issued August 7, 1963, (Humble Oil & Refining Company) and October 9, 1963, (Gulf Oil Corporation and Socony Mobil Oil Company, Inc.) in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, 30 FPC 456 and 979, respectively.

[2] All rates expressed inclusive of applicable tax reimbursement and all volumes expressed at 15.025 psia.

[3] See appendix for further details.

[4] See *Transcontinental Gas Pipe Line Corp.*, 27 FPC 187.

The flow through provisions of our orders in the recent Southern Natural Gas Company rate case[5] do not refer specifically to Docket No. CI60–344. Therefore, in order to avoid a situation in which a pipeline obtains and keeps the benefits of refunds and a reduction in gas purchase costs even though it may be, in the absence of such refunds and reductions in gas purchase costs, earning a reasonable rate of return on invested capital, we shall require Southern to report to the Commission the amount of refund and interest that it receives as a result of this settlement, the estimated annual reductions in purchased gas costs, the proposed disposition of the refunds and the proposed rate adjustments, if any, to reflect the reduction in gas purchase costs. We shall require Southern to hold the refunds and amounts equal to the reductions in purchased gas costs which will accrue as a result of the settlement of Docket No. CI60–344 in a special account subject to further orders of the Commission.

In accordance with the above we shall sever these individual dockets from the consolidated proceeding Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*, omit the intermediate decision in regard to these dockets[6] and issue certificates of public convenience and necessity in accordance with the applications, settlement proposal and conditions of this order.

The Commission finds:

(1) Union Producing Company is a natural-gas company within the meaning of the Natural Gas Act, and is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(2) The proposed sales of natural gas are subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Union is able and willing properly to do the acts and to perform the services proposed. and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, are required by the public convenience and necessity and are in the public interest upon the conditions set forth below, and certificates should be issued as ordered below.

(5) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

(6) It is in the public interest and it is appropriate in carrying out the provisions of the Natural Gas Act that Southern be required to submit the reports and account for the refunds, interest and purchased gas cost reductions as ordered below.

(7) No party has opposed the waiver of the intermediate decisions in these proceedings.

The Commission orders:

(A) The motion for waiver of the intermediate decisions is granted.

---

[5] *Southern Natural Gas Company*, Docket No. G–20509, *et al.*, Opinion No. 379, issued February 18, 1963, 29 FPC 323, Opinion No. 379–A, issued April 19, 1963, 29 FPC 779.

[6] The hearings in the Union Texas Petroleum, *et al.*, consolidated proceeding concluded July 25, 1963.

(B) The matters in the Union dockets listed in the caption to this order are hereby severed from the consolidated proceeding, Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*

(C) Certificates of public convenience and necessity are hereby issued upon the conditions set forth herein to Union Producing Company for the sales of natural gas in interstate commerce for resale as proposed and as modified by the settlement proposal and this order, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in Union's applications and settlement proposal herein.

(D) The certificates issued by paragraph (C) above, are granted upon the express condition that Union comply fully with the terms of this order and the settlement proposal, as modified, which settlement is expressly approved, under the conditions of this order.

(E) Within 45 days from the date of issuance of this order, Union shall refund to the respective pipeline purchasers the difference between the amounts collected for gas delivered subsequent to March 31, 1963, and the amounts that would have been collected under the settlement rates for gas delivered since that time together with interest computed at a rate of 7 percent per annum, such interest to accrue through the last day of the month in which the settlement proposal was filed, June 30, 1963.

(F) Within 30 days after making the refunds required by the terms and conditions of this order and the settlement proposal as modified, Union shall report to the Commission, in triplicate, the amount of the refunds made to its pipeline purchasers, showing separately the amount of principal and interest so paid and the bases used for such determination, together with releases from the purchasers showing receipt of the refunds in conformity with the settlement as approved.

(G) Upon full compliance of Union with all the terms of this order and of the settlement proposal. Union shall be relieved of any further refund obligations in these certificates proceedings and said proceedings shall terminate.

(H) The certificates herein issued are not transferable and shall be effective only so long as Union continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(I) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or Part 154 of the Regulations thereunder; *Provided, however,* that the 30-day notice provision of Part 154.94(b) and the detailed submittal requirements of Part 154.94(f) are hereby waived insofar as they apply to the filing of reductions in rate as required by this order and the settlement proposal.

(J) The grant of certificates herein and approval of the settlement proposal is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Union, particularly any proceeding under Section 5 of the Natural Gas Act or Section 5(c) of the Outer Continental Shelf Lands Act and is without prejudice to claims or contentions which may be made by the Commission, Applicant, the Commission staff, or any affected party herein in any other proceeding.

(K) Within 15 days from the date of receipt of refunds and interest required by this order, Southern shall submit a report to the Commission and serve a copy on its jurisdictional customers and the various state utility commissions wherein it does business, setting forth the amount of refund and

interest received, the estimated annual reduction in purchased gas costs due to Union's rate reduction, its proposed disposition of such refunds and its proposed rate adjustments to reflect the reduction in gas purchase costs. Pending Commission action and further orders respecting such proposed disposition and adjustments, Southern shall hold such refunds, interest and amounts equal to the reductions in purchased gas costs which accrue as a result of this settlement in a special account (without interest obligation).

APPENDIX

Rate schedule No.	Docket No.	Buyer	Present rate (¢/Mcf)	Settlement rate (¢/Mcf)
237	CI60-344	Southern Natural Gas Co.	20.75	20.625
244	CI61-1111	Transcontinental Gas Pipe Line Corp.	21.4	19.0

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

FUELS RESEARCH COUNCIL, INC., NATIONAL COAL ASSOCIATION, UNITED MINE WORKERS OF AMERICA, AND MID-WEST COAL PRODUCERS INSTITUTE, INC. v. MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP62-57

ORDER GRANTING PETITION FOR AN ORDER REQUIRING MICHIGAN WISCONSIN PIPE LINE COMPANY TO SHOW CAUSE WHY IT SHOULD NOT BE REQUIRED TO FILE AN APPLICATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PROHIBITING USE OF FACILITIES CONSTRUCTED WITHOUT APPARENT AUTHORIZATION

(Issued October 30, 1963)

On September 6, 1961, Fuels Research Council, Inc., a Delaware corporation with principal place of business at Room 220, Coal Building, Washington 6, D.C., National Coal Association, a Delaware corporation with principal place of business at the Coal Building, Washington 6, D.C., United Mine Workers of America, an unincorporated organization with principal place of business at 900–15th Street N.W., Washington 5, D.C., and Mid-West Coal Producers Institute, Inc., a Delaware corporation with principal place of business at 307 North Michigan Avenue, Chicago 1, Illinois (Petitioners), filed a petition for an order to issue, under Section 1.6(d) of the Commission's Rules of Practice and Procedure, directing Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) "* * * to show cause why it should not be required to file an application for a certificate of public convenience and necessity for certain unauthorized pipeline facilities now being used to deliver natural gas for boiler fuel consumption to the Weston steam electric generating station of Wisconsin Public Service Corporation (Public Service) near Weston, Wisconsin."

Petitioners allege that Michigan Wisconsin, without first having obtained authority therefor pursuant to Section 7 of the Natural Gas Act, constructed in the fall of 1960 and placed into operation the facilities required to deliver to Public Service large volumes of gas for use by the latter in its Weston electric generating station. Petitioners state that the facilities which Michigan Wisconsin constructed in order to serve the Weston plant consist of a tap, approximately .8 mile of 8-inch pipeline to interconnect with

facilities constructed by Public Service, and a metering station to measure the volumes of gas delivered to Public Service for consumption in its Weston plant. Petitioners also allege that deliveries of gas to the Weston plant began in December of 1960, that gas consumption at Weston in that month totaled 68,914 Mcf, and that from December 1960 through July 1961, a total of 3,215,422 Mcf was delivered by Michigan Wisconsin to Weston.[1]

Petitioners further allege that the use of gas by Public Service at its Weston steam plant replaces coal "* * * produced by members of Petitioners" and Petitioners aver that there is an abundant supply of coal readily available to meet the entire fuel requirements of the Weston plant. Petitioners also cite cases in support of their assertion that the facilities constructed and operated by Michigan Wisconsin for delivering gas to the Weston plant are used for the transportation and sale of natural gas in interstate commerce and are therefore subject to the jurisdiction of this Commission.

Michigan Wisconsin filed on October 6, 1961, an answer to Petitioners' petition for an order to show cause, and in its answer Michigan Wisconsin states (pp. 2–4):

> Contrary to the allegations of the Coal Interests, the facts are that the delivery of natural gas to Public Service for use in its Weston Plant was requested by Public Service, along with service to certain new communities in Wisconsin in Docket No. G–20569, and was explained by the witness for Public Service under cross-examination by counsel for the Coal Interests in the hearing in that matter on May 10, 1960 (T. 842–856). Indeed, this was one of the grounds upon which the Coal Interests opposed Michigan Wisconsin's request for a temporary certificate in an answer (p. 5) which they filed on June 1, 1960, and opposed Michigan Wisconsin's certificate application, in a brief (p. 7) which they filed on July 8, 1960, in that proceeding.
>
> By its Opinion No. 336 the Commission issued the certificate to Michigan Wisconsin and granted the requests of Public Service (24 FPC 177). A service agreement which Michigan Wisconsin and Public Service executed and which specifically covered the Weston delivery point was accepted for filing by the Commission effective as of September 1, 1960.
>
> Thereafter, in the hearings on the applications of Northern Natural Gas Company and Michigan Wisconsin in Docket No. G–20570, *et al.*, covering the sale by Northern Natural of 75,000 Mcf per day to Michigan Wisconsin, the witness for Public Service testified on September 13, 1960—again under cross-examination by counsel for the Coal Interests—that Public Service planned to use a portion of its gas in its Weston plant; that Public Service was constructing a 2.5 mile line from the plant to a metering station to be built by Michigan Wisconsin; that the gas would be used in a *new* generating unit being installed in the plant while the existing unit in the plant *continues to use coal* (T. 2671–79). Following the issuance of the Commission's Opinion No. 345 approving the Northern Natural-Michigan Wisconsin project, Michigan Wisconsin executed a new service agreement with Public Service which again covered the Weston delivery point and which the Commission by order of August 31, 1961 accepted for filing effective as of September 1, 1961.
>
> The allegations of the Coal Interests are thus entirely without merit

[1] Page 432 of Public Service's Annual Report for 1961 shows that 6,040,461 Mcf of gas were consumed at the Weston plant for generation of electricity in the calendar year of 1961.

and the order to show cause as requested by them should *not* be issued, as hereinafter more fully set forth. [Emphasis is intrinsic part of quotation.]

As we understand Michigan Wisconsin's answer, it is claiming that it received authority to construct the Weston measuring station in the order accompanying Opinion No. 336 issued August 6, 1960, in Michigan Wisconsin *Pipe Line Co.*, Docket No. G–20569, 24 FPC 177. Paragraph (A) of that order reads as follows (24 FPC 177 at 189):

(A) A certificate of public convenience and necessity hereby is issued authorizing Applicant to construct and operate the facilities and to make the sales proposed herein, all as more fully described above, in the Applicant's application, *and in the evidence in this proceeding*, for the transportation and sale of natural gas in interstate commerce for resale, subject to the terms and conditions of this order. [Emphasis supplied.]

Since neither Michigan Wisconsin's application nor Public Service's petition to intervene filed in Docket No. G–20569 refers to the facilities required for delivery of gas to the Weston plant, it necessarily follows that if Michigan Wisconsin ever had a certificate in Docket No. G–20569 authorizing construction of the Weston measuring station and appurtenant facilities, such certificate authority is confined to whatever authorization was granted by the phrase "* * * and in the evidence in this proceeding * * *" as that phrase is used in paragraph (A) of the order accompanying Opinion No. 336. However, a thorough study of the evidence in Docket No. G–20569 fails to reveal that Public Service made a specific request that we order Michigan Wisconsin to construct the facilities required to serve the Weston plant and likewise fails to show that Michigan Wisconsin ever indicated that it wanted a certificate authorizing such construction.

Page 8 of Michigan Wisconsin's answer states "* * * that the Public Service desired Michigan Wisconsin to establish a delivery point for the Weston Plant (T. 842–856)." We have searched the pages of the transcript in Docket No. G–20569 to which Michigan Wisconsin referred and the nearest statement resembling a request by Public Service for a new delivery point[2] seems to be contained in the following testimony which occurred when counsel for Petitioners was cross-examining the witness for Public Service (Tr. 853-55):

Q. Well, do you contemplate as a result of your surplus valley gas to attach the Pulliam Plant?

A. I think if we had a choice between Pulliam and Weston, we would take Weston.

Q. Are you seeking to have Michigan-Wisconsin, under its ten cent formula, construct all or a portion of the 18 miles, Stevens Point to your Weston Plant?

A. No, we do not seek to invoke the ten cent formula.

Q. You would construct those facilities yourself?

A. We would construct some of them, yes.

Q. Well, would Michigan-Wisconsin construct some of those?

---

[2] As Petitioners correctly observe on page 7 of their petition, Michigan Wisconsin cannot claim that the Weston delivery point was established under Section 2.55(c) of the Commission's Rules of Practice and Procedure because the Weston plant is approximately 20 miles north of Stevens Point, Wisconsin, which is the nearest to the Weston plant of any "local community" in which Public Service presently distributes natural gas for resale.

A. I expect that there has been some part that they might, yes.

Q. And in what docket are you seeking a connection for Michigan-Wisconsin's pipeline in order to run the service to the Weston Plant?

A. We have not made an application.

Q. Do you propose to make an application or a request for a new delivery point in order to serve your Weston Plant?

A. We would like to see them furnish a delivery point, yes.

Q. Would you seek that connection in Michigan-Wisconsin's application [in Docket No. G–20572] pending before the Commission, in which it is seeking additional volumes of gas from Northern Natural?

A. I am not familiar enough with the proceedings, Mr. McGrath, to answer that.

It is incredible that Public Service's witness would have testified in the manner set forth in the foregoing excerpt of the cross-examination in Docket No. G–20569 if, as Michigan Wisconsin's answer alleges, Public Service had actually requested in Docket No. G–20569 that Michigan Wisconsin be ordered to provide a delivery point for the Weston Plant. Other testimony of the witness falls short of indicating that natural gas would actually be used by Public Service in its Weston Plant. For example, the witness stated that Public Service's valley gas would "perhaps" be sold to either its Pulliam plant at Green Bay, Wisconsin, or to its Weston plant in the Wisconsin River Valley (Tr. 842). He further stated that no natural gas was available in the area where the Weston plant is located and that the closest community, Stevens Point, where Public Service distributes natural gas was at least 18 miles south of Weston (Tr. 843; 852). He also said that Public Service "might" have two or three million Mcf available for one or the other of the steam plants or both of them, and that he thought Public Service would begin constructing facilities to serve Weston "* * * as soon as we are assured that we can go ahead with it." (Tr. 844; 852). In fact, so far as we can determine, at no place during the cross-examination of Public Service's witness did he ever unequivocally state that gas would be used at the Weston plant.

Michigan Wisconsin's answer also alleges that the Petitioners opposed the granting of Michigan Wisconsin's application for a temporary certificate and filed a brief opposing the granting of Michigan Wisconsin's application on the ground that gas would be used by Public Service at the Weston plant. However, the Petitioners' answer filed June 1, 1960, to Michigan Wisconsin's request for a temporary certificate states that Public Service will have gas *available* for use "* * * as boiler fuel in one of its electric generating stations (Tr. 844)." Thus, Petitioners' answer shows ostensibly that they were unaware that Public Service had made a final choice as to which of its electric generating plants would be using gas, much less that they were participating in a proceeding involving a request by Public Service that Michigan Wisconsin be required to construct and operate facilities for the delivery of natural gas to the Weston plant.

Later, on July 1, 1960, when Petitioners filed their brief on the merits, their primary complaint as to markets was directed to the fact that Michigan Wisconsin's failure to present witnesses in support of its alleged market requirements had foreclosed them from "* * * ascertaining aggrievement and otherwise protecting their interests, thus effectively nullifying their intervention and the rights accorded thereby" (p. 3). Because Public Service had requested that Michigan Wisconsin be ordered under Section 7(a) of the Act to deliver natural gas to four newly-proposed Wisconsin communities, Petitioners, as indicated *supra*, had had an opportunity to cross-examine a wit-

ness presented by Public Service, and in their brief Petitioners did point out that Public Service was apparently going "* * * to use approximately 3,000,000 Mcf for electric generation (Tr. 844)," but at no point in their brief do Petitioners specifically oppose Michigan Wisconsin's providing a delivery point for the Weston plant.

Nor have we been able to find any mention of a Weston delivery point by Michigan Wisconsin or Public Service in either of those companies' initial or reply briefs filed in Docket No. G–20569. We do note, however, that the following "10-cent formula" argument in Michigan Wisconsin's reply brief would have been extremely incongruous in Docket No. G–20569 if Michigan Wisconsin had actually been proposing to construct .8 mile of 8-inch pipeline, a measuring station, and other facilities to make deliveries of gas to the Weston plant (p. 13):

> * * * We feel that Michigan Wisconsin should not be required to build facilities on the basis of interruptible loads, which usually are closely competitive with alternate fuels. If the interruptible load were lost to the distributing company, Michigan Wisconsin, at the least, would lose the sale of the gas and the commodity rate applicable thereto. Moreover, the operation of the lateral might well become uneconomic and a burden on Michigan Wisconsin's other customers.

The foregoing analysis of the evidence presented and the documents filed in Docket No. G–20569 has disclosed no reason to believe that paragraph (A) of the order accompanying Opinion No. 336 could possibly be interpreted as having authorized Michigan Wisconsin to construct the measuring station and other facilities required for the delivery of gas to Public Service's Weston plant.

Michigan Wisconsin's and Public Service's answers also endeavor to justify Michigan Wisconsin's construction of the Weston measuring station and appurtenant facilities by referring to certain service agreements "* * * which specifically covered the Weston delivery point" and which they say were accepted for filing by the Commission as of September 1, 1960. Public Service's answer states that these service agreements were dated June 20, 1960, and August 25, 1960. We note that the service agreement between Michigan Wisconsin and Public Service dated June 20, 1960, lists five delivery points (Weston, Marinette, Oconto, Peshtigo, and Stevens Point) *in addition* to those which were listed in the service agreement which was superseded by the agreement of June 20, 1960. All of these additional delivery points, *except Weston*, are required to intiate natural-gas service in communities which were certificated by the order accompanying Opinion No. 331, issued October 31, 1959, in *Midwestern Gas Transmission Co., et al.*, Docket No. G–18313, *et al.*, 22 FPC 775.[3] Since we did not issue Opinion No. 336 in Docket No. G–20569 until August 6, 1960, it is not clear to us why Michigan Wisconsin and Public Service included Weston as a delivery point in a service agreement signed nearly two months before and filed five weeks *prior* to the issuance of the order which they now cite as the source of the certificate which authorized the Weston measuring station and appurtenant facilities.[4]

[3] The possibility of Public Service's being able to use gas in its Weston plant was discussed by Public Service's witness in the proceeding in Docket No. G–18313, *et al.* (Tr. 270), but we have found in that proceeding no evidence which can be interpreted as a request by Public Service that Michigan Wisconsin be required to construct facilities for delivering gas to the Weston plant.

[4] Section 154.22 of our Regulations under the Natural Gas Act provides "* * * That no natural-gas company shall *file* under this part any new rate schedule or contract for the performance of any service for which a certificate of public convenience and necessity must be obtained pursuant to section 7(c) of the Natural Gas Act, *until* such certificate *has been issued*. * * *" [Emphasis supplied.]

The delivery points required to provide the service actually requested by Public Service and certificated in Docket No. G–20569 did not appear in any service agreements between Public Service and Michigan Wisconsin until they filed two agreements dated August 25, 1960, which added three delivery points (Mosel, Valders, and Lena) to those delivery points already listed in the aforementioned service agreement of June 20, 1960, which was superseded by the agreements of August 25, 1960. These three delivery points of Mosel, Valders, and Lena are required for natural-gas service to the communities of Mosel, Valders, Brillion, and Lena on whose behalf Public Service specifically intervened and presented testimony and other evidence in Docket No. G–20569. These were the communities which Michigan Wisconsin was required to serve pursuant to paragraph (B)(ii) of the order accompanying Opinion No. 336, 24 FPC 177, 190.

It is also pertinent to observe that even though both Michigan Wisconsin and Public Service admit that gas is being delivered by Michigan Wisconsin at the Weston delivery point, and despite the fact that Michigan Wisconsin avers that we authorized the construction of the Weston delivery facilities in the order accompanying Opinion No. 336, there is not in our files any statement showing when construction of these specific facilities was completed and when they were placed into operation. Yet, as Michigan Wisconsin knows, paragraph (G) of the order accompanying Opinion No. 336 provided, *inter alia*, that Michigan Wisconsin should comply with Subsection (c) of Section 157.20 of the Commission's Regulations under the Natural Gas Act which requires the Applicant to file with the Commission, within ten days after authorized facilities have been constructed and placed in operation, a statement, in writing and under oath, setting forth the date on which such construction was completed and service initiated.

Public Service's answer filed October 5, 1961, to the Petitioners' request for an order to show cause states (p. 2):

> * * * This Commission, prior to installation of said metering facilities, was repeatedly informed that Public Service intended to use gas at Weston and that for convenience a delivery point at Weston would be required. Public Service's [sic] witnesses so indicated in testimony on May 10, 1960 in Docket No. G–20569 (T842ff) and on September 13, 1960 in Docket No. G–20570, *et al* (T2671ff). * * *

We have hereinbefore discussed the testimony given by Public Service's witness during cross-examination in Docket No. G–20569 and we have shown that such testimony cannot be characterized as a request by Public Service that Michigan Wisconsin be ordered to provide facilities for the delivery of gas to Public Service's Weston plant. As indicated in the above quotation from Public Service's answer, its witness did testify in Docket No. G–20570, *et al.*, regarding the possible use of gas by Public Service at its Weston plant. In fact, 38 days *after* the issuance of the order in Docket No. G–20569 in which Michigan Wisconsin claims to have been authorized to construct the Weston delivery facilities, the same witness who is supposed to have requested such facilities in Docket No. G–20569 testified as follows in Docket No. G–20570, *et al.* (Tr. 2673–74):

> Q. And in what docket before the Federal Power Commission if you know was Michigan Wisconsin authorized to construct a meter station and permit a tap on your line for service to your Weston plant, if you know?

MR. TABIN: I am going to object to that. It is not within this witness' province to know when Michigan Wisconsin received permission for anything. This witness is testifying as to our gas requirements.

PRESIDING EXAMINER: Well, either he knows or he doesn't know. Do you know?

THE WITNESS: I do not know what responsibility Michigan Wisconsin has in that matter.

* * * * * * *

Q. But you have already constructed your facilities?

A. We are constructing them.

Q. And what is this maximum day that you contemplate you will use at Weston?

A. This is merely a guess, I don't know how the gas will be taken, what the operating conditions will be, when it will be necessary to take gas or desirable to take gas. I would expect that it would be somewhere in the neighborhood of, if I have my decimal point correct, about 18 or 19,000 Mcf a day.

Public Service's witness, who had been cross-examined repeatedly regarding the Weston delivery point and who, according to Michigan Wisconsin's answer, is supposed to have requested the Weston delivery facilities during cross-examination in Docket No. G–20569 on May 10, 1960, was again cross-examined about this matter in the proceeding in Docket No. G–2306, *et al.*, on April 28, 1961, at which time he gave the following uninformative answers (Tr. 6928):

Q. Mr. Goggin, who made the arrangement on behalf of Wisconsin Public Service Corporation for this new Weston delivery point?

A. It was handled by our management.

Q. Did you participate in making the arrangements?

A. No, sir.

Q. Who, if you know, did?

A. I don't think I can answer that. I don't know, I am not certain.

Q. Would that not come within the sphere of activity of Mr. Pierce Ellis?

A. It could, but whether he did handle it, I can't say with any definiteness.

Q. When were you advised that Wisconsin Public Service Corporation would be purchasing gas from Michigan Wisconsin for consumption by your company at the Weston Plant?

A. I think we have had that under consideration for some time.

Q. Yes, sir. Now when were you advised that it would become a fact?

A. I can't state precisely when I was advised to that effect.

Q. Who advised you?

A. I can't say that I can remember that, either.

Public Service, after alleging in its answer "* * * that the Commission was fully advised and clearly extended its authority prior to installation of the facilities," asserts (pp. 2–3):

> However, even were it not so, Public Service needs no authority from the Power Commission to use gas allocated to it, in its own power plant or for any other Company use. Metering stations are indispensable for the pipe line to render its service.
>
> Authority to construct delivery facilities wherever convenience requires, is implicit in the Commission's grant of gas allocation to customer utilities.

We considered an argument similar to this one in *American Louisiana Pipe Line Co., et al.*, Docket No. G-2306, *et al.*, Opinion No. 402, issued September 17, 1963, 30 FPC 698, where we pointed out, p. 712) that gas used in the generating plant there involved was part of a "sale for resale." In *City of Hastings* v. *F.P.C.*, 221 F. 2d 31 (CADC), cert, den. 349 U.S. 920, the customer had a separate contract with the pipeline supplier providing for the sale of gas directly to the customer's generating plant. This *separate* sale was considered to be a direct sale and therefore nonjurisdictional. However, Public Service's use of gas at Weston should be distinguished from the *City of Hastings* case because Public Service's use of gas at Weston appears to be very similar to the factual situation in *State Corp. Com'n of Kansas* v. *F.P.C.*, 206 F. 2nd 690 (CA8), where the court stated (206 F. 2d 690 at 701):

> * * * Both the demand charges which Northern makes in its sales of natural gas for resale to its utility customers and its commodity charges that are added to make up the full price charged for such gas are within the jurisdiction of the Commission. * * *

The record in the aforementioned proceeding in Docket No. G-2306, *et al.*, shows that the gas used by Public Service at its Weston plant is purchased under Michigan Wisconsin's ACQ-1 Rate Schedule which provides for a demand and commodity charge (Tr. 7041-42):

> Q. Could I ask you what do you mean by saying that Weston is a balancing load?
>
> A. I mean to say this, Mr. Carroll: We nominate an MDQ. We are permitted to take up to a certain ACQ associated with that MDQ. We have indicated here that we will take all of the ACQ that we are entitled to. We are working with the paper mills throughout our territory to develop interruptible loads. We are hopeful that the time will come when we have interruptible industrial loads that will absorb all this gas, but until such time we will burn it at Weston.

However, we are not directly concerned in this order with jurisdiction over the *sale* of gas to the Weston plant; we are simply endeavoring now to determine whether Michigan Wisconsin ever received authorization to construct the measuring station and appurtenant facilities required for the delivery of gas to the Weston plant. In such an inquiry it is essential that we note our disagreement with Public Service's assertion that "* * * Authority to construct delivery facilities wherever convenience requires, is implicit in the Commission's grant of gas allocation to customer utilities." Section 7(c) of the Natural Gas Act leaves no doubt as to a natural-gas company's obligation to secure a certificate of public convenience and necessity *before* it engages in the transportation *or* sale of natural gas in interstate commerce. The courts have many times explained the extent of our jurisdiction over the transportation of gas in interstate commerce as distinguished from sale of gas for resale in interstate commerce. For example, in *Panhandle Eastern Pipe Line Co.* v. *Public Service Commission of Indiana*, 332 U.S. 507, the Court stated (at p. 516):

> * * * Three things and three only Congress drew within its own regulatory power, delegated by the Act to its agent, the Federal Power Commission. These were: (1) the transportation of natural gas in interstate commerce; (2) its sale in interstate commerce for resale; and (3) natural gas companies engaged in such transportation or sale.

Again in *F.P.C.* v. *East Ohio Gas Co.*, 338 U.S. 464 at p. 468 the Court observed that "* * * throughout the Act 'transportation' and 'sale' are viewed as separate subjects of regulation. They have independent and equally im-

portant places in the Act." But perhaps the clearest court statement showing that Public Service is incorrect in concluding that authorization to construct facilities is implicit in an allocation of gas is to be found in *Panhandle Eastern Pipe Line Co.* v. *F.P.C.*, 232 F. 2d 467 (CA3), cert. den. 352 U.S. 891, where the court held (232 F. 2d 467 at 472):

> * * * The gas included eventually might be for resale or direct sale but the decision of the Commission must be rendered *prior* to any of the particular gas flowing through the pipe. That decision goes to the *operation of the line itself*. When the Congress gave the Commission control over the transportation of natural gas, it necessarily gave it control over the functioning of a *pipe line's facilities*. * * * [Emphasis supplied.]

Michigan Wisconsin also alleges in its answer to Petitioners' request for a show cause order that (p. 13):

> The Coal Interests have no legitimate complaints with respect to Michigan Wisconsin or its operations. In order to assure the availability of summer gas for injection into storage to meet winter space heating demands, Michigan Wisconsin's tariff limits the annual volumes available to its customers to 190 times their maximum daily quantities. As a result, Michigan Wisconsin *necessarily* does *not* have *interruptible* gas available to the same extent as an ordinary pipeline without storage. * * * [Emphasis supplied.]

Contrary to the allegation quoted above, Michigan Wisconsin seems to have large volumes of interruptible gas available for use by Public Service in its Weston plant, according to information elicited by counsel for Petitioners when he was cross-examining Public Service's witness on July 30, 1963, in a proceeding in Docket No. CP63-230, *et al.* At that time Public Service's witness admitted that his company had "run out" of its ACQ in June of this year and in July of 1962 and that Public Service was purchasing gas for the Weston plant under Michigan Wisconsin's overrun rate (Tr. 626). The witness further stated that on January 14, 1963, when the *mean* temperature was 15 degrees below zero, Public Service consumed 16,700 Mcf of gas in its Weston generating plant (Tr. 629-30). It would appear from Exhibit 38 presented in the proceeding in Docket Nos. CP63-230, *et al.*, that all of these 16,700 Mcf of gas consumed on Jauary 14, 1963, were overrun or interruptible volumes. An indication that Public Service expects to continue using interruptible gas in its Weston plant in the future is contained in the following answer of Public Service's witness to a question asked by counsel for Petitioners (Tr. 630):

> Q. Now, sir, with the experience that you have had in the past two years in running out of your ACQ before the end of the contract year, do you still contemplate selling gas or using gas, I should say, in your Weston Plant before the heating season of 1963-64 is expired?
>
> A. According to our calculations, we will have some ACQ that we can use in it and we hope to get overrun we can use in it too.

In addition to requesting that Michigan Wisconsin be required to show cause why it should not be required to file an application requesting permission to construct the facilities necessary for delivery of gas to the Weston plant, Petitioners request that we "Direct Michigan Wisconsin to cease deliveries of gas to Public Service for use at Weston until such time as final determination of this matter is made; * * *." Michigan Wisconsin's answer avers that this request "* * * is patently absurd" and points out that the Petitioners have not shown that they will suffer any irreparable injury.

Public Service alleges that even a temporary disruption of deliveries to the Weston plant would cause irreparable and substantial injury to Public Service which can be measured only in terms of millions of dollars. Public Service further alleges that it has relied upon use of gas at Weston in (a) expending very substantial sums in the construction of gas-burning facilities at Weston, (b) in expending very substantial sums in constructing a lateral to Michigan Wisconsin's pipeline for making delivery of gas to Weston possible, (c) in making nominations of gas for the 1960–61 contract year and for the 1961–62 contract year, (d) in refraining from releasing gas under Section 7.4 of Michigan Wisconsin's Tariff, (e) in planning, promoting, and placing into effect its industrial sales program, (f) in accepting, without opposition, a demand-commodity form of rate, and (g) in budgeting its past and future operations.

If Public Service has, in fact, relied upon the use of gas at Weston to the extent described in its answer to the petition for a show cause order, it should have made a specific request that Michigan Wisconsin be ordered to provide facilities needed for use at Weston. Furthermore, its witnesses should have explained the importance of burning gas at Weston when they were given opportunities to do so during five successive hearings between July of 1959 and July of 1963. Instead, the witnesses have at all times minimized the importance of receiving gas for use in the Weston plant, and Public Service's witness specifically stated in the very hearing where Michigan Wisconsin now claims to have received certificate authority to construct the Weston delivery point that he did (Tr. 853, G–20569):

> A * * * not admit of any over-estimation. We need our MDQ to meet our maximum day's load. We were not considering annual requirements when we forecast that MDQ.

Since the amount of MDQ nominated determines the annual volumes of gas which Michigan Wisconsin's customers are entitled to receive, Public Service would necessarily have had to be considering its annual requirements needed for Weston if, as Public Service alleges in its answer, Public Service had been relying upon the use of gas at Weston when it made its nomination for quantities of gas for the 1960–61 contract year which was under consideration in Docket No. G–20569.

In any event, the thorough review of the records in five different proceedings involving Michigan Wisconsin and Public Service has failed to show that Public Service ever requested that Michigan Wisconsin be required under Section 7(a) to construct facilities to provide for the delivery of gas to the Weston plant, or that Michigan Wisconsin ever included the facilities required for delivery of gas to Weston among the facilities for which it sought a certificate of public convenience and necessity in the proceedings in Docket No. G–18313, *et al.*, or in Docket No. G–20569, or in Docket No. G–20570, *et al.*, or in Docket No. G–2306, *et al.*, or in Docket No. CP63–230, *et al.*

Since Section 7 of the Natural Gas Act and the court decisions hereinbefore cited require that a certificate authorizing the construction of specific facilities be issued *prior to* the actual construction and operation of those facilities, we have no alternative but to order Michigan Wisconsin to cease the delivery of gas to the Weston plant pending disposition of the show cause proceeding hereinafter provided for in this order. Our requirement that deliveries of gas be discontinued pending a determination of whether Michigan Wisconsin should be permitted to construct facilities required for delivery of gas to the Weston plant is not dependent upon Petitioners' being

able to show that they will suffer irreparable injury or upon the allegation of Public Service that it will suffer irreparable injury in delivery of gas to Weston is even temporarily disrupted. Cessation of deliveries pending final determination of the issues herein is simply the necessary consequence which flows from our having found no order wherein we have authorized Michigan Wisconsin to construct the facilities required to deliver gas to the Weston plant.

The Commission finds:

(1) A review of the records in five different proceedings involving Michigan Wisconsin and Public Service (Docket No. G–18313, *et al.*; Docket No. G–20569; Docket No. G–20570, *et al*; Docket No. G–2306, *et al*; and Docket No. CP63–230, *et al.*) and of Michigan Wisconsin's applications and Public Service's petitions to intervene in those proceedings, as well as the Commission's orders issued in connection with such proceedings, fails to show that Michigan Wisconsin ever received a certificate of public convenience and necessity authorizing it to construct and operate the measuring station and appurtenant facilities required for the delivery of gas to Public Service's Weston generating plant.

(2) Michigan Wisconsin should be required to show cause why it should not file an application for a certificate of public convenience and necessity authorizing it to construct the facilities required to deliver gas to Public Service's Weston plant.

(3) Pending final disposition of the show cause proceeding, Michigan Wisconsin should be required to cease deliveries of gas to the Weston plant.

(4) It is desirable to grant the petition to intervene of Wisconsin Public Service Corporation filed herein on October 13, 1961, in order that Public Service may establish the facts and law from which the nature and validity of its alleged rights and interests may be determined and show what further action may be appropriate under the circumstances in the administration of the Natural Gas Act.

(5) Good cause has been shown for the granting of the petition for an order to show cause filed September 6, 1961, by Fuels Research Council, Inc., National Coal Association, United Mine Workers of America, and Mid-West Coal Producers Institute, Inc.

The Commission orders:

(A) Michigan Wisconsin Pipe Line Company shall show cause, if any there be, why it should not be required, pursuant to Section 7 of the Natural Gas Act, to file an application for a certificate of public convenience and necessity authorizing it to construct and operate the facilities required for the delivery of gas to Wisconsin Public Service Corporation's Weston generating plant.

(B) Michigan Wisconsin is hereby prohibited from utlizing facilities, heretofore constructed without apparent authority, for making deliveries of natural gas to Public Service for use by the latter in its Weston generating station prior to the issuance by the Commission of a final order in this proceeding.

(C) Pursuant to the authority contained in, and subject to the authority conferred upon the Federal Power Commission by the Natural Gas Act, including particularly Sections 7, 14, 15, and 16, and the Commission's Rules and Regulations under that Act, a public hearing shall be held commencing December 10, 1963, at 10:00 a.m. (EST) in a hearing room of the Federal

Power Commission, 441 G Street, NW., Washington, D.C., 20426, concerning the matters involved in and the issues raised by the petition for an order to show cause filed by the Petitioners named in paragraph (5) above.

(D) The petition for a show cause order filed by Petitioners on September 6, 1961, is hereby granted.

(E) Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C., 20426, in accordance with the Rules of Practice and Procedure [18 CFR 1.8 or 1.10] on or before November 25, 1963.

(F) Wisconsin Public Service Corporation be and it is hereby permitted to become an intervener in the above-entitled proceeding subject to the rules and regulations of the Commission: *Provided, however,* that the participation of such intervener shall be limited to matters affecting asserted right and interests as specifically set forth in said petition for leave to intervene; and *provided, further,* that the admission of such intervener shall not be construed as recognition by the Commission that it might be aggrieved because of any order or orders of the Commission entered in this proceeding.

Commissioner Black *dissents* to ordering Paragraph (B) but otherwise concurs.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

MIDWESTERN GAS TRANSMISSION COMPANY, DOCKET NOS. G–16841, RP61–19, ET AL.; PEOPLES GAS LIGHT & COKE COMPANY v. MIDWESTERN GAS TRANSMISSION COMPANY, DOCKET NO. RP63–11

ORDER APPROVING SETTLEMENT

(Issued October 30, 1963)

On October 18, 1963, the Presiding Examiner certified to the Commission a Stipulation and Agreement entered into by Midwestern Gas Transmission Company and its three principal Southern System customers in proposed settlement of the controversy over Midwestern's obligation to pass on certain refunds and rate reductions of its supplier, Tennessee Gas Transmission Company. While different periods and different Commission proceedings are involved, all of the controversies which the parties propose to settle arise out of the Commission Opinion No. 320, 21 FPC 653, certificating the construction and operation of Midwestern's Southern System.

The Commission on April 11, 1963 sua sponte raised the question of whether Midwestern was not obliged to reduce its rates effective as of October 1, 1962, in order to pass on a reduction in Tennessee's rates. Subsequently, by order of May 10, 1963, the Commission directed that, in order to give Midwestern an opportunity to support certain legal arguments, this issue of Midwestern's obligation to make rate reductions from and after October 1, 1962 should be decided by the Examiner in the pending Section 5(a) proceedings in Docket No. RP61–19, *et al.*

On April 22, 1963, Peoples Gas Light & Coke Company filed a formal complaint against Midwestern, in Docket No. RP63–11, contending that, in addition to the prospective rate reductions from October 1, 1962, Midwestern was obligated to pass on to its customers any refunds received from Tennessee with respect to the period from April 5, 1960 to October 1, 1962, to the extent that such refunds brought Midwestern's gas purchase costs for the period below the level of rates which Tennessee had in effect subject to

refund at the time of Opinion No. 320. In Opinion No. 394, issued July 12, 1963, 30 FPC 150, the Commission ruled in favor of Peoples' contention with respect to the April 5, 1960–October 1, 1962, period.[1]

The Stipulation and Agreement at which Midwestern and its principal Southern System customers have now arrived appears as an Exhibit to this order. In general it provides that Midwestern shall make all of the refunds specified in Opinion No. 394 and for the period beginning October 1, 1962, shall fully reflect the reduction of Tennessee's rates below the level in effect at the time of Opinion No. 320. The latter reduction shall be accomplished by refunds covering the period from October 1, 1962, through September 30, 1963, and thereafter by means of monthly credits on the customers' bills, in effect refunding a portion of the previous month's payments. The monthly credits shall continue until such time as a change in Midwestern's rate level becomes effective. Commission staff counsel concurred in the proposed settlement on the record.

Since the proposed settlement provides for the maximum amount of refunds and rate reductions which the Commission could have ordered after full litigation of the issues involved, it is satisfactory to the Commission and should be approved. This approval is without prejudice to any order which the Commission may issue in the pending Section 5(a) proceedings in Docket No. RP61–19, *et al.*

The Commission further finds:

(1) Upon performance of the acts specified in the appended Stipulation and Agreement, Midwestern will have satisfactorily complied with the obligations imposed by Opinion No. 320 with respect to the passing on of rate reductions and refunds of its supplier, Tennessee Gas Transmission Company.

The Commission orders:

(A) The appended "Stipulation and Agreement" is hereby approved and Midwestern shall perform the acts required thereby within the times specified.

(B) The proceedings in Docket No. RP63–11 are hereby terminated.

(C) The proceedings in Docket No. G–16841, which were consolidated with Docket No. RP61–19 *et al.* by order of May 10, 1963, are hereby terminated.

(D) This approval is without prejudice to any order or orders which the Commission may issue in the investigation of Midwestern's rates and charges under Section 5(a) of the Natural Gas Act in Docket No. RP61–19, *et al.*

APPENDIX A

MIDWESTERN GAS TRANSMISSION COMPANY

BILLING DEMANDS—MCF AT 14.73 PSIA

Period Prior to April 5, 1960

Customer:	
Northern Illinois Gas Company	348, 980
Northern Indiana Public Service Company	422, 810
The Peoples Gas Light and Coke Company	432, 472
Total	1, 204, 262

[1] Rehearing was denied by order of September 6, 1963, 30 FPC 659.

Period From April 5, 1960, through September 30, 1962

Customer:	
American Louisiana Pipeline Company	171,526
Northern Illinois Gas Company	1,794,589
Northern Indiana Public Service Company	4,428,485
The Peoples Gas Light and Coke Company	2,598,045
Total	8,992,645

Period From October 1, 1962, through September 30, 1963

Customer:	
Northern Illinois Gas Company	902,774
Northern Indiana Public Service Company	2,417,466
The Peoples Gas Light and Coke Company	1,197,223
Total	4,517,463

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

PACIFIC POWER & LIGHT COMPANY, DOCKET NO. E-7128

ORDER AUTHORIZING THE ISSUANCE OF COMMON STOCK

(Issued October 30, 1963)

Pacific Power & Light Company (Applicant), a corporation organized under the laws of the State of Maine and doing business in the States of California, Oregon, Washington, Wyoming, Montana and Idaho, with its principal business office at Portland, Oregon, filed an application on September 27, 1963, for an order, pursuant to Section 204 of the Federal Power Act, authorizing the issuance of up to 732,854 shares of Common Stock, par value $3.25 per share.

Applicant proposes to offer up to 732,854 additional shares of Common Stock to its Common Stockholders of record at the close of business on October 30, 1963, for subscription on the basis of one additional share of Common Stock for each twenty shares of outstanding Common Stock held on such record date, with a supplementary subscription privilege if the number of shares held on the record date is not evenly divisible by twenty or is less than twenty. Rights to subscribe for the additional Common Stock will be evidenced by transferable subscription warrants. The subscription price per share will be determined by Applicant's Board of Directors shortly before the proposed offering date, and will be fixed in relation to, and at an appropriate discount from the then market price of Applicant's presently issued and outstanding Common Stock. The subscription offer will expire at 3:30 p.m., New York Time, on December 5, 1963. In addition, Applicant proposes to sell to underwriters any shares of additional Common Stock for which Applicant's Common Stockholders do not subscribe, at the same price at which shares of additional Common Stock will be offered under the subscription offer, and to fix by competitive bidding the compensation of the underwriters for their commitments to purchase the unsubscribed Stock.

On or about November 6, 1963, Applicant proposes to invite sealed, written bids for the purchase of the unsubscribed Stock by newspaper publication and by distribution of a form of bid and a form of purchase agreement, together

with a statement of terms and conditions relating to the bid. All bids, whether from a single bidder or a group of bidders, must be on the form of bid furnished by Applicant and must be for the purchase of all of the unsubscribed Stock. Each bid must specify, among other things, (1) the price per share to be paid to Applicant for the unsubscribed Stock, which price shall be the same as the subscription price to Applicant's Common Stockholders; and, (2) the aggregate amount to be paid by Applicant to the bidder or bidders as compensation for their commitments and obligations in connection with the purchase by them of the unsubscribed Stock.

Unless postponed, all bids for the purchase of the unsubscribed Stock must be submitted to Applicant at Room 2033, Two Rector Street, New York, New York, before 11:00 a.m. New York Time, on November 13, 1963. Each bid must be accompanied by a certified or official bank check or checks in the aggregate amount of $250,000 payable in New York Clearing House funds. Each of the bidders must agree that in case any shares of unsubscribed Stock are acquired and sold prior to the expiration of thirty days following the day upon which the subscription period expires for a price in excess of the purchase price plus $1.00 per share, the bidder will pay to the Applicant, in addition to the purchase price, a sum equal to 50% of excess. Unless Applicant rejects all bids, which it reserves the right to do, or excludes a bid or bids for reasons specified in the statement of terms and conditions relating to bids, Applicant will accept the bid which provides for the lowest aggregate amount of compensation to be paid by Applicant to the bidder or group of bidders.

Applicant will utilize the proceeds of approximately $17,150,000 to be obtained from the proposed issuance of additional Common Stock toward repayment of up to $23,000,000 principal amount of Promissory Notes, under a Credit Agreement dated as of August 15, 1961 as amended by a Letter Agreement dated as of August 14, 1962 (Docket No. E–7052) authorizing the Applicant to issue up to $45,000,000 short-term notes. As of August 31, 1963, Applicant had a total of $8,000,000 notes outstanding and it expects to issue $15,000,000 additional notes prior to November 30, 1963. The notes were and will be issued to provide funds for Applicant's 1963 construction program estimated total $52,000,000 of which approximately $27,975,000 has been expended through August 31, 1963.

The principal items in Applicant's construction budget and the amounts estimated to be expended in 1963 are as follows: $18,000,000 for the 3rd unit at the Dave Johnston Steam Plant; $1,000,000 toward the construction of the 230/500 kv transmission line from Stephens Butte, California to Keno, Oregon; $650,000 for the completion of Applicant's portion of the Walla Walla, Washington-Wanpum Line; $1,300,000 for the completion of the 230 kv transmission line from Rock Springs, Wyoming to the Flaming Gorge Project in Utah; $300,000 toward the construction of the 230 kv transmission line from Muddy Ridge, Wyoming to Thermopolis, Wyoming; $835,000 toward the construction of the 230 kv transmission line from Frannie, Wyoming to Oregon Basin, Wyoming via Garland Dome; $300,000 for the completion of a 115 kv line from Lebanon, Oregon to Sweet Home, Oregon; $850,000 for the completion of the Walla Walla substation; $432,000 for the completion of the Rock Springs substation; $485,000 for completion of the Diamond Hill substation at Corvallis, Oregon and $16,444,000 for electric distribution facilities.

Written notice of the application has been given to the Public Utilities Commission of California, the Idaho Public Utilities Commission, the Public Service Commission of Montana, the Public Utility Commissioner of Oregon, the Washington Utilities and Transportation Commission, and the Public

Service Commission of Wyoming, and to the Governor of each of those States. Notice of the application has also been given by publication in the Federal Register on October 12, 1963 (28 F.R. 10985), stating that any person desiring to be heard or to make any protest with reference to the application should file a petition or protest on or before October 23, 1963 with the Federal Power Commission, Washington 25, D.C. No protest or petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission, as heretofore determined and set forth in the Commission's order issued March 28, 1962, *Pacific Power & Light Company*, in Docket No. E–7025.

(2) The proposed issuance of Common Stock, as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issue here involved is regulated by a State commission within the meaning of Section 204(f) of the Act, and the proposed issuance of Common Stock is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(4) The proposed issuance of Common Stock, as hereinafter authorized, will be for a lawful object, within the corporate purposes of the Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by the Applicant of service as a public utility and which will not impair its ability to perform that service and is reasonably appropriate for such purposes.

(5) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) The proposed issuance of Common Stock, upon the terms and conditions and for the purposes specified in the application, as described above, is hereby authorized, subject to the provisions of this order.

(B) The proposed issuance and sale of Common Stock at competitive bidding shall not be consummated until:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h) of those Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.

(ii) The Commission, by further order, shall have approved the subscription price per share to be received by Applicant for the Common Stock and the compensation to be paid to underwriters under the proposed arrangement as described above.

(C) This authorization shall expire unless the transaction hereby authorized is consummated within 90 days from the issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of costs, or any other matter whatsoever which is now pending or which may come before this Commission.

(E) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect to any securities to which this order relates.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

PACIFIC POWER & LIGHT COMPANY, PROJECT NO. 2082

ORDER APPROVING REVISED PROJECT EXHIBITS AND ADJUSTING ANNUAL CHARGES

(Issued October 30, 1963)

On May 23, 1963, Pacific Power & Light Company, licensee for Project No. 2082, filed for Commission approval nine revised prints of Exhibit K–4 (FPC Nos. 2082–47 through –55) and a revised sheet of Exhibit F–7 showing minor revisions in project land ownership in the John C. Boyle Development, as between the licensee and the United States.

Commission approval of Exhibit F is not required.

The licensee has authorized Commission staff to make the minor changes on the tracings on file with the Commission. This was necessary with respect to only three tracings and these tracings have been corrected. The errors requiring the corrections were discovered by the licensee in a re-calculation of the area of lands occupied by the development.

The effect of our approval of the revised exhibit prints would be to show a reduction of 2.96 acres of lands of the United States occupied by the project, and a resultant reduction in the annual charges for such occupancy from $847.22 to $841.30.

The Commission finds:

(1) Exhibit K–4 FPC Nos. 2082–47, –52 and –53), as revised by the staff, conforms to the Commission's Rules and Regulations and should be approved as part of the license for the project.

(2) Exhibit K–4 (FPC Nos. 2082–47, –52 and –53) now part of the license and which has been superseded, should be eliminated from the license.

(3) The decreased amount of annual charges for recompensing the United States for the occupancy of its lands by the project is reasonable as hereinafter fixed and specified.

The Commission orders:

(A) The revised Exhibit K–4 prints described in finding (1) above are hereby approved as part of the license for Project No. 2082.

(B) The Exhibit K–4 prints described in finding (2) above are hereby eliminated from the license for the project.

(C) Subparagraph (b) of Article 35 of the license for Project No. 2082 is hereby modified, effective as of October 1, 1963, to read as follows:

(b) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands, exclusive of those used for transmission line right-of-way, $841.30.

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgment of the acceptance of this order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

[LETTER-ORDER DIRECTING NATURAL GAS PRODUCERS TO RESPOND TO QUESTIONNAIRES]

OCTOBER 30, 1963*

TO THE PARTY ADDRESSED:

In order to assist the Commission in the proper administration of the Natural Gas Act, and to provide essential data needed for programing additional area rate proceedings, certain cost and related operations data must be obtained with respect to your gas production operations in the year 1962, all of which is more fully particularized in the two enclosed questionnaires.[1]

The first enclosure, a two-page general questionnaire, is entitled, "Summary Lists of Respondent's (1) Gas and Oil Production and (2) Field and Cycling Plants by Pricing Areas—Year 1962". The completion of these lists will provide, in summary form, pricing area information concerning the two producing activities described in the title of the questionnaire. It should be completed and returned to the Secretary of the Commission on or before December 3, 1963.

The other, and the major questionnaire, is entitled "Questionnaire—Costs and Statistics Pertaining to Oil and Gas Production, Exploration, Gas Systems, and Field Gasoline and Cycling Plant Operations—Year 1962". It is a revision and consolidation of the two former Appendix A operating data and Appendix B cost and statistics questionnaires answered by various natural gas producing respondents in the Permian Basin and Southern Louisiana Areas. Certain modifications, largely organizational and clarifying in nature, have been made by the Commission Staff on the basis of experience in the area proceedings now in progress. However, the data sought at this time is still basically the same as that previously furnished but it pertains to a more recent year and expands the amount of information concerning trends of costs and operations. An index to the questionnaire is also enclosed.

Accordingly, in conformity with the provisions of Section 10(a) of the Natural Gas Act, and as a natural-gas company subject to the jurisdiction of the Commission, you are required to complete and file with the Secretary of the Commission on, or before, the dates fixed in the attached reporting schedule, three copies of the data and statistics required by the enclosed questionnaire entitled "Questionnaire—Costs and Statistics Pertaining to Oil and Gas Production, Exploration, Gas Systems, and Field Gasoline and Cycling Plant Operations—Year 1962."

By Direction of the Commission

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

GEORGIA POWER COMPANY, PROJECT NO. 2177

ORDER APPROVING REVISED EXHIBIT L DRAWINGS

(Issued October 31, 1963)

On June 25, 1963, Georgia Power Company, licensee for Project No. 2177, filed for Commission approval revised Exhibit L drawings showing the project

---

*Modified; reconsideration denied, 31 FPC 34; 944; 1541.

[1] Omitted in printing.

structures as constructed. Flashboards have been added to the spillway section and minor revisions were made during construction.

The Chief of Engineers, Department of the Army, has approved the plans insofar as the interests of navigation are concerned.

The Commissions finds:

The following described revised Exhibit L drawings conform to the Commission's rules and regulations and should be approved as part of the license for the project and Exhibit L, Sheets 8 and 9 (FPC Nos. 2177–15 and –16), now part of the license and which have been superseded, should be eliminated from the license.

Exhibit L, Sheet 8: (Revised February 11, 1963) (FPC No. 2177–24) Entitled "North Highlands Dam — General Plan, Elevation, and Typical Section of Dam" and

Exhibit L, Sheet 9: (Revised February 11, 1963) (FPC No. 2177–25) Entitled "North Highlands Dam — Powerhouse — Plans and Transverse Sections".

The Commission orders:

The revised Exhibit L drawings described in the above finding are hereby approved as part of the license for Project No. 2177, and the Exhibit L drawings described in the same finding as being as superseded are hereby eliminated from the license for the project.

OPINION NO. 408

GRARIDGE CORPORATION (OPERATOR), ET AL.,[1] DOCKET NO. G–19246, ET AL.

OPINION AND ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 31, 1963)*

Syllabus

1. Commission *concludes* that price should not be reexamined in producer succession certificate proceedings. PP. 1158; 1160.
2. Justice and equity require that where same sale under same terms is being made to same purchaser it should be made at same price—mere change in ownership of producing properties does not require price review. P. 1161.
3. While certificates are not transferable, issuance of instant certificates permits successors to continue predecessors existing sales—there were, in effect, no new sales. P. 1161.
4. Since these are not new sales, certificates may not be used as justification that proper "price line" is represented by prices in successor contracts at time succession contracts were executed or at any other time. P. 1162,
5. In producer succession proceedings, non-transferability provision of certificate is intended to focus on successor himself, not on the full scope of the 7(e) requirements. P. 1162.

---

[1] The parties and dockets in this proceeding are more fully referred to in ordering paragraphs (A) and (B) of the order hereto.

*Rehearing denied, 30 FPC 1524.

6. Out-of-line rates are not to be perpetuated; Commission states that any question as to reasonableness of permanently certificated sales is to be resolved in area rate proceedings and not successor certificate cases. P. 1163.
7. Principal effect of holding that prices may be reviewed upon every transfer would be to inhibit transfers, thus interfering with normal functioning of the industry without assuring any commensurate benefits to customers. P. 1163.
8. Commission *issues* certificates of public convenience and necessity authorizing continued sales of gas, under Section 7 of the Natural Gas Act. P. 1164.

Commissioner Black *dissenting*, joined by Commissioner Ross

Sherman S. Poland for Magna Oil Corporation.

Cecil E. Munn for General American Oil Company of Texas

Cecil N. Cook and *Neil Powers, Jr.* for U. S. Oil of Louisiana, Inc.

Tom Burton for Continental Oil Company

W. T. Kilbourne, II, H. W. Varner and *Homer J. Penn* for Superior Oil Company

Albert C. McClain and *Jesse H. Foster, Jr.* for Humble Oil & Refining Company

George B. Mickum, III and *Robert M. Goolrick* for Southeastern Public Service Company

J. Evans Attwell for Austral Oil Company, Inc., Agent for Oil Participations, Inc.

Charles E. McGee, James D. McKinney, Jr., R. E. Christiansen and *Angus A. Davidson* for Sinclair Oil & Gas Company

Charles F. Dugan for Southeastern Public Service Company

Charles E. McGee and *James D. McKinney, Jr.* for Jefferson Lake Sulphur Company

James O'Malley, Jr., Halcyon C. Skinner, Ronald D. Jones and *Eugene B. Thomas, Jr.* for Orange & Rockland Utilities, Inc.

Paul Montgomery for Irwin Miller (Operator), et al.

Robert O. Koch and George J. Meiburger for Texas Gas Transmission Corporation

Edwin F. Russell and *Harry G. Hill, Jr.* for The Brooklyn Union Gas Company

Edward S. Kirby, J. Harry Mulhern and *William R. Duff* for Public Service Electric & Gas Company

Bertram D. Moll, David Kadane and *Edward M. Barrett* for Long Island Lighting Company

James O'Malley, Jr., Halcyon G. Skinner, Eugene B. Thomas, Jr. and *R. D. Jones* for Consolidated Edison Company of New York, Inc.

William T. Coleman, Jr. and *Robert W. Maris* for Philadelphia Gas Works Division of United Gas Improvement Company

Vincent P. McDevitt, H. P. Sullivan, S. G. Miller and *Donald Blanken* for Philadelphia Electric Company

Norman A. Flaningam and *Thomas F. Brosnan* for The East Ohio Gas Company, New York State Natural Gas Corporation, The Peoples Natural Gas Company, Lake Shore Pipe Line Company, Hope Natural Gas Company and The River Gas Company

Morton L. Simons and *Kent H. Brown* for Public Service Commission of New York

737-370—66——76

Frederick D. Cornelius, Herbert E. Squires and *Alan R. Squires* for Pennsylvania Public Utility Commission

Hugh J. Morgan, Jr. for Southern Natural Gas Company

William I. Harkaway and *David B. Ward* for the Staff of the Federal Power Commission

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

O'CONNOR, *Commissioner:*

Introduction

This is a certificate proceeding under Section 7(c) of the Natural Gas Act (Act) involving 18 applications by independent producers (Applicants) for certificates of public convenience and necessity authorizing certain sales of natural gas. The case is before us pursuant to our order issued May 29, 1963, providing for the omission of the intermediate decision procedure. The basic question presented is whether a producer who has succeeded to another producer's interest under a gas sales contract, and seeks a certificate authorizing the continuance of the sale for which the predecessor was issued a final, permanent certificate, must adduce evidence again establishing that the sale meets the requirements of public convenience and necessity in regard to price. More succinctly put, should the price level issue be opened in producer succession certificate proceedings?

Applicants' predecessors-in-interest were previously granted final, permanent certificates, but since those certificates were not transferable,[1] Applicants, having succeeded to their predecessors' interest, have filed the present applications to continue their predecessors' sales. Supported by the Commission's Staff and a distributing company intervener, Public Service Electric and Gas Company (Public Service), Applicants contend that certificates should be issued authorizing them to continue those sales without having to adduce price evidence. In contrast, certain distributing company interveners, joined by the New York Public Service Commission, contend that Applicants must adduce evidence showing that those prices are "in line" or stated differently that successor applications should be treated the same as new sales applications, insofar as initial prices are concerned.

We conclude that certificates should be issued to Applicants authorizing them to continue their predecessors' previously certificated sales without having to adduce evidence again establishing that those sales meet the requirements of public convenience and necessity in regard to price. We conclude, in other words, that price should not be re-examined in producer succession certificate proceedings.

Procedural Background

We originally set for hearing numerous certificate applications, including most of Applicants', in the *Union Texas Petroleum, et al.*, certificate proceeding in Docket No. G-13221, *et al.* By one order issued March 14, 1963, and by certain other orders and notices in that proceeding, we severed Applicants' dockets from that proceeding and consolidated them in this case, and also per-

[1] The certificates issued the predecessors provide in varying language that such certificates "are not transferable and shall be effective only as long as the applicants continue the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act, and the applicable rules, regulations and orders of the Commission thereunder."

mitted interventions. The parties held a pre-hearing conference in this case on April 26, 1962, and as a result entered into a Stipulation and Agreement which was placed in the record at the one-day hearing on May 14, 1963 (Tr. 9–12).

By the Stipulation, the parties agree that Applicants are able and willing properly to do the acts and perform the services proposed in accordance with the sales contracts, and to conform to the provisions of the Act and the requirements, rules, and regulations of the Commission, as shown by Applicants' certificate applications and related rate schedules. Those applications and rate schedules were admitted in evidence by reference to the Commission's files, as were the certificate applications of Applicants' predecessors. Also, official notice was taken of the certificates issued to Applicants' predecessors.

Respecting ten of the dockets, in the Stipulation the parties further state that they have no objection to the issuance of certificates authorizing the sales at the prices stated in the Stipulation, which prices were deemed "in line."[3] We are satisfied that certificates should be issued authorizing those sales as required by the public convenience and necessity, and our order attached to this opinion issues such certificates.

Respecting the remaining nine dockets,[4] as set forth in the Stipulation, the parties are in dispute concerning whether Applicants must adduce additional evidence showing that the requirements of public convenience and necessity are satisfied. The parties agree that if it is determined that additional evidence need not be presented, certificates authorizing the sales in these dockets also should be issued, subject to any appeal which might be taken from such a decision. Applicants and Staff take the position that such certificates should authorize the sales at the prices listed in Column (9) of Exhibit 1 in the record (the last rates not subject to refund),[5] and not the rates listed in Column (8) of the said Exhibit (the predecessors' initial rates). It is further agreed that if the Commission decides, or the Court upon review decides that additional evidence need be presented, the hearing in this case should be reopened for such evidence.

---

[3] The Stipulation lists ten dockets but the application of Humble Oil & Refining Company in Docket No. CI63–455, formerly consolidated with this proceeding, has been severed and decided in a separate proceeding. The nine dockets, and the prices proposed are as follows: Graridge Corporation, Docket No. G–19246, 11.7714 cents per Mcf; Jefferson Lake Sulphur, Docket No. G–14307, Rate Schedule No. 1, 11.1467 cents per Mcf, and Rate Schedule No. 2, 17.5 cents per Mcf; General American Oil Company of Texas, Docket No. CI61–54, 17.5 cents per Mcf, Docket No. CI61–217, 18.5 cents per Mcf, Docket No. CI61–316, 19.25 cents per Mcf; Continental Oil Company, Docket No. CI62–1507, 14.5 cents per Mcf; Southwest Resources Inc., Docket No. G–20103, Rate Schedule No. 1, 11.75 cents per Mcf, Rate Schedule No. 2, 10.747 cents per Mcf; and San Jacinto Oil and Gas Company, Operator, *et al.*, Docket No. G–8938, 18.5 cents per Mcf; Austral Oil Co., Inc., Agent for Oil Participations, Inc., Docket No. CI63–342, 18.3 cents per Mcf.

The Stipulation also provides that if any of the Applicants are making these sales at prices higher than those shown above, but subject to existing suspension orders issued by the Commission under Section 4(e) of the Act, the Applicants shall continue to collect the higher rate but shall be subject to all of the terms and provisions of such outstanding suspension orders and shall make, if they have not already done so, appropriate motions to be substituted as Applicants in such rate suspension dockets (Tr. 11–12).

[4] Sinclair Oil and Gas Company, Docket No. CI63–463 was severed and decided in a separate proceeding.—(Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*, issued October 28, 1963).

[5] The last rate not subject to refund is either the initial rate of the predecessor, or a rate which has been increased but is not subject to refund or any longer the subject of any Section 4 rate proceeding.

Contentions of the Parties

While each party does not make the same assertions, Applicants, Staff and Public Service argue in favor of placing the successor applicants in the same position as their predecessors-in-interest without further evidentiary proceedings concerning the price sought for the following reasons:

(1) Unique circumstances peculiar to producer succession certificate proceedings make it reasonable to dispense with any further showing:

(2) Equitable considerations justify dispensing with a re-examination of the price issue;

(3) It would be against the public interest to require a new showing as to the proper price because it would mean that permanent certificates at approved prices could not be relied upon in the future;

(4) In other proceedings the Commission has certificated sales at the prices of predecessors-in-interest without further showing as to price;[6]

(5) The previous orders granting certificates to the predecessors-in-interest are *res judicata* in this proceeding.

The intervener opponents to the granting of the certificates without a further evidentiary hearing on the price issue argue:

(1) Under *Catco* (*Atlantic Refining Company* v. *F.P.C.*, 360 U. S. 378) Applicants must prove that the price in the contract is required by the public convenience and necessity or is "in line" and that the prices in question are above the "line."

(2) The Commission has a continuing duty to review prices and, because certificates are non-transferable, it should review the prices sought in this proceeding.

(3) The prices in the predecessors-in-interest cases were approved during a period of "doubt" or "error" concerning the Commission's powers and duty to attach price conditions.

(4) Equitable considerations cannot be substituted for the requirements of Section 7(e) of the Natural Gas Act and the requirements of *CATCO*.

(5) *Res judicata* and collateral estoppel have no application in such a case as this.

The Commission's Determination

We are of the opinion that there are substantial public interest considerations justifying our conclusion that certificates of public convenience and necessity should be issued to Applicants authorizing them to continue their predecessors' previously certificated sales, subject to any rate proceedings involving the predecessors' rate schedules, without opening the price level issue. We conclude, moreover, that it is reasonable and appropriate to follow such a policy generally in succession certificate proceedings involving producers.

Although *CATCO* requires a "most careful scrutiny and responsible reaction to initial price proposals of producers under Section 7", 360 U. S. at 391, it also provides that "Section 7(e) requires the Commission to evaluate all factors bearing on the public interest." (*Ibid*). See also *Transcontinental Gas Pipe Line Corp.*, 365 U.S. 1, 8.

The various applications in this proceeding (each of which was entered in evidence as an item by reference) indicate that in some instances the successor-applicants and the predecessors-in-interest are different parties only be-

---

[6] They cite, *inter alia*, Commission orders issued in *Alma M. Schrader, et al.*, Docket No. G-2813, *et al.*, on May 29, 1963 (mimeo., p. 12); in *Keating-Parket Co. (Operator), et al.*, Docket No. G-11858, *et al.*, on April 19, 1963; and *cf*, order in *Area Rate Proceeding*, Docket No. AR61-2, issued June 13, 1961 (25 FPC 1133).

cause of a change in corporate structure or partnership or personnel involved. In other instances the successors have acquired the producing properties of the predecessors and are continuing to produce from the same wells under the same contractual terms.

The sum and substance of this proceeding is that identical sales to the same purchasers are being made under the same terms of contracts which were already found in the public interest when the predecessors were issued certificates of public convenience and necessity. Nothing has been changed except the identity of the seller who continues to make the identical sale as could have been made by the predecessor, but for the fact that there has been a change in the seller-party relationship. Should interveners' arguments be followed, the mere fact of death of an individual seller would automatically require a review of the price question when the estate, or the heir seeks to be substituted as a party for the deceased predecessor. We are of the opinion that the equities of the situation favor the successor applicants.

Many of the rates charged by the predecessors or successors are under investigation pursuant to Section 5 of the Act in pending area rate proceedings; under Section 4 of the Act any attempt to increase rates would permit an investigation into the justness and reasonableness of the rates sought.[7] Certainly, the initial price is an important issue in certificate proceedings for new sales of gas. We do feel, however, that this proceeding on Section 7 successor applications is not the proper place to try the price issue when the predecessors have certificates, no longer subject to review. Justice and equity require that where the same sale under the same terms is being made to the same purchaser, this Commission should allow it to be made at the same price—and do not require a review of the price merely because of a change in ownership of the producing properties.

Intervenors would have us treat the sales under these contested applications as *new* sales insofar as initial price is concerned. Yet no new consideration passed between the pipeline purchasers and the successors; no new bargaining took place between those parties; the service to the pipeline is the same; the pipeline purchaser was not an active participant in the "new" sale by the successor (who took over by assignment the predecessors rights and obligations). While certificates are not transferable, the effect of the issuance of these certificates is to permit the successors to continue existing sales of the predecessors; there were, in effect, no new sales.

If intervenor's contentions were adopted, the successor, upon receipt of a certificate would be freed of any Section 4 obligation which would apply against a predecessor who, having a prior permanent certificate had filed for a rate increase. As a *new* sale the successor would be seeking an *initial* price which is not subject to the suspension and refund provisions of Section 4 of the Natural Gas Act. Thus, some of those ten Applicants, whom the intervenors were willing to concede should be granted certificates without contest, would be entitled to the rate the predecessors were collecting subject to refund at the time the successor acquired the property as an *initial* price— up to the "line" without making them subject to the same refund conditions imposed on the predecessor-in-interest. We cannot agree that such treatment is justified. To do this would be to lose sight of the fact that these are not really new sales of gas, but rather the continuance of existing sales of gas upon succession of interests. To permit this treatment would open the doors

[7] In the Area Rate Proceeding, Docket No. AR61-2, a general rate investigation is being conducted.

to transfers of property which might circumvent the Commission's prior Section 4 suspension orders and orders providing for refunds, if required. Consistency of treatment would end in this result, which we think wrong.

On the other hand, by treating the successor like the predecessor we obtain a consistency of administration and treatment. Each successor, by stepping into the shoes of his predecessor, takes the properties and sales subject to any benefits or infirmities inherent therein.

Two other matters require disposition. First, we recognize that some of these sales were certificated at a time when the Commission was granting permanent certificates in Southern Louisiana at a price level higher that the guideline prices subsequently recognized in our Statement of General Policy, No. 61–1, as amended. However, since these are not new sales in South Louisiana, we would not permit the certificates which are here issued to be used as any justification that the proper "price line" at the time the succession contracts were entered upon or at any other time is represented by prices in the successor's contracts. These succession proceedings are unique and must be recognized as such. Secondly, addressing themselves to the non-transferability clause in the predecessor's certificate, the minority opinion states . . . . "The parties should thus necessarily have been on notice that a successor's rights and obligations would be subjected to review." This statement is unfounded for two reasons. First, it misconstrues the scope of the review intended by the non-transferability provision. This scope does not, as the minority would have it, include a reopening of the entire range of a successor's "rights and obligations", but is intended rather, to focus on the successor himself, to insure that he is not, for some particular reason, unqualified to hold a certificate. Limiting the scope of review to the successor is in order because it is only the successor which differentiates the new application from the old: the same volumes of gas from the same fields being sold to the same vendees utilizing the same facilities are present in both applications. Thus, the scope of review is not the full scope of the Sec. 7(e) requirements; it is decidely smaller. Secondly, in stating that the parties could not have relied on the predecessor's certification, the minority surely overlooks the myriad of successor certification applications that have previously come before the Federal Power Commission, in none of which the Commission either ordered or allowed conditions other than those in the predecessor's certificate. A recent application that deserves particularly close attention is found in Docket CI62–1096. There the Delhi-Taylor Oil Corporation received a certificate at 11¢ to continue sales previously made at 10¢. This Commission later amended the certificate by reducing the authorized price back to 10¢, stating:

> It appears that the certificate was erroneously issued at the 11.0 cent rate *in contravention of the Commission's policy of placing a successor in interest in the same rate status as the predecessor.* The initial rate to be paid to Applicant will be changed to 10.0 cents per Mcf. Applicant may file for an increase in rate pursuant to Section 4 of the Natural Gas Act and Section 154.94 of the Regulations thereunder."[8] [Emphasis added]

[8] *Texaco Inc., et al.*, Docket No. G–4616, *et al.*, issued August 7, 1963. The minority might also wish to reexamine such recent applications as United States Smelting Refining & Mining Co. (Operator), *et al.*, Docket Nos. CI61–176 and CI61–214 (predecessor's effective rate was 8.0¢; contract provided for an increase to 9¢ which the successor applied for in the certification proceedings; area ceiling of 11¢ for increased rates); Texaco Inc., Docket CI63–1511 (predecessor's effective rate was 5.5¢; contract provided for an increase to 9¢ which the successor applied for in the certification proceedings; area ceiling of 11¢ for increased rates) Pan American Petroleum Corporation, Docket No. CI63–960 (predecessor's effective rate was 15¢; contract provided for increase to 16¢

[Footnote continued on page 1163.]

To say that these successors could not have relied on previous dispositions of successor applications is thus hardly accurate.

Public interests considerations also support our decision in this proceeding. The history of the Commission's administration of the Act over the years has made us aware of the importance of not adding to the price uncertainty which of course to some extent is inherent in a regulated industry. To hold that prices found required by the public convenience and necessity and certificated on a permanent basis are subject to reduction merely because of a transfer of the gas producing properties underlying the sale would add greatly to price uncertainty. Producers' interests are continually changing for a variety of reasons and freedom to effect the changes in ownership dictated by normal operating conditions is, we think, indispensable to successful and efficient operations in the gas producing industry. Leases may be sold to obtain funds for future exploration and development or are acquired to obtain additional supplies to meet increased demands for gas. Unnecessarily to inhibit these transfers would result in financial uncertainty prejudicial to the economic functioning of the industry and the ability of small producers, in particular, to carry on their operations. This is not to say that out-of-line rates are to be perpetuated. On the contrary, the Commission is presently conducting area rate proceedings to fix just and reasonable rates and it is in such proceedings, and not successor certificates cases, that any question as to the reasonableness of permanently certificated sales is to be resolved.

The principal effect of holding that prices may be reviewed on the occasion of every transfer would be to inhibit the transfers, thus interfering with the normal functioning of the industry. This interference would arise without assuring any commensurate benefits to consumers. The rolling back of these few prices before us now would surely have minimal effect on the ultimate consumer's price. Further, the remainder of the producers who received certificates at above our subsequently stated guideline level would not be inclined to transfer their properties knowing that any prospective vendee would have to base his offering price on rates below those the vendor was receiving. Thus, a stalemate would be reached; we would have on our books the requirement of reopening the price issue in succession applications where previous certificates were granted at above the guideline level, but because holders of such certificates would be disinclined to transfer their property, such applications, the vehicle by which the dissenting opinion would have us satisfy our statutory duty, would seldom be before us.

Disposing of the case as we do, we reach no conclusion as to the validity of the *res judicata* and collateral estoppel arguments.

A question that remains under the Stipulation, adverted to briefly hereinabove, is whether the certificates issued to Applicants in the remaining ten dockets should authorize the sales at the prices listed in Column (9) or (8) of Exhibit No. 1. The prices in Column (9) are the last rates applicable to the sales not subject to refund, that is, either the initial price of the predecessor, or a rate which was increased but is no longer subject to refund or otherwise the subject of a Section 4 rate proceeding. The prices in Column

---

[Footnote continued from page 1162.]
which the successor applied for in the certification proceedings; area ceiling of 17¢ for increased rates). In each instance the Commission disallowed proposed increases in the certification proceedings and stated that applications must be made under Section 4(a). Thus it follows that if consistent Commission policy has been to disallow clearly justified rate increases in certification proceedings, that same policy precludes us from ordering rate decreases in certification proceedings.

(8) are the predecessors' initial prices. Staff and Applicants take the stand that the sales should be certificated at the Column (9) rates, and we agree. This position is consistent with the conclusion reached above, the Applicants should be placed in the same positions occupied by their predecessors, and is, moreover, supported by many of the same considerations that support our above conclusion.

A subsidiary issue can be disposed of briefly. Intervenors express concern that a sale proposed by one of the Applicants, U.S. Oil of Louisiana, Inc. (U.S. Oil), in Docket No. CI61–173, may have been consolidated with this proceeding by our order issued March 14, 1963, in the *Union Texas* Petroleum proceeding. They say that some of the gas for this sale is from a so-called CC–9 Reservoir, a property differing from the reservoir underlying the sale certificated for the predecessor, John W. Mecom, and the U.S. Oil's obligation to justify the price for this sale cannot be met by showing that the predecessor was issued a certificate authorizing sales from some other reservoirs. The Interveners' concern, however, is unfounded, for the *U.S. Oil* docket remains consolidated with the *Union Texas Petroleum* proceeding and will be considered there.

The Commission further finds:

(1) Each Applicant in this proceeding is, or upon commencement of the respective sales authorized herein, will be engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and is or will be a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The sales of natural gas herein described, as more fully described in the respective applications and in the record in this proceeding, are being made in interstate commerce, subject to the jurisdiction of the Commission, and such sales by the respective Applicants, together with the construction and operation of any facilities, subject to the jurisdiction of the Commission, necessary therefor, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicants are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission, thereunder, as hereinafter ordered and conditioned.

The Commission orders:

(A) Certificates of public convenience and necessity are hereby issued to the Applicants listed in footnote 3, *supra*, authorizing their proposed sales of natural gas in interstate commerce for resale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission used for the said sales, as hereinabove described and as more fully described in the respective applications and in the Stipulation in this proceeding, upon the terms, and conditions of this order; and such certificates remain subject to the conditions summarized in footnote 3, as more fully set forth in the said Stipulation.

(B) Certificates of public convenience and necessity are hereby issued to Continental Oil Company, Docket Nos. CI62–1504 and CI62–1513; Irwin Miller, Docket No. CI63–179; Magna Oil Corporation, Docket Nos. G–19957 and G–19958; Southeastern Public Service Co., Docket No. CI62–1396; Superior Oil Company, Docket No. CI63–377; and U. S. Oil of Louisiana, Inc., Docket Nos. CI61–173 and CI61–174, authorizing their proposed sales of natural gas in interstate commerce for resale, together with the construction and operation

of any facilities subject to the jurisdiction of the Commission used for the said sales, as hereinbefore described and as more fully described in the respective applications and the record in this proceeding, upon the terms and conditions of this order.

(C) The certificates herein issued are not transferable and shall be effective only so long as Applicants continue the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(D) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Section 154 of the Commission's Rules and Regulations thereunder, requiring the filing of rate schedules applicable to the services herein authorized, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by, or against, the respective Applicants. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objection relating to the operation of any price or related provisions in the gas purchase contracts herein involved.

Commissioner Black *dissenting, joined* by Commissioner Ross.

BLACK, *Commissioner, dissenting:*

A number of non-transferable certificates were issued to applicant's predecessors in interest prior to the time that this Commission had established guideline ceiling prices for sales by independent producers. The Commission's subsequent determination of such guideline price levels lower than the prices charged by the holders of these certificates necessarily means that we now think those prices are too high. Where it is possible to bring such prices into line, it is our responsibility to do so.

The pending area proceedings for Southern Louisiana will not result in new price levels for several years and will not operate retroactively even then. The public interest is not fully protected in the interim. We presently have the opportunity to exercise our jurisdiction to accomplish this protection in the issuance of the requested certificates. But the majority would give the Commission's blessing to the perpetuation of these out-of-line prices on the theory that justice and equity require it. Justice and equity to whom? Surely not to those pipelines, distributors and consumers who are required to pay excessive prices.

The issue here is presented to the Commission in the context of applications for *new certificates* by *new parties* pursuant to Section 7 of the Natural Gas Act. I agree fully with the majority that we are not, however, concerned with *new sales*. Therefore, the calamitous results forseen by my colleagues relating to loss of refund obligations need not concern us. If, through the process of issuing certificates to the new operators there arises any uncertainty concerning preservation of existing refund obligations, appropriate conditions can be imposed pursuant to Section 7.

Section 7(e) provides in pertinent part that "The Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require." *Price* is certainly one of the essential elements in a determination of the public convenience and necessity (*CATCO*). The majority would have us shy away from any consideration of price, however. They tell us that this "is not the proper place to try the price

issue when the predecessors have certificates no longer subject to review." I might agree if the Commission, in issuing the original certificates, had properly discharged its responsibilities to the public by evaluating price at that time. We are not, in any event, reviewing here the predecessors' certificates. We are acting on certificate applications by new parties and Section 7 imposes upon us the obligation to examine the requirements of public convenience and necessity before awarding the certificates. Section 7(e) provides that a certificate will issue if the sale "is or will be required by the present or future public convenience and necessity." This must mean from the time of issuance forward, and contemplates an evaluation of the elements which bear upon the public convenience and necessity as we presently find them. It does not, in my view, permit us to sanctify a price determined in the past without proper Commission evaluation, but which we have subsequently decided (by virtue of our published guideline prices) is not in the public interest.

The majority expresses concern that this is not "the proper place" to try the price issue, but neglects to tell us what the proper place is. Presumably, they would say that Section 5(a) affords the Commission the necessary machinery to bring prices down that are too high. I need not examine here the delays attendant upon this cumbersome and expensive administrative process nor the legal implications of individual Section 5(a) proceedings affecting producers or prices already involved in the Southern Louisiana area case, since it is clear that the majority has no intention of pursuing these out-of-line prices separately in any event.

It is argued that to examine into the matter of price would be against public interest "because it would mean that permanent certificates at approved prices could not be relied upon in the future." Even if it were to be conceded that such "reliance" is more important than the discharge of our obligations to the public respecting the price of gas, this position is untenable because these certificates were expressly made non-transferable. The parties should thus necessarily have been on notice that a successor's rights and obligations would be subjected to review. The majority asserts that a Section 7 proceeding, if it involves a successor's interest, is "intended" to focus only on the qualifications of the applicant himself, and that price—apparently no matter how outrageously excessive it might be—is sacrosanct. I find nothing in the Act, its legislative history, or its interpretation by the courts which would support the view that we should eliminate this most important element in our determination of the public convenience and necessity, simply because the applicant for a certificate under Section 7 happens to be a "successor."

The majority also seeks to support its decision with administrative precedent. The cases cited, however, are not in point since they stand for the simple proposition that the price of gas should not be increased other than in a Section 4(a) proceeding. This is proper; and the applicants now before us have the protection of Section 4 of the Act if they think the price at which we certificate these sales is too low. The purpose of examining price in a certificate case is to protect the public against rates that are too high. This protection is, of course, not furthered by *raising* prices, even if they happen to be below the applicable ceilings, as was sought to be done in the cases cited. Therefore, I find nothing inconsistent between past Commission practice and the position advanced here. I do not, however, concur in the "policy of placing a successor in interest in the same rate status as the predecessor," as stated in at least one cited Commission decisions. In my opinion, price should be an issue in any successor proceeding involving sales of gas initially certificated prior to the time this Commission properly evaluated price in its Section 7 proceedings. The profound economic effect upon the industry which the majority predicts

would flow from such an approach, is totally unsupported by the record. This kind of conjecture should not be the basis for the Commission's order.

The implications of the majority opinion are that successor applications under Section 7 will be granted automatically; that if mistakes were made by the Commission in issuing certificates to applicant's predecessors, these mistakes will not be corrected. This approach is not consistent with our responsibility under the Natural Gas Act, and I must respectfully dissent.

Commissioner Ross *joins* in this statement.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

HUNT OIL COMPANY, DOCKET NOS. G–16422, G–18668, AND G–20009

ORDER DENYING MOTION TO TERMINATE PROCEEDINGS

(Issued October 31, 1963)

On September 3, 1963, Hunt Oil Company (Hunt) filed a motion requesting that the above-designated rate suspension proceedings be terminated. All of these proceedings involve jurisdictional sales of natural gas to El Paso Natural Gas Company (El Paso) in the Permian Basin area.

On September 8, 1958, Hunt tendered for filing a notice of change in its FPC Gas Rate Schedule No. 34.[1] On September 30, 1958, El Paso filed a protest to the notice of change contending, *inter alia*, that the alleged triggering rate was not justified. The proposed favored-nation increase from 8.0¢ per Mcf to 10.1699¢ per Mcf at 14.65 psia, plus tax reimbursement, designated as supplement No. 5 to its FPC Gas Rate Schedule No. 34, was suspended and later became effective subject to refund in Docket No. G–16422.

On September 4, 1956, Hunt and El Paso entered into a contract, designated as Hunt's FPC Gas Rate Schedule No. 36, under which Hunt would make sales of gas to El Paso at a minimum pressure of 900 psia, at the wellhead, in the Amacker-Tippett Field, Texas. The initial rate was 10.6417¢ per Mcf, at 14.65 psia, including tax reimbursement. Subsequent filings increased the rate to 13.52822¢ per Mcf and then to 15.70925¢ per Mcf, including tax reimbursement. Thereafter, Hunt and El Paso agreed that low pressure gas from the V. T. Amacker B. No. 1–67 well, which was incapable of entering El Paso's high pressure line, would be sold under the pricing terms of another contract, the casing-head gas contract dated September 4, 1956, designated as Hunt's FPC Gas Rate Schedule No. 34. On October 5, 1959, Hunt tendered for filing a notice of change in rate, decreasing the rate for the low pressure gas from 15.70925¢ per Mcf to 10.3072¢ per Mcf at 14.65 psia, including tax reimbursement. By letter of October 15, 1959, El Paso protested this filing, stating that the contract rate for low pressure gas was 8.0¢ per Mcf and that there was no agreement between the parties to support the higher rate proposed by Hunt. The proposed decreased rate, designated as Supplement Nos. 4, 5, and 6 to Hunt's FPC Gas Rate Schedule No. 36, was suspended and later became effective subject to refund in Docket No. G–20009.

On May 5, 1959, Hunt tendered for filing a notice of change in its FPC Gas Rate Schedule No. 48. The proposed increased rate, from 7.0942¢ per Mcf to 10.3072¢ per Mcf, at 14.65 psia, including tax reimbursement, designated as Supplement No. 1 to Hunt's FPC Gas Rate Schedule No. 48, was suspended and became effective subject to refund in Docket No. G–18668.

[1] This proceeding also relates to other sales not involved in Hunt's motion.

All of the aforementioned rate changes are favored-nation changes allegedly triggered by a spiral escalation increase by Phillips Petroleum Company (Phillips) in effect subject to refund in Docket No. G–14115, which, in turn, is based on El Paso's increased rate suspended in Docket No. G–12948. A hearing was held in the above-designated Hunt proceedings, and an examiner's decision was issued on October 2, 1961. In Opinion No. 365,[2] the Commission remanded the proceedings in Docket Nos. G–16422, G–18668, and G–20009, *inter alia*, to the examiner for further hearings. On July 16, 1963, the Commission issued an order approving a settlement of the proceedings involved in Opinion No. 365, but excluded the proceedings in Docket Nos. G–16422, G–18668, and G–20009, because the sales involved there are made in the Permian Basin area.

In support of its motion, Hunt states that the rates involved in these proceedings are below the area price level of 11.0¢ per Mcf at 14.65 psia for increased rates, announced in the Commission's Statement of General Policy No. 61–1.[3]

The favored-nation rates in these proceedings were suspended because they were allegedly triggered by Phillips' spiral escalation increase suspended in Docket No. G–14115. The proceeding in Docket No. G–14115 has been consolidated with the Permian Basin area rate proceeding, Docket No. AR61–1, *et al.*, which is not yet concluded. The validity of Hunt's rates may depend upon the disposition of Phillips' increased rate. It would therefore not be appropriate to terminate the above-designated proceedings prior to a determination of the validity of Phillips' increased rate in Docket No. G–14115.

Further, the rates set forth in the Statement of General Policy are applicable to pipeline quality gas. The gas sold by Hunt in the above-designated proceedings may be non-pipeline quality gas because it is casinghead gas sold at the wellhead, or low-pressure gas well gas. In effect, then, the rates involved in these proceedings may exceed the applicable area price level. We do not so decide here, but conclude that determination of these matters should await the outcome of the proceeding in Docket No. AR61–1.

The Commission finds:

For the reasons set forth above, Hunt's motion to terminate the proceedings in Docket Nos. G–16422, G–18668, and G–20009 should be denied.

The Commission orders:

The Hunt's motion to terminate the proceedings in Docket Nos. G–16422, G–18668, and G–20009, is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

PACIFIC GAS & ELECTRIC COMPANY, PROJECT NOS. 137, 1354, 2105 AND 2130

ORDER DETERMINING ACTUAL LEGITIMATE ORIGINAL PROJECT COSTS AND NET CHANGES THEREIN; AND PRESCRIBING ACCOUNTING THEREFOR

(Issued October 31, 1963)

The Commission has here under consideration the matters of the determination of the actual legitimate original cost as of certain dates and net changes

[2] Opinion No. 365, Hunt Oil Company, *et al.*, Docket No. G–9065, *et al.*, issued October 17, 1962, 28 FPC 623.

[3] Issued September 28, 1960, 24 FPC 818 (18 CFR, Chapter I, Part 2, Section 2.56).

therein for subsequent periods of Project Nos. 137, 2105 and 2103 and the net change in actual legitimate original cost of Project No. 1354 for the period from May 2, 1939 through December 31, 1954. These projects have been in operation for varying periods of time; and Pacific Gas and Electric Company, Licensee of the four projects,[1] has filed from time to time statements, pursuant to Sections 4.20 and 4.1 of the Commission's Regulations under the Federal Power Act, claiming various actual legitimate original project costs for the projects as of certain dates and net changes in project costs during subsequent periods.

On September 12, 1955, Licensee filed its initial statement claiming as of July 31, 1954, an actual legitimate original cost of $10,349,535.77 for the Bear River Unit of Project No. 137. It also filed statements of claimed and recorded project cost changes for the Salt Springs and Tiger Creek plants of that project, including related common plants, for the period from January 1, 1935 through December 31, 1956, and for the Electra and West Point plants, including related common plants, for the period from July 1, 1950 through December 31, 1956.[2] The aforesaid statements showed a total claimed and recorded net increase in project cost of the four above-mentioned developments, including related common plants, through December 31, 1956, of $1,530,763.35, consisting of gross project additions of $1,753,744.70, retirements of $222,412.15, and contributions in aid of construction in the credit amount of $569.20, and resulting in a claimed total actual legitimate original cost of the entire project as of December 31, 1956, of $55,179,287.33.

At various times Licensee has filed statements claiming for Project No. 1354 for the period from May 2, 1939, through December 31, 1954, project additions and retirements resulting in a $487,989.58 net increase or change in project cost over the previously determined amount of actual legitimate original cost of the project, $4,498,066.94 as of May 1, 1939.[3] The amount of $487,989.58 is comprised of gross additions of $729,697.52 and retirements of $241,707.94, resulting in a claimed total actual legitimate original cost of the project as of December 31, 1954, of $4,986,056.52.

In its initial statement for Project No. 2105 Licensee claimed an actual legitimate original project cost as of November 1, 1954, of $21,676,441, consisting of a claimed and recorded cost of $5,497,656.89 for the Lake Almanor Dam and Reservoir Development and of $16,178,784.11 for the Caribou No. 1 Development. In addition, Licensee recorded upon its books of account project additions and retirements resulting in a net increase of $179,116.42 in project cost for the period from November 2, 1954 through December 31, 1956. The claimed net increase of $179,116.42 in project cost results from project gross additions of $297,981.49 and retirements of $118,865.07.

In its initial statement for Project No. 2130, Licensee claimed an actual legitimate original cost as of January 1, 1955, of $10,438,483.12, consisting of

[1] All of the projects are located in the State of California, and licenses for Project Nos. 2105 and 2130 were issued pursuant to Section 4(e) of the Federal Power Act, those for Project Nos. 137 and 1354, under Sections 4(d) of the Federal Water Power Act and 23(a) of the Federal Power Act, respectively.

[2] The Commission, by orders issued October 11, 1946 (5 FPC 824) and April 2, 1958 (19 FPC 448), respectively, determined the actual legitimate original cost of the Salt Springs and Tiger Creek developments as of December 31, 1934, to be $18,639,525.18, and that of the new Electra and West Point developments as of June 30, 1950, to be $24,659,463.03.

[3] See Commission order issued February 27, 1950 (9 FPC 542).

claimed and recorded costs of $6,078,529.54 for the Stanislaus plant, $1,082,-024.26 for the Spring Gap plant, $1,375,508.23 for related Common plant, and $1,902,421.09 for the Melones plant. In addition, Licensee recorded upon its books of account project additions and retirements resulting in a net increase of $396,075.22 in project cost for the period from January 2, 1955, through December 31, 1957. The claimed net increase of $396,075.22 in project cost results from total project gross additions of $450,261.42 and retirements of $54,186.20, exclusive of credit amount of $146,538.60 claimed as part of initial project cost as of January 1, 1955.

The Commission's staff conducted a field examination of the books and records of Licensee and other data for the purpose of ascertaining the correctness of the foregoing claimed and recorded amounts. During and subsequent to such examinations conferences were held at various times between Licensee's representatives and members of the Commission staff. As a result of those conferences agreements, subject to Commission approval, were reached between the staff and representatives of the Licensee, with respect to certain proposed adjustments involving: (1) reclassifications within the various project accounts of amounts totalling $8,063,369.59, all as more specifically shown in the attached Schedule I; (2) eliminations totalling $1,475,-714.50 from the claimed and recorded project costs for Project Nos. 137, 1354, 2105 and 2130 during the varying periods involved; and (3) the accounting dispositions of all amounts involved in the foregoing proposed adjustments.

The net eliminations from claimed and recorded costs to be recorded in order to conform Licensee's books of account to the allowed original costs determined herein consist of the following items:

Project No. 137

Transfer of nonproject items	($14, 436. 88)
Adjust construction power to cost	(13, 816. 85)
Excess taxes during construction	(50, 282. 86)
Excess FPC annual charges	(1, 270. 80)
Excess prorated general overheads	(7, 571. 19)
Removal costs and operating expenses improperly capitalized	(99, 635. 06)
Excess interest during construction charges	(97, 005. 01)
Overstated, understated and unrecorded retirements	13, 379. 86
Value of power produced during construction	(9, 951. 51)
Project changes not claimed	7, 533. 29
Overcredits to electra plant	23, 444. 36
Sub total	(249, 612. 65)
To reconcile book cost to claimed cost	7, 371. 37
Total	(242, 241. 28)

Project No. 1354—San Joaquin No. 3 Plant

Nonproject station equipment	(94, 752. 55)
Indirect costs related to maintenance expense	(2, 799. 94)
Total	(97, 552. 49)

Project No. 2105—Claimed Initial Project Cost as of November 1, 1954

Improper transfer of land	($16, 177. 27)
Taxes during construction	(14, 392. 19)
Removal cost and operating expenses improperly capitalized	(10, 415. 13)
Unrecorded retirements	(208, 232. 26)
Adjusting construction power to cost	(48, 354. 70)
Preliminary surveys for future construction	(15, 212. 13)
Costs applicable to Project No. 1962	(25, 053. 36)
Interest during construction	(242, 693. 19)
Sub total	(580, 530. 23)
To reconcile book cost to claimed cost	(194, 200. 63)
Total	(774, 730. 86)

Project No. 2130—Claimed Initial Project Cost as of January 1, 1955

Nonproject items	(2, 332. 31)
Net understated retirements	(25, 249. 62)
Indirect and overhead costs capitalized in error	(6, 280. 41)
Unsupported and improper charges	(8, 591. 31)
Taxes during construction	(1, 465. 05)
Nonproject prorated system overheads	(54, 822. 26)
Interest during construction	(49, 750. 04)
Total	(148, 491. 00)
Project cost changes January 2, 1955 through December 31, 1957:	
Nonproject items	(194, 857. 86)
Sub total	(343, 348. 86)
To reconcile book cost to claimed cost	(17, 841. 01)
Total	(361, 189. 87)

The proposed accounting dispositions of the amounts involved in the foregoing adustments to bring Licensee's recorded project costs and changes for the four projects into agreement with the recommended project costs and changes for the projects as of the various dates on which project costs are determined herein are shown by the composite journal entries summarized in the attached Schedule II for each of the four projects. The total composite journal entry for all of the projects is set forth in column 6 of that schedule.

Staff analysis of Licensee's provisions for project depreciation applicable to inservice project properties of the projects herein considered have not been completed. The staff, therefore, recommends that the Commission defer for future consideration and determination the amounts of accrued depreciation applicable to inservice project properties of these projects as of the dates on which the actual legitimate costs of the respective project properties are determined herein other than initial costs.

By letters dated July 25, 1961, March 21, 1962, August 17, 1962, and June 27, 1962, respectively, Licensee confirmed its agreement with respect to the proposed adjustments, accounting dispositions, and resulting project costs of Project Nos. 137, 1354, 2105, and 2130.

The California Public Utilities Commission was advised by letters of this Commission dated November 5, 1962, July 3, 1962, August 24, 1962, and July 20, 1962, of the proposed adjustments, accounting dispositions, and resulting project costs for Project Nos. 137, 1354, 2105 and 2130, respectively. By letters dated November 20, 1962, July 5, 1962, September 4, 1962 and July 26, 1962, that Commission indicated that it had no objection to the foregoing.

The Commission finds:

(1) Licensee, by its agreement to the proposed adjustments, including the accounting dispositions, and resulting project costs of Project Nos. 137, 1354, 2105, and 2130 by its letters referred to above and the California Public Utilities Commission, by its letters referred to above, have obviated the necessity for notice and opportunity to protest provided in Sections 4.4, 4.5, 4.22 and 4.23 of the Commission's Regulations under the Federal Power Act.

(2) The foregoing adjustments, including the accounting dispositions, with respect to Project Nos. 137, 1354, 2105 and 2130 are reasonable and appropriate for the purposes of the Federal Power Act and, therefore, should be approved and directed as hereinafter provided.

(3) It is necessary and appropriate for the purposes of the Federal Power Act that determination of the accrued depreciation applicable to inservice project properties of Project Nos. 137, 1354, 2105 and 2130 be reserved for future Commission determination and decision as hereinafter ordered.

(4) The actual legitimate original cost of all developments of Project No. 137, as of December 31, 1956, is $54,929,674.68, classified by developments and by primary plant accounts during varying periods as shown in the attached Schedule III.

(5) The net increase or change in the actual legitimate original cost of Project No. 1354 for the period from May 2, 1939, through December 31, 1954, is $390,437.09, consisting of project gross additions of $606,246.67 and gross retirements of $215,809.58; and the resulting total actual legitimate original cost of Project No. 1354 as of December 31, 1954, is $4,888,504.03, classified by primary plant accounts as shown in the attached Schedule IV.

(6) The actual legitimate original cost of Licensee's Project No. 2105 as of November 1, 1954, is $21,095,910.77; the net increase or change in project cost for the period from November 2, 1954, through December 31, 1956, is $179,116.42; and the resulting total actual legitimate original cost of Project No. 2105 as of December 31, 1956, is $21,275,027.19, classified by primary plant accounts as shown in the attached Schedule V.

(7) The actual legitimate original cost of Licensee's Project No. 2130 as of January 1, 1955, is $10,289,992.12; the net increase or change in project cost for the period from January 2, 1955, through December 31, 1957, is $201,217.36; and the resulting total actual legitimate original cost of Project No. 2130 as of December 31, 1957, is $10,491,209.48, classified by primary plant accounts as shown in the attached Schedule VI.

The Commission orders:

(A) The provisions of Sections 4.4, 4.5, 4.22 and 4.23 of the Commission's Regulations under the Federal Power Act are hereby waived for the purposes of this order.

(B) The foregoing adustments, including the accounting dispositions shown in Schedule II, with respect to Project Nos. 137, 1354, 2105 and 2130 are hereby approved and directed to be made by Licensee.

(C) Licensee, to the extent that it has not already done so, shall establish and maintain control and detailed plant accounts for Project No. 137 showing

the debit balance of $10,169,618.96 as the actual legitimate original cost of the Bear River Unit as of July 31, 1954; the debit amount of $1,461,067.51 as the net increase or change in the cost of the entire project for the period from January 1, 1935, through December 31, 1956; and the total debit balance of $54,929,674.68 as the actual legitimate original cost of Project No. 137 as of December 31, 1956; all as more specifically shown in the attached Schedule III, classified by developments and primary plant accounts of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees effective prior to January 1, 1961.

(D) Licensee, to the extent that it has not already done so, shall establish and maintain control and detailed plant accounts for Project No. 1354 showing the debit amount of $390,437.09 as the net increase or change in project cost during the period from May 2, 1939, through December 31, 1954, and the total debit balance of $4,888,504.03 as of December 31, 1954; all as more specifically shown in the attached Schedule IV classified by primary plant accounts of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees effective prior to January 1, 1961.

(E) Licensee, to the extent that it has not already done so, shall establish and maintain control and detailed plant accounts for Project No. 2105 showing the debit balance of $21,095,910.77 as the actual legitimate original cost of the project as of November 1, 1954; the debit amount of $179,116.42 as the net increase or change in the cost of the project for the period from November 2, 1954, through December 31, 1956; and the total debit balance of $21,275,027.19 as the actual legitimate original cost of Project No. 2105 as of December 31, 1956; all as more specifically shown in the attached Schedule V classified by primary plant accounts of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees effective prior to January 1, 1961.

(F) Licensee, to the extent that it has not already done so, shall establish and maintain control and detailed plant accounts for Project No. 2130 showing the debit balance of $10,289,992.12 as the actual legitimate original cost of the project as of January 1, 1955; the debit amount of $201,217.36 as the net increase or change in the cost of the project for the period from January 2, 1955, through December 31, 1957; and the total debit balance of $10,491,209.48 as the actual legitimate original cost of Project No. 2130 as of December 31, 1957; all as more specifically shown in the attached Schedule VI classified by primary plant accounts of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees effective prior to January 1, 1961.

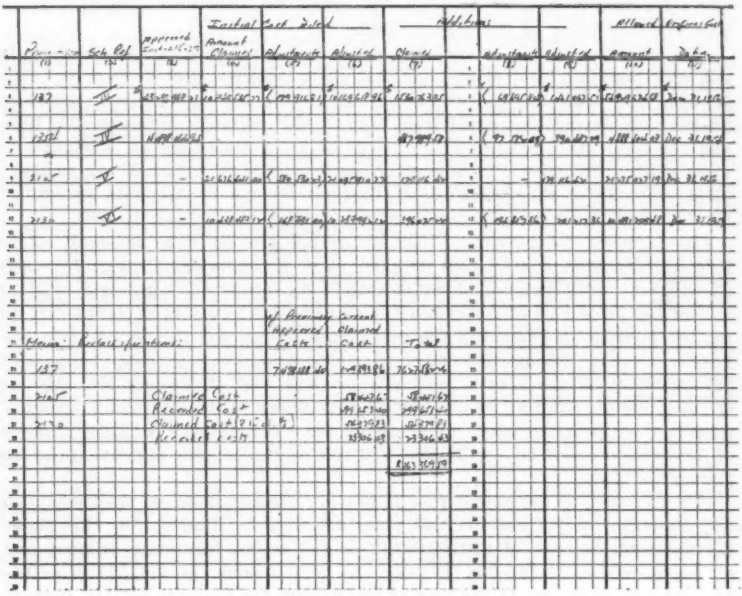
(G) The matter of Commission determination of the amount of accrued depreciation applicable to inservice project properties of Project Nos. 137, 1354, 2105 and 2130 is hereby reserved for future Commission consideration and decision.

(H) Licensee shall file with the Commission within 90 days from the issuance of this order the following documents: Three copies of FPC Form No. 7 as of December 31, 1956, for the Bear River Unit of Project No. 137 and certified copies of its journal entries for the entire project showing compliance with this order; and FPC Forms Nos. 7 for Project Nos. 2105 and 2130, together with three copies of its journal entries for those two projects and for Project No. 1354 showing compliance herewith. Two conformed copies of each of these documents are to be sent to the Regional Accountant, Federal Power Commission, San Francisco, California.

SCHEDULE I

PACIFIC GAS & ELECTRIC COMPANY, LICENSEE PROJECTS NO. 137, 1354, 2105 AND 2130

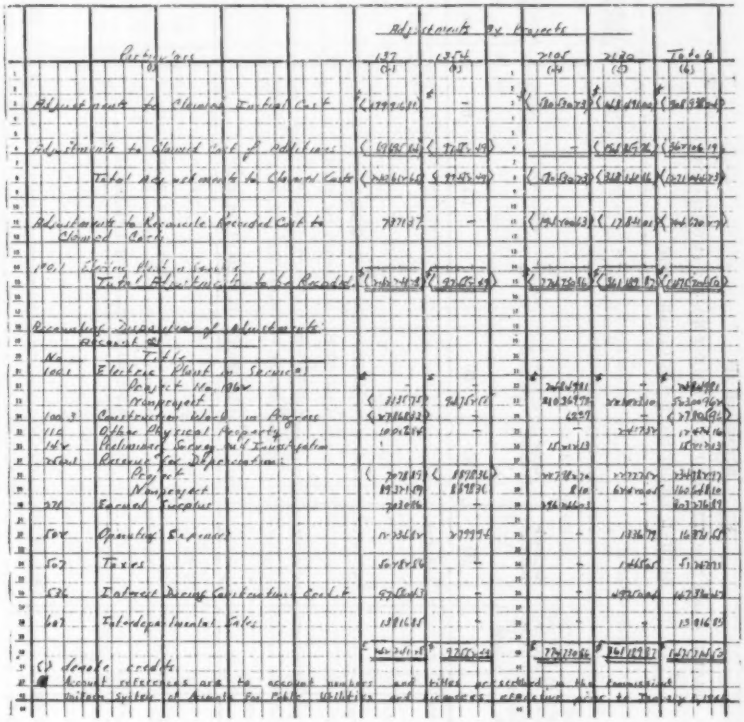
ACTUAL LEGITIMATE ORIGINAL COST SUMMARY



SCHEDULE II

PACIFIC GAS & ELECTRIC COMPANY, LICENSEE PROJECTS NO. 137, 1354, 2105 AND 2130

SUMMARY, BY PROJECTS, OF ADJUSTMENTS TO RECORDED AND CLAIMED PROJECT COSTS AND ACCOUNTING DISPOSITION TO BE RECORDED



SCHEDULE III

PACIFIC GAS & ELECTRIC COMPANY, PROJECT NO. 137 (MOKELUMNE)

ACTUAL LEGITIMATE ORIGINAL COST

Account[1]		Approved costs				Initial cost of the Bear River unit as of July 31, 1954			Charges to the project for the period from Jan. 1, 1935 to Dec. 31, 1956			Allowance as of Dec. 31, 1956
No.	Title	As of Dec. 31, 1934 per Commission Order issued Oct. 8, 1946	As of June 30, 1950 per Commission Order issued Apr. 2, 1958	Reclassifications	As reclassified	As claimed	Adjustments	Allowance	As claimed	Adjustments	Allowance	
		(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
	BEAR RIVER UNIT											
	Hydraulic Production Plant											
322	Reservoirs, dams, and waterways					$3,361,912.52	($32,900.24)	$3,329,012.28				$3,329,012.28
323	Water wheels, turbines and generators					1,155,475.56	(9,379.40)	1,146,096.16				1,146,096.16
324	Accessory electric equipment					158,210.90	2,953.40	161,164.30				161,164.30
326	Roads, railroads, and bridges					292,606.74	(16,644.77)	275,961.97				275,961.97
	Total hydraulic production plant					4,968,205.72	(55,971.01)	4,912,234.71				4,912,234.71
	General Plant											
378	Communication equipment					4,648.75	110.29	4,759.04				4,759.04
	Total Bear River unit					4,972,854.47	(55,860.72)	4,916,993.75				4,916,993.75
	SALT SPRINGS PLANT											
	Hydraulic Production Plant											
320	Land and land rights	$761,203.46		($761,203.46)					$15,220.12	($15,220.12)		
321	Structures and improvements	310,240.53			$310,240.53				52,625.52	(432.70)	$52,192.82	362,433.35

322	Reservoirs, dams, and waterways	6,608,193.80		(5,775,355.70)	832,838.10				13,097.38	(8,303.79)	4,793.59	837,631.69
323	Water wheels, turbines, and generators	278,312.26			278,312.26				1,950.93	(7.64)	1,943.29	280,255.55
324	Accessory electric equipment	117,791.91			117,791.91				631.94	(27.25)	604.69	118,396.60
325	Miscellaneous power plant equipment	9,784.13			9,784.13				2,434.91	(30.49)	2,404.42	12,188.55
326	Roads, railroads, and bridges	306,716.67		(306,716.67)					(47,342.77)	47,342.77		
	Total hydraulic production plant	8,392,242.76		(6,843,275.83)	1,548,966.93				38,618.03	23,320.78	61,938.81	1,610,905.74
	Transmission Plant											
340	Land and land rights	35,364.49			35,364.49							35,364.49
341	Clearing land and rights-of-way	62,156.23			62,156.23				6.88		6.88	62,163.11
343	Station equipment	176,759.60			176,759.60				38,078.28	(170.65)	37,907.63	214,667.23
344	Towers and fixtures	147,120.82			147,120.82				19.46		19.46	147,140.28
346	Overhead conductors and devices	60,532.51			60,532.51				(1.19)	(20.77)	(21.96)	60,510.55
349	Roads and trails	4,921.61			4,921.61				.57		.57	4,922.18
	Total transmission plant	486,855.26			486,855.26				38,104.00	(191.42)	37,912.58	524,767.84
	Total Salt Springs plant	8,879,098.02		(6,843,275.83)	2,035,822.19				76,722.03	23,129.36	99,851.39	2,135,673.58
	TIGER CREEK PLANT											
	Hydraulic Production Plant											
320	Land and land rights	19,283.07		(13,261.92)	6,021.15				264.89	(264.89)		6,021.15
321	Structures and improvements	396,127.45			396,127.45				22,058.81	343.59	22,402.40	418,529.85
322	Reservoirs, dams, and waterways	7,035,425.94		(21,975.91)	7,013,450.03				496,823.27	3,973.77	500,797.04	7,514,247.07
323	Water wheels, turbines, and generators	798,641.15			798,641.15				2,649.67	(729.36)	1,920.31	800,561.46
324	Accessory electric equipment	163,353.55			165,353.55				53,315.02	(7,458.37)	45,856.65	211,210.20
325	Miscellaneous power plant equipment	31,018.08			31,018.08				57,522.84	1,853.94	59,376.78	90,394.86
326	Roads, railroads, and bridges	84,366.93		(84,366.93)					14,953.09	(14,953.09)		
	Total hydraulic production plant	8,530,216.17		(119,604.76)	8,410,611.41				647,587.59	(17,234.41)	630,353.18	9,040,964.59

See footnotes at end of table.

SCHEDULE III—Continued

No.	Account[1]	Approved costs				Initial cost of the Bear River unit as of July 31, 1954			Charges to the project for the period from Jan. 1, 1935 to Dec. 31, 1956			Allowance as of Dec. 31, 1956
		As of Dec. 31, 1934 per Commission Order issued Oct. 8, 1946 (1)	As of June 30, 1950 per Commission Order issued Apr. 2, 1958 (2)	Reclassifications (3)	As reclassified (4)	As claimed (5)	Adjustments (6)	Allowance (7)	As claimed (8)	Adjustments (9)	Allowance (10)	(11)
	Transmission Plant											
340	Land and land rights	$37,452.92		($37,452.92)								
341	Clearing land and rights-of-way	47,713.65		(47,713.65)					$5.28	($5.28)		
343	Station equipment	647,828.89			$647,828.89				66,323.04	19,417.69	$85,740.73	$733,569.62
344	Towers and fixtures	237,250.67		(237,250.67)					(29.64)	29.64		
345	Poles and fixtures											
346	Overhead conductors and devices	155,870.64		(155,870.64)					286.53	(286.53)		
349	Roads and trails	4,026.78		(4,026.78)					.46	(.46)		
	Total transmission plant	1,130,143.55		(482,314.66)	647,828.89				66,585.67	19,155.06	85,740.73	733,569.62
	General Plant											
370	Land and land rights	28,576.72			28,576.72				78.31		78.31	28,655.03
378	Communication equipment	71,490.72			71,490.72				56,131.74	(1,874.62)	54,257.12	125,747.84
	Total general plant	100,067.44			100,067.44				56,210.05	(1,874.62)	54,335.43	154,402.87
	Total Tiger Creek plant	9,760,427.16		(601,919.42)	9,158,507.74				770,383.31	46.03	770,429.34	9,928,937.08
	ELECTRA PLANT											
	Hydraulic Production Plant											
320	Land and land rights		$218,021.79		218,021.79							218,021.79
321	Structures and improvements		997,181.69		997,181.69				(17,512.53)	22,590.82	5,078.29	1,002,259.98
322	Reservoirs, dams, and waterways		14,085,433.13		14,085,433.13				154,463.50	(89,789.16)	64,674.34	14,150,107.47
323	Water wheels, turbines,		1,897,680.49		1,897,680.49				789.96	10,760.68	11,500.64	1,909,181.13

323	Water wheels, turbines, and generators		1,897,680.49		1,897,680.49				739.96	10,760.68	11,500.64	1,909,181.13
324	Accessory electric equipment		644,689.40		644,689.40				6,524.34	3,235.13	9,759.47	654,448.87
325	Miscellaneous power plant equipment		35,112.56		35,112.56				2,363.48	(5,560.14)	(3,196.66)	31,915.90
326	Roads, railroads, and bridges		171,203.37		171,203.37				3,445.04	139.05	3,584.09	174,787.46
	Total hydraulic production plant		18,049,322.43		18,049,322.43				150,023.79	(58,623.62)	91,400.17	18,140,722.60
	Transmission Plant											
343	Station equipment		777,421.49		777,421.49				7,185.40	(6,223.30)	962.10	778,383.59
345	Poles and fixtures		9,423.83		9,423.83					(5,573.89)	(5,573.89)	3,849.94
346	Overhead conductors and devices		3,742.76		3,742.76					1,558.85	1,558.85	5,301.61
	Total transmission plant		790,588.08		790,588.08				7,185.40	(10,238.34)	(3,052.94)	787,535.14
	General Plant											
371	Structures and improvements								425.50		425.50	425.50
378	Communication equipment		59,201.71		59,201.71				3,046.90	241.82	3,288.72	62,490.43
	Total general plant		59,201.71		59,201.71				3,472.40	241.82	3,714.22	62,915.93
	Total Electra plant		18,899,112.22		18,899,112.22				160,681.59	(68,620.14)	92,061.45	18,991,173.67
	WEST POINT PLANT											
	Hydraulic Production Plant											
320	Land and land rights		91,484.43		91,484.43							91,484.43
321	Structures and improvements		443,788.63		443,788.63				(5,223.18)		(5,223.18)	438,565.45
322	Reservoirs, dams, and waterways		3,257,614.79		3,257,614.79				165.08	1,680.00	1,845.08	3,259,459.87
323	Water wheels, turbines, and generators		757,256.79		757,256.79							757,256.79
324	Accessory electric equipment		171,045.31		171,045.31				893.15	(.92)	892.23	171,937.54
325	Miscellaneous power plant equipment		6,963.22		6,963.22				465.44		465.44	7,428.66
326	Roads, railroads, and bridges		87,456.84	(52,993.15)	34,463.69				4,216.19	(4,216.19)		34,463.69
	Total hydraulic production plant		4,815,610.01	(52,993.15)	4,762,616.86				516.68	(2,537.11)	(2,020.43)	4,760,596.43

See footnotes at end of table.

SCHEDULE III—Continued

No.	Account [1] Title	Approved costs: As of Dec. 31, 1934 per Commission Order issued Oct. 8, 1946 (1)	Approved costs: As of June 30, 1950 per Commission Order issued Apr. 2, 1958 (2)	Reclassifications (3)	As reclassified (4)	Initial cost of the Bear River unit: As claimed (5)	Adjustments (6)	Allowance (7)	Charges to the project for the period: As claimed (8)	Adjustments (9)	Allowance (10)	Allowance as of Dec. 31, 1956 (11)
	Transmission Plant											
340	Land and land rights		$9,710.28		$9,710.28				$3.08		$3.08	$9,713.36
341	Clearing land and rights-of-way		31,441.53		31,441.53				4.59		4.59	31,446.12
343	Station equipment		104,466.30		104,466.30							104,466.30
345	Poles and fixtures		47,090.00		47,090.00				184.42	$2,985.81	3,170.23	50,260.23
346	Overhead conductors and devices		41,756.87		41,756.87				2,661.74	106.64	2,768.38	44,525.25
	Total transmission plant		234,464.98		234,464.98				2,853.83	3,092.45	5,946.28	240,411.26
	General Plant											
370	Land and land rights		2,994.76		2,994.76							2,994.76
378	Communication equipment		5,860.80		5,860.80							5,860.80
	Total general plant		8,855.56		8,855.56							8,855.56
	Total West Point plant		5,058,930.55	($52,993.15)	5,005,937.40				3,370.51	555.34	3,925.85	5,009,863.25
	COMMON PLANT											
	Hydraulic Production Plant											
	Bear River Reservoir (Lower)											
320	Land and land rights					$116,996.87	($28,375.07)	$88,621.80				88,621.80
322	Reservoirs, dams, and waterways					5,259,684.43	(95,681.02)	5,164,003.41				5,164,003.41
	Total Bear River Reservoir (lower)					5,376,681.30	(124,056.09)	5,252,625.21				5,252,625.21
	Salt Springs Reservoir											
320	Land and land rights			769,681.20	769,681.20					14,056.25	14,056.25	783,737.45
322	Reservoirs, dams, and			5,775,355.70	5,775,355.70				408,097.34	3,682.20	411,779.54	6,187,135.24

322	Reservoirs, dams, and waterways			5,775,355.70	5,775,355.70				408,097.34	3,682.20	411,779.54	6,187,135.24
	Total Salt Springs Reservoir			6,545,036.90	6,545,036.90				408,097.34	17,738.45	425,835.79	6,970,872.69
	Headwater Storage Reservoirs											
320	Land and land rights		13,945.09		13,945.09							13,945.09
322	Reservoirs, dams, and waterways		687,475.17		687,475.17				110,656.06	(9,829.68)	100,826.38	788,301.55
	Total headwater storage reservoirs		701,420.26		701,420.26				110,656.06	(9,829.68)	100,826.38	802,246.64
325	Miscellaneous powerplant equipment								915.10		915.10	915.10
	Project Roads											
320	Land and land rights			4,784.18	4,784.18					258.24	258.24	5,042.42
326	Roads, railroads, and bridges			466,052.66	466,052.66				506.61	(33,235.18)	(32,728.57)	433,324.09
	Total project roads			470,836.84	470,836.84				506.61	(32,976.94)	(32,470.33)	438,366.51
	Total hydraulic production plant		701,420.26	7,015,873.74	7,717,294.00	5,376,681.30	(124,056.09)	5,252,625.21	520,175.11	(25,068.17)	495,106.94	13,465,026.15
	Transmission Plant											
	Tiger Creek-Electra 220 KV Line											
340	Land and land rights			37,452.92	37,452.92							37,452.92
341	Clearing lands and rights of way			47,713.65	47,713.65					5.28	5.28	47,718.93
344	Towers and fixtures			237,250.67	237,250.67					(30.42)	(30.42)	237,220.25
346	Overhead conductors and devices			155,870.64	155,870.64					286.42	286.42	156,157.06
349	Roads and trails			4,026.78	4,026.78					.46	.46	4,027.24
	Total transmission plant			482,314.66	482,314.66					261.74	261.74	482,576.40
	Total common plant		701,420.26	7,498,188.40	8,199,608.66	5,376,681.30	(124,056.09)	5,252,625.21	520,175.11	(24,806.43)	495,368.68	13,947,602.55
	Total electric plant in service	18,639,525.18	24,659,463.03		43,298,988.21	10,349,535.77	(179,916.81)	10,169,618.96	1,531,332.55	(69,695.84)	1,461,636.71	54,930,243.88
265.2	Contributions in Aid of Construction—Federal (Tiger Creek)								(569.20)		(569.20)	(569.20)
	Total project costs	18,639,525.18	24,659,463.03		43,298,988.21	10,349,535.77	(179,916.81)	10,169,618.96	1,530,763.35	(69,695.84)	1,461,067.51	54,929,674.68

( ) Denotes red figures.

[1] Account references are to account numbers and titles prescribed in the Commission's Uniform System of Accounts effective prior to January 1, 1961.

SCHEDULE IV

PACIFIC GAS & ELECTRIC COMPANY, PROJECT NO. 1354 (CRANE VALLEY)

ACTUAL LEGITIMATE ORIGINAL COST

Account [2] No.	Title	Approved original cost as of May 1, 1939 [1]	Changes from May 2, 1939 through Dec. 31, 1954			Allowed original cost as of Dec. 31, 1954
			As claimed	Adjustments	As recommended	
	A. G. WISHON PLANT					
	Hydraulic production plant					
320	Land and land rights	$1,306.53				$1,306.53
321	Structures and improvements	180,430.44	$51,371.02		$51,371.02	231,801.46
322	Reservoirs, dams, and waterways	850,828.91	74,023.04		74,023.04	924,851.95
323	Water wheels, turbines, and generators	188,445.67	26,838.80		26,838.80	215,284.47
324	Accessory electric equipment	29,581.88	928.04		928.04	30,509.92
325	Miscellaneous power plant equipment	13,915.08	14,630.59		14,630.59	28,545.67
326	Roads, railroads, and bridges	1,457.15	6,809.39		6,809.39	8,266.54
	Total hydraulic production plant	1,265,956.66	174,600.88		174,600.88	1,440,566.54
	Transmission plant					
342	Structures and improvements	1,905.44				1,905.44
343	Station equipment	98,274.28	2,870.01		2,870.01	101,144.29
	Total transmission plant	100,179.72	2,870.01		2,870.01	103,049.73
	General plant					
378	Communication equipment	1,673.44	486.72		486.72	2,160.16
	Total A. G. Wishon Plant	1,367,818.82	177,957.61		177,957.61	1,545,776.43
	SAN JOAQUIN NO. 1-A PLANT					
	Hydraulic production plant					
321	Structures and improvements	22,987.81	7,491.30		7,491.30	30,479.11
322	Reservoirs, dams, and waterways	32,555.22				32,555.22
323	Water wheels, turbines, and generators	39,825.06	(115.27)		(115.27)	39,709.79
324	Accessory electric equipment	6,088.19	14,377.32		14,377.32	20,465.51
325	Miscellaneous power plant equipment	1,171.78	(487.39)		(487.39)	684.48
	Total hydraulic production plant	102,628.15	21,265.96		21,265.96	123,894.11

	General plant					
378	Communication equipment	408.02	716.32		716.32	1,124.34
	Total San Joaquin No. 1-A Plant	103,036.17	21,982.28		21,982.28	125,018.45
	SAN JOAQUIN NO. 2 PLANT					
	Hydraulic production plant					
320	Land and land rights	3,716.20				3,716.20
321	Structures and improvements	32,448.62	9,336.33		9,336.33	41,784.95
322	Reservoirs, dams, and waterways	384,514.88	8,503.73		8,503.73	393,018.61
323	Water wheels, turbines, and generators	51,771.11	930.42		930.42	52,701.53
324	Accessory electric equipment	6,635.10	983.06		983.06	7,618.16
325	Miscellaneous power plant equipment	5,497.20	(317.96)		(317.96)	5,179.24
326	Roads, railroads, and bridges	1,962.64	1,233.97		1,233.97	3,196.61
	Total hydraulic production plant	486,545.75	20,669.55		20,669.55	507,215.30
	Transmission plant					
343	Station equipment	20,005.97				20,005.97
	General plant					
378	Communication equipment	1,120.63	76.37		76.37	1,197.00
	Total San Joaquin No. 2 Plant	507,672.35	20,745.92		20,745.92	528,418.27
	SAN JOAQUIN NO. 3 PLANT					
	Hydraulic production plant					
320	Land and land rights	581.11				581.11
321	Structures and improvements	47,941.04	11,282.21		11,282.21	59,223.25
322	Reservoirs, dams, and waterways	412,328.04	109,740.44	(2,799.94)	106,940.50	519,268.54
323	Water wheels, turbines, and generators	64,891.06	(547.14)		(547.14)	64,343.92
324	Accessory electric equipment	20,028.36	(4,307.21)		(4,307.21)	15,721.15
325	Miscellaneous power plant equipment	1,463.08	2,787.08		2,787.08	4,250.16
326	Roads, railroads, and bridges	1,366.85	66.77		66.77	1,433.62
	Total hydraulic production plant	548,599.54	119,022.15	(2,799.94)	116,222.21	664,821.75
	Transmission plant					
343	Station equipment	34,744.44	30,699.77	(5,519.05)	25,180.72	59,925.16
	Distribution plant					
352	Station equipment		89,233.50	(89,233.50)		
	General plant					
378	Communication equipment	1,639.72	596.30		596.30	2,236.02
	Total San Joaquin No. 3 Plant	584,983.70	239,551.72	(97,552.49)	141,999.23	726,982.93

See footnotes at end of table.

SCHEDULE IV—Continued

Account [2] No.	Account [2] Title	Approved original cost as of May 1, 1939 [1]	Changes from May 2, 1939 through Dec. 31, 1954 As claimed	Adjustments	As recommended	Allowed original cost as of Dec. 31, 1954
	CRANE VALLEY PLANT					
	Hydraulic production plant					
320	Land and land rights	$38,811.72				$38,811.72
321	Structures and improvements	29,967.17	$4,845.57		$4,845.57	34,812.74
322	Reservoirs, dams, and waterways	1,631,845.66	13,705.56		13,705.56	1,645,551.22
323	Water wheels, turbines, and generators	30,014.27	186.28		186.28	30,200.55
324	Accessory electric equipment	2,560.30	1,671.77		1,671.77	4,232.07
325	Miscellaneous power plant equipment	1,515.15	800.30		800.30	2,315.45
326	Roads, railroads, and bridges	781.59	1,032.89		1,032.89	1,814.48
	Total hydraulic production plant	1,735,495.86	22,242.37		22,242.37	1,757,738.23
	Transmission plant					
343	Station equipment	14,601.45	(5,774.81)		(5,774.81)	8,826.64
	General plant					
378	Communication equipment	1,362.41	743.11		743.11	2,105.52
	Total Crane Valley plant	1,751,459.72	17,210.67		17,210.67	1,768,670.39

	COMMON PLANT					
	Transmission plant					
340	Land and land rights	3,989.09	492.01		492.01	4,481.10
341	Clearing lands and rights-of-way	3,703.93				3,703.93
344	Towers and fixtures	71,564.24				71,564.24
345	Poles and fixtures	10,381.46	1,034.38		1,034.38	11,415.84
346	Overhead conductors and devices	74,847.86	(361.97)		(361.97)	74,485.89
349	Roads and trails	445.27				445.27
	Total transmission plant	164,931.85	1,164.42		1,164.42	166,096.27
	General plant					
370	Land and land rights	856.66	1,210.31		1,210.31	2,066.97
378	Communication equipment	17,307.67	8,166.65		8,166.65	25,474.32
	Total general plant	18,164.33	9,376.96		9,376.96	27,541.29
	Total common plant	183,096.18	10,541.38		10,541.38	193,637.56
	Total cost of project	4,498,066.94	487,989.58	($97,552.49)	390,437.09	4,888,504.03

( ) Denotes credit.

[1] See Commission Order issued Feb. 27, 1950 (9 FPC 542).

[2] Account references are to account numbers and titles prescribed in the Commission's Uniform System of Accounts for Public Utilities and Licenses effective prior to Jan. 1, 1961.

SCHEDULE V

LAKE ALMANOR DAM AND RESERVOIR AND CARIBOU NO. 1 DEVELOPMENT, PROJECT NO. 2105

ACTUAL LEGITIMATE ORIGINAL COST

Account [2]		Initial cost as of Nov. 1, 1954						Changes from Nov. 2, 1954 through Dec. 31, 1956			
		As claimed									
No.	Title	Approved cost as of Jan. 1, 1936 [1]	Changes from Jan. 1, 1936 through Nov. 1, 1954	Lake Almanor as of Nov. 1, 1954 [3]	Total	Adjustments	As allowed	As claimed or recorded	Adjustments	As allowed	Allowed original cost as of Dec. 31, 1956
		(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
	LAKE ALMANOR										
	Hydraulic Production Plant										
320	Land and land rights			$1,815,860.61	$1,815,860.61	($186,997.71)	$1,628,862.90	($1,371.48)		($1,371.48)	$1,627,491.42
322	Reservoirs, dams, and waterways			3,681,796.28	3,681,796.28	(319,869.92)	3,361,926.36	3,671.93	$121.39	3,793.32	3,365,719.68
325	Miscellaneous power plant equipment							121.39	(121.39)		
	Total electric plant in service			5,497,656.89	5,497,656.89	(506,867.63)	4,990,789.26	2,421.84		2,421.84	4,993,211.10
265.2	Contributions in aid of construction—Federal					(49,241.48)	(49,241.48)				(49,241.48)
	Total Lake Almanor			5,497,656.89	5,497,656.89	(556,109.11)	4,941,547.78	2,421.84		2,421.84	4,943,969.62
	CARIBOU NO. 1										
	Hydraulic Production Plant										
320	Land and land rights	$394,549.80			394,549.80		394,549.80				394,549.80
321	Structures and improvements	1,867,304.17	$85,819.73		1,953,123.90		1,953,123.90	16,891.32		16,891.32	1,970,015.22
322	Reservoirs, dams, and waterways	10,719,823.02	(93.25)		10,719,729.77	4,219.41	10,723,949.18	54,098.96		54,098.96	10,778,048.14

323	Water wheels, turbines, and generators	1,234,086.88	49,560.65		1,283,647.53		1,283,647.53	65,923.49		65,923.49	1,349,571.02
324	Accessory electric equipment	232,250.50	87,480.47		319,730.97		319,730.97	25,562.33		25,562.33	345,293.30
325	Miscellaneous power plant equipment	41,852.49	6,585.67		48,438.16		48,438.16	7,744.47		7,744.47	56,182.63
326	Roads, railroads, and bridges	53,470.95	4,596.81		58,067.76		58,067.76				58,067.76
	Total hydraulic production plant	14,543,337.81	233,950.08		14,777,287.89	4,219.41	14,781,507.30	170,220.57		170,220.57	14,951,727.87
	Transmission Plant										
340	Land and land rights	8,868.56	262.03		9,130.59		9,130.59	61.81		61.81	9,192.40
341	Clearing land and rights-of-way	77,821.23	14,275.05		92,096.28	(2,175.48)	89,920.80	(61.81)		(61.81)	89,858.99
343	Station equipment	478,981.55	(6,611.05)		472,370.50		472,370.50				472,370.50
344	Towers and fixtures	354,402.56	45,697.53		400,100.09	(26,067.87)	374,032.22	(5,204.59)		(5,204.59)	368,827.63
346	Overhead conductors and devices	406,639.05	14,741.70		421,830.75	(397.18)	420,983.57	(6,007.02)		(6,007.02)	414,976.55
349	Roads and trails	408.63	461.67		870.30		870.30	213.84		213.84	1,084.14
	Total transmission plant	1,327,121.58	68,826.93		1,395,948.51	(28,640.53)	1,367,307.98	(10,997.77)		(10,997.77)	1,356,310.21
	Distribution Plant										
362	Station equipment	68,858.86	(68,858.86)								
	General Plant										
378	Communication equipment	8,143.00	385.48		8,528.48		8,528.48	17,471.78		17,471.78	26,000.26
393	Donations in aid of construction	(2,606.41)	2,606.41								
	Total general plant	5,536.59	2,991.89		8,528.48		8,528.48	17,471.78		17,471.78	26,000.26
	Total electric plant in service	15,944,854.84	236,910.04		16,181,764.88	(24,421.12)	16,157,343.76	176,694.58		176,694.58	16,334,038.34
265.2	Contributions in aid of construction—Federal		(2,980.77)		(2,980.77)		(2,980.77)				(2,980.77)
	Total Caribou No. 1	15,944,854.84	233,929.27		16,178,784.11	(24,421.12)	16,154,362.99	176,694.58		176,694.58	16,331,057.57
	Total cost of project	15,944,854.84	233,929.27	5,497,656.89	21,676,441.00	(580,530.23)	21,095,910.77	179,116.42		179,116.42	21,275,027.19

( ) Denotes credits.

[1] See Commission order issued Feb. 27, 1950 (9 FPC 545) for project No. 1352, license surrendered as of Oct. 31, 1954.

[2] Former minor-part license No. 616, surrendered as of Oct. 31, 1954.

[3] Account references are to account number and titles prescribed in the Commission's uniform system of accounts for public utilities and licensees effective prior to Jan. 1, 1961.

SCHEDULE VI

PACIFIC GAS & ELECTRIC COMPANY, PROJECT NO. 2130 (STANISLAUS-SPRING GAP-MELONES)

ACTUAL LEGITIMATE ORIGINAL COST

Account [3]		Initial cost as of Jan. 1, 1955						Changes from Jan. 2, 1955 through Dec. 31, 1957			Allowed original cost as of Dec. 31, 1957
		As claimed									
No.	Title	Approved cost as of Jan. 1, 1936 [1]	Changes from Jan. 2, 1936 through Jan. 1, 1955	Melones Plant as of Jan. 1, 1955 [2]	Total	Adjustments	As allowed	As claimed or recorded	Adjustments	As allowed	
		(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
	STANISLAUS PLANT										
	Hydraulic production plant										
320	Land and land rights	$248,315.94	$6,774.75		$255,090.69	($2,951.72)	$252,138.97				$252,138.97
321	Structures and improvements	246,832.61	(22,096.77)		224,735.84	52,796.83	277,532.67	$4,837.42		$4,837.42	282,370.09
322	Reservoirs, dams, and waterways	3,009,845.39	1,393,435.71		4,403,281.10	(158,253.20)	4,245,027.90	2,415.29		2,415.29	4,247,443.19
323	Water wheels, turbines, and generators	431,780.08	13,283.85		445,063.93	(6,154.22)	438,909.71	690.43		690.43	439,600.14
324	Accessory electric equipment	84,936.50	16,623.62		101,560.12		101,560.12	5,696.80		5,696.80	107,256.92
325	Miscellaneous power plant equipment	32,866.05	(8,968.79)		23,897.26	2,825.44	26,722.70	3,176.19		3,176.19	29,898.89
326	Roads, railroads, and bridges	372,338.25	10,985.59		383,323.84	713.31	384,037.15	(7,505.06)		(7,505.06)	376,532.09
	Total hydraulic production plant	4,426,914.82	1,410,037.96		5,836,952.78	(111,023.56)	5,725,929.22	9,311.07		9,311.07	5,735,240.29
	Transmission plant										
343	Station equipment	230,117.90	11,458.86		241,576.76		241,576.76				241,576.76
	Distribution plant										
352	Station equipment	33,546.14	(33,546.14)								
	Total Stanislaus plant	4,690,578.86	1,387,950.68		6,078,529.54	(111,023.56)	5,967,505.98	9,311.07		9,311.07	5,976,817.05

	SPRING GAP PLANT										
	Hydraulic production plant										
320	Land and land rights	12,518.96			12,518.96		12,518.96				12,518.96
321	Structures and improvements	130,375.65	2,939.69		133,315.34	(3,554.83)	129,760.51	5,739.32		5,739.32	135,499.83
322	Reservoirs, dams, and waterways	414,229.98	1,339.02		415,569.00		415,569.00	4,336.19		4,336.19	419,905.19
323	Water wheels, turbines, and generators	112,714.37	2,780.14		115,494.51		115,494.51				115,494.51
324	Accessory electric equipment	35,482.49	2,019.00		37,501.49		37,501.49	11,444.15		11,444.15	48,945.64
325	Miscellaneous power plant equipment	6,658.73	4,306.41		10,965.14		10,965.14	485.44		485.44	11,450.58
326	Roads, railroads, and bridges	107,663.60	18,951.26		126,614.86		126,614.86	912.62		912.62	127,527.48
	Total hydraulic production plant	819,643.78	32,335.52		851,979.30	(3,554.83)	848,424.47	22,917.72		22,917.72	871,342.19
	Transmission plant										
340	Land and land rights	1,217.07			1,217.07		1,217.07				1,217.07
341	Clearing land and rights of way	35,370.53			35,370.53		35,370.53				35,370.53
343	Station equipment	69,744.32	893.63		70,637.95		70,637.95	44,778.80		44,778.80	115,416.75
345	Poles and fixtures	62,142.29	1,908.08		64,050.37		64,050.37	3,536.84		3,536.84	67,587.21
346	Overhead conductors and devices	56,679.64	1,330.45		58,010.09		58,010.09	429.62		429.62	58,439.71
349	Roads and trails		758.95		758.95		758.95				758.95
	Total transmission plant	225,153.85	4,891.11		230,044.96		230,044.96	48,745.26		48,745.26	278,790.22
	Total Spring Gap plant	1,044,797.63	37,226.63		1,082,024.26	(3,554.83)	1,078,469.43	71,662.98		71,662.98	1,150,132.41

See footnotes at end of table.

SCHEDULE VI—Continued

Account [2]		Initial cost as of Jan. 1, 1955						Changes from Jan. 2, 1955 through Dec. 31, 1957			Allowed as of original cost Dec. 31, 1957
		As claimed				Adjustments	As allowed	As claimed or recorded	Adjustments	As allowed	
No.	Title	Approved cost as of Jan. 1, 1936 [1]	Changes from Jan. 2, 1936 through Jan. 1, 1955	Melones Plant as of Jan. 1, 1936 [2]	Total						
		(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
	MELONES PLANT										
	Hydraulic production plant										
320	Land and land rights			$10,002.34	$10,002.34	($2,579.75)	$7,422.59	($175.00)		($175.00)	$7,247.59
321	Structures and improvements			349,514.52	349,514.52	(6,228.77)	343,285.75	18,428.39		18,428.39	361,714.14
322	Reservoirs, dams, and waterways			769,496.34	769,496.34	(14,401.07)	755,095.27	10,265.15		10,265.15	765,360.42
323	Water wheels, turbines, and generators			419,823.25	419,823.25	(8,114.26)	411,708.99	(129.88)		(129.88)	411,579.11
324	Accessory Electric Equipment			121,132.80	121,132.80	(1,476.88)	119,655.92	42,053.80		42,053.80	161,709.72
325	Miscellaneous Power Plant Equipment			26,277.25	26,277.25	(207.13)	26,070.12	250.75		250.75	26,320.87
326	Roads, Railroads, and Bridges			21,190.14	21,190.14	(1,418.16)	19,771.98	309.79		309.79	20,081.77
	Total hydraulic production plant			1,717,436.64	1,717,436.64	(34,426.02)	1,683,010.62	71,003.00		71,003.00	1,754,013.62
	Transmission plant										
340	Land and land rights			4,107.28	4,107.28	(347.28)	3,760.00				3,760.00
341	Clearing land and rights-of-way			3,147.08	3,147.08	(133.12)	3,013.96				3,013.96
343	Station Equipment			102,662.03 [3]	102,662.03	(1,917.31)	100,744.72	194,857.86	($194,857.86)		100,744.72
344	Towers and Fixtures			52,202.01	52,202.01	(889.28)	51,312.73				51,312.73
346	Overhead Conductors and Devices			19,075.05	19,075.05	(318.32)	18,756.73				18,756.73
	Total transmission plant			181,193.45	181,193.45	(3,605.31)	177,588.14	194,857.86	(194,857.86)		177,588.14

	General plant										
378	Communication equipment			3,791.00	3,791.00		3,791.00	(459.67)		(459.67)	3,331.33
	Total Melones plant			1,902,421.09	1,902,421.09	(38,031.33)	1,864,389.76	265,401.19	(194,857.86)	70,543.33	1,934,933.09
	COMMON PLANS										
	Hydraulic production plant										
320	Land and land rights	$4,959.32			4,959.32		4,959.32				4,959.32
322	Reservoirs, dams, and waterways	1,131,279.23	$220,280.12		1,351,559.35	1,224.85	1,352,784.20	5,133.88		5,133.88	1,357,918.08
325	Miscellaneous Power Plant Equipment		438.47		438.47		438.47	166.94		166.94	605.41
	Total hydraulic production plant	1,136,238.55	220,718.59		1,356,957.14	1,224.85	1,358,181.99	5,300.82		5,300.82	1,363,482.81
	General plant										
370	Land and land rights	739.07			739.07		739.07				739.07
371	Structures and improvements		633.83		633.83		633.83				633.83
378	Communication equipment	18,656.12	(1,477.93)		17,178.19	2,893.87	20,072.06	44,399.16		44,399.16	64,471.22
	Total general plant	19,395.19	(844.10)		18,551.09	2,893.87	21,444.96	44,399.16		44,399.16	65,844.12
	Total common plant	1,155,633.74	219,874.49		1,375,508.23	4,118.72	1,379,626.95	49,699.98		49,699.98	1,429,326.93
	Total cost of project	6,891,010.23	1,645,051.80	1,902,421.09	10,438,483.12	(148,491.00)	10,289,992.12	396,075.22	(194,857.86)	201,217.36	10,491,209.48

[1] See Commission Order Issued February 27, 1950 (9 FPC 531) for project No. 1318, license surrendered as of December 31, 1954.

[2] Former minor-part license No. 708, surrendered as of December 31, 1954.

[3] Account references are to account numbers and titles prescribed in the Commission's Uniform System of Accounts for Public Utilities and Licensees effective prior to January 1, 1961.

( ) Denotes credits.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

PETITION TO ESTABLISH A UNIFORM SYSTEM OF ACCOUNTS FOR INDEPENDENT PRODUCERS OF NATURAL GAS, DOCKET NO. R-220

ORDER DISMISSING PETITION WITHOUT PREJUDICE AND TERMINATING PROCEEDING

(Issued October 31, 1963)

On July 9, 1962, the People of the State of California and the Public Utilities Commission of the State of California (California), petitioned the Commission to establish a uniform system of accounts and records for independent producers of natural gas. An Answer and Objection to the California Petition was filed by Sun Oil Company on August 8, 1962.

Shortly after the Supreme Court held in *Phillips Petroleum Co.* v. *Wisconsin, et al.*, 347 U.S. 672, that natural gas producers making sales in interstate commerce were subject to all of the requirements of the Natural Gas Act, the Commission promulgated regulations governing the filing of rate schedules and certificate applications by gas producers, but exempted producers from the regulations requiring natural gas companies to keep and maintain their accounts in accordance with the Commission's Uniform System of Accounts (Order No. 174-B, 13 FPC 1576 at 1585).

The promulgation of a meaningful uniform system of accounts for gas producers is of course interrelated with the problem of implementing a permanent method of producer regulation. A decision on this question will depend at least in part on the rationale of the Commission's decision in the area rate proceedings now underway. When we have established guidelines for producer regulation in the area rate proceedings the Commission should be in a position to determine whether a uniform system of accounts is feasible for independent producers and also whether annual reports and other means of securing regular information concerning the regulated activities of producers would be a useful adjunct of producer regulation. In the interim we shall continue to secure from producers such information as may be necessary or appropriate in particular proceedings and investigations.

In view of these circumstances, the Commission *finds:*

(1) Present consideration of California's petition to establish a uniform system of accounts for independent producers of natural gas would be premature.

(2) Good cause exists to dismiss California's petition, without prejudice to its right to resubmit it at an appropriate time in the future.

(3) The proceeding should be terminated.

The Commission orders:

(A) The petition of California filed on July 9, 1962, and designated as Docket No. R-220 is hereby dismissed without prejudice.

(B) Effective upon the issuance of this order, the proceeding herein is terminated.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

NEW ENGLAND POWER COMPANY, PROJECT NO. 2077

ORDER APPROVING PROJECT EXHIBIT

(Issued November 1, 1963)

On June 22, 1960, New England Power Company, licensee for Project No. 2077, filed for Commission approval Exhibit K maps for the Littleton Development of Project No. 2077.

No lands of the United States are involved and approval of the Exhibit K maps will not affect the annual charges for the project.

The Commission finds:

The following described Exhibit K maps conform to the Commission's rules and regulations and should be approved as part of the license for the project.

Exhibit K (3)–3: (FPC No. 2077–49) Index Project map;

Exhibit K (3)–3: Seven Sheets (FPC Nos. 2077–50 through –56) showing the Project Boundary of the Littleton Development; and

Exhibit K (3)–4: (FPC No. 2077–57) One sheet showing the Project Boundary of the Littleton-Cumerford Transmission Line.

The Commission orders:

The Exhibit K maps described in the above finding are hereby approved as part of the license for Project No. 2077.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

SAN SALVADOR DEVELOPMENT COMPANY, INC., DOCKET NOS. G–19833, RI60–290 AND RI61–291

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICE OF CHANGE AND CONTRACT AMENDMENT, REQUIRING REFUNDS, AND TERMINATING PROCEEDINGS

(Issued November 4, 1963)

On September 27, 1963, San Salvador Development Company, Inc. (San Salvador) filed an Offer of Settlement in the above-designated rate suspension proceedings, pursuant to Section 1.18 of the Commission's Rules of Practice and Procedure. These proceedings relate to the jurisdictional sale of natural gas at 14.65 psia by San Salvador under its FPC Gas Rate Schedule No. 1 to Tennessee Gas Transmission Company (Tennessee Gas) from San Salvador Field, Hidalgo County, Texas (Railroad Commission District No. 4).

The following table sets forth the data pertinent to the proceedings involved herein.

Docket No.	Rate schedule No.	Supplement No.	Effective rate (cents)	Date effective subject to refund
G–19833	1	3	[1] 15.09520	4/1/60
RI60–290	1	4	[1] 17.24347	10/2/60
RI61–291	1	5	[2] 17.24347	5/24/61

[1] Includes 0.21931 cent per Mcf for dehydration deducted by buyer.

[2] Does not include the 0.21931 cent per Mcf deducted for dehydration by buyer. As of July 1, 1960, San Salvador commenced delivery of dehydrated gas; however, it did not file to eliminate the dehydration deduction until May 14, 1962.

Under the terms of the Offer, San Salvador proposes to eliminate the favored-nation, redetermination, and periodic provisions from its rate schedule, and to establish a 15.0¢ per Mcf settlement rate, inclusive of tax reimbursement, which will remain in effect until the end of the term of the contract. With regard to refunds, for the period it has been delivering dehydrated gas, July 1, 1960 to the present, it proposes to refund, with interest, the difference between the effective rate and the 15.0¢ per Mcf settlement rate. For the period during which it was delivering undehydrated gas, April 1, 1960 through June 30, 1960, it proposes to refund the difference between the effective rate and 14.78069¢ per Mcf (i.e. the 15.0¢ per Mcf settlement rate less the 0.21931¢ per Mcf deduction for dehydration by Tennessee Gas).

Tennessee Gas has joined in the Offer of Settlement and has approved the proposed contractual amendments. No objections to the settlement have been received from any interested parties.

Since the proposed settlement rate of 15.0¢ per Mcf for dehydrated gas at 14.65 psia is acceptable under the provisions of the Second Amendment to the Commission's Statement of General Policy No. 61–1, issued December 20, 1960, 24 FPC 1107, as amended by Order No. 264 issued March 27, 1963, 29 FPC 589, for jurisdictional sales of natural gas in Texas Railroad Commission District No. 4, it is believed that the public interest will be best served by accepting San Salvador's proposed settlement as hereinafter ordered.

We desire to make it clear that acceptance of this Offer of Settlement shall not be construed as approval of any future increased rates proposed by San Salvador.

The Commission finds:

The proposed settlement of the above-designated proceedings on the basis described herein, as more fully set forth in the Offer of Settlement filed by San Salvador with the Commission on September 27, 1963, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The Offer of Settlement filed by San Salvador with the Commission on September 27, 1963, is hereby approved in accordance with the provisions of this order.

(B) San Salvador shall file, within 30 days from the date of issuance of this order, a notice of change providing for the 15.0¢ per Mcf rate, including present tax reimbursement, specified in its Offer of Settlement and a contractual amendment to its FPC Gas Rate Schedule No. 1, which San Salvador shall execute with Tennessee Gas in conformity with San Salvador's Offer of Settlement in all respects. Both the notice of change and the contractual amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Within 30 days from the date of issuance of this order, San Salvador shall refund, together with simple interest at the rate of 7 per cent per annum, all amounts collected from Tennessee Gas under its FPC Gas Rate Schedule No. 1 in Docket Nos. G–19833, RI60–290, and RI61–291 in excess of 14.78069¢ per Mcf applicable to sales for the period from April 1, 1960 through June 30, 1960, and in excess of 15.0¢ per Mcf applicable to sales for the period commencing July 1, 1960. Interest shall be computed from the date of receipt of such excess amounts by San Salvador to the date of refund. San Salvador shall bear all costs incidental to the making of such refunds.

(D) Within 45 days from the date of issuance of this order, San Salvador shall report to the Commission in writing the details of its calculations resulting in refunds ordered pursuant to paragraph (C) above, together with copy of a release from Tennessee Gas with respect to such refunds.

(E) Upon notification by the Secretary of the Commission that San Salvador has complied with the terms and conditions of this order, the rate and charge of 15.0¢ per Mcf at 14.65 psia, inclusive of tax reimbursement, specified in the Offer of Settlement, shall be effective as of the date of issuance of this order, the above-designated proceedings shall be terminated, and San Salvador's refund obligations with respect to such proceedings shall be deemed discharged.

(F) The acceptance of this Offer of Settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending or hereafter instituted by or against San Salvador.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNION TEXAS PETROLEUM, ET AL. DOCKET NO. G–13221, ET AL.; GULF OIL CORPORATION, DOCKET NO. G–19062, ET AL.; SOCONY MOBIL OIL COMPANY, INC., DOCKET NO. CI60–310, ET AL.

ORDER AMENDING ORDER SEVERING PROCEEDINGS, CONDITIONALLY APPROVING SETTLEMENT AGREEMENTS AND CONDITIONALLY ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 4, 1963)

Ordering paragraph (K) of our order of October 9, 1963, in the above-captioned matters ordered, *inter alia*, Transcontinental Gas Pipeline Corporation (Transco), to hold certain funds in a special account and to make certain reports to the Commission regarding the effects of the settlement of Docket Nos. CI61–659, CI61–1630 and CI61–1640. It appears that ordering paragraph (K) should not apply to Docket No. CI61–659 because Transco's settlement agreement in Docket No. RP61–13,[1] specifically refers to this docket and Transco agrees that it is under an obligation to flow through any refunds and adjust its rates to reflect the settlement in that docket. Accordingly, ordering paragraph (K) should be amended to apply to Transco only insofar as Docket Nos. CI61–1630 and CI61–1640 are concerned.

The Commission orders:

(A) Ordering paragraph (K) of our order severing proceedings, conditionally approving settlements and conditionally issuing certificates of public convenience and necessity, issued in the above-captioned proceedings on October 9, 1963, is hereby amended by changing the period to a semi-colon and by adding the following after the last sentence therein:

Provided, however, that the holding and reporting requirements imposed by this paragraph shall apply only to refunds, interest and purchased gas cost reductions resulting from the settlement of Docket Nos. CI61–1630, CI61–1640 (Transco), CI60–440 and CI61–290 (Southern).

(B) In all other respects said order shall remain in full force and effect.

---

[1] *Transcontinental Gas Pipe Line Corporation*, 27 FPC 187, Docket No. CI61–659 is listed at page 18 of the settlement proposal of Transco but is listed under the name of Socony's predecessor in interest, Republic Natural Gas Company.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNITED GAS PIPE LINE COMPANY v. HUMBLE OIL & REFINING COMPANY, ET AL., DOCKET NO. CP64-74

ORDER DISMISSING COMPLAINT AND REQUEST FOR ORDER TO SHOW CAUSE

(Issued November 4, 1963)

United Gas Pipe Line Company (United) on September 26, 1963, filed a "Complaint and Request for Order To Show Cause" directed against certain actions which it alleges are being taken by Humble Oil & Refining Company (Humble) and Neches Valley Gas Transmission Company (Neches).

The gist of United's complaint is that it is an interstate pipeline company, subject to the jurisdiction of this Commission, and has been and is selling natural gas in interstate commerce "to the distributor in the City of Tyler, Texas" [1] under rate schedules on file with the Commission and pursuant to a grandfather certificate of public convenience and necessity issued by this Commission. In July, 1962, the contract for gas service between United and Tyler expired, but since that time Tyler has continued to accept service from United and to pay therefor under United's filed rates. During this period, however, Tyler has declined to execute a service agreement with United for future gas service. It is alleged that Humble has agreed to make available and sell to Neches, for transmission and resale to Tyler, all of the latter's natural gas requirements at a rate which will make possible the resale at a price less than United's presently applicable rate "knowing that, when the facilities necessary to transport the gas to Tyler have been completed and placed in operation, the distributor will discontinue receipt of gas from United."

United alleges "that this joint action by Humble and Neches will constitute an invasion and taking of an interstate market heretofore efficiently and economically served by United at a rate regulated by this Commission and under authorization granted by this Commission."

United requests that the "Commission hold a hearing to determine whether it is in the public interest that United be supplanted as the supplier of gas to Tyler, Texas, under the arrangement made by Humble and Neches and that it initiate this investigation and determination by issuing its orders directed to Humble and Neches to show cause, if any they can, why they should not cease and desist from effectuating the plan to supplant United as the supplier of gas to the City of Tyler, Texas.

Motions to dismiss the complaint were filed by Humble and Neches on October 14th and 15th respectively.[2] Answers to such motions were filed by United on October 23, 1963.

We have carefully examined the aforementioned complaint, the motions to dismiss, and the answers thereto and are convinced that the complaint should be dismissed.

United, in its complaint, has failed to set forth any facts which would provide the Commission with a basis for proceeding further in this matter. First and

---

[1] While the distributor is not specifically named in the complaint, reference is to Tyler Gas Service Company (Tyler). United claims that Neches and Tyler are under joint control or ownership.

[2] Humble and Neches have also filed request for deferring the filing of answers to the complaint until such time as we have acted upon the motions to dismiss. Such requests were denied by the Secretary on October 21, 1963. Appeals from the Secretary's action have been noted. In view of our action granting the motions to dismiss, action on the appeals will be unnecessary.

foremost its complaint does not contain any facts to show that the actions of Humble and Neches of which it complains involve the transportation of natural gas in interstate commerce, or the sale of natural gas in interstate commerce. In fact, in its answer to the motion to dismiss filed by Humble, United states it "* * * did not know source of the gas Humble will sell to Neches, neither does it know the route Neches' pipeline will follow, nor does it know the uses to be made of the line. United's complaint is that Humble and Neches, in concert, threaten serious injury to interstate commerce * * *."

The mere allegation that interstate commerce may be threatened by contemplated action is an insufficient basis upon which to predicate a complaint asking relief from the Commission. The threat of injury to interstate commerce to be cognizable must come from actions otherwise subject to our jurisdiction, i.e., the transportation or sale of natural gas in interstate commerce. If it were clear that United's service to Tyler were threatened by operations themselves subject to our jurisdiction we could initiate a proceeding looking into the public interest aspects of the transactions. This is not the situation. United's complaint rests only on speculation as to the nature of the operations to be carried on by Humble and Neches.

The complaint does not purport to show that Humble's sale to Neches is a sale in interstate commerce, or that Neches' subsequent transportation or sale of gas to Tyler encompasses or otherwise involves transportation or sales in interstate commerce. Humble and Neches have denied that they will.[2] If, at any time, United can demonstrate that Humble's sales to Neches are in interstate commerce or that Neches is utilizing as yet unconstructed, facilities as part of an operation in interstate commerce it can then file a complaint upon which we could predicate a proceeding. At this point, however, United's complaint, to the extent that it is based upon the bare possibility of such developments, is clearly premature.

The situation here is not analogous to that presented where what are clearly interstate facilities are used in part to make intrastate sales. *Cf. United Gas Pipe Line Company*, Docket No. CP62–161, Opinion No. 401; 30 FPC 560, rehearing pending. [Granted, 30 FPC 1073.]

The Commission orders:

The motions of Humble Oil & Refining Company and Neches Valley Gas Transmission Company to dismiss the complaint filed by United Gas Pipe Line Company be and they hereby are granted.

OPINION NO. 409

EAST TENNESSEE NATURAL GAS COMPANY, DOCKET NO. CP63–212

OPINION AND ORDER REVERSING PRESIDING EXAMINER AND DISMISSING APPLICATION

(Issued November 5, 1963)*

Syllabus

1. Commission *holds* application deficient in that it fails to include information and data required by Section 157.6 of the Regulations under the Natural Gas Act. P. 1200.

[2] It goes without saying that if Humble were to seek to abandon an interstate sale to make the gas available to Neches such action would be subject to Commission scrutiny under the public convenience and necessity standards of Section 7of the Natural Gas Act, even if the subsequent sale would be nonjurisdictional.

* Initial decision appears on p. 1201.

2. Section 2.58 of the rules permits budget-type applications for gas purchase facilities only—not pipeline facilities for sales to unnamed new customers, or increased volumes of sales to unnamed existing customers. P. 1200.
3. Commission *dismisses* application for certificate of public convenience and necessity in proceeding arising under Section 7, of the Natural Gas Act. P. 1201.

William W. Bedwell and *T. B. Taylor, Jr.* for East Tennessee Natural Gas Company

John J. Mullally for Staff of the Federal Power Commission

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

Ross, *Commissioner:*

On January 21, 1963, East Tennessee Natural Gas Company (East Tennessee), filed an application for a certificate of public convenience and necessity. The application was filed "pursuant to and in accordance with Section 7 of the Natural Gas Act and the rules and regulations promulgated thereunder."[1]

The application states that East Tennessee seeks "budget-type authorization to construct and operate an unspecified number of lateral facilities as may be necessary to assure East Tennessee's ability to provide adequate natural gas service to existing customers for resale in existing service areas."[2] The application further states that "East Tennessee is unable to specify with any degree of certainty the description or locations of these proposed facilities."[3] The application alleges that "the proposed facilities [or, more properly, the application therefor] . . . are [is] consistent with the Federal Power Commission's Order No. 185."[4]

Pursuant to notice issued June 4, 1963, a public hearing was held in Washington, D.C., on July 8, 1963. The only parties to appear were East Tennessee and the Staff. At the conclusion of the hearing, Staff orally moved to dismiss the application. No ruling on the motion was made at that juncture, but after the filing of briefs, the Presiding Examiner denied the motion and entered a decision in which he granted the certificate. The case is now before us on exceptions to that decision.

At the outset, we note that the application was, necessarily, filed "pursuant to and in accordance with Section 7 of the Natural Gas Act and the rules and regulations promulgated thereunder."[5] The application was not filed pursuant to Order No. 185, except to the extent that that order amended Part 157 of the Regulations Under the Natural Gas Act.

Section 157.6 of the Regulations requires that certain information be included in an application for a certificate of public convenience and necessity.[6] The sole question in this proceeding is whether the requirements of § 157.6 apply to the instant certificate application. If that section does apply, the application is clearly deficient and should therefore be dismissed.

---

[1] *Application*, p. 1.
[2] *Application*, p. 3.
[3] *Application*, p. 3.
[4] *Application*, p. 4. Order No. 185 may be found at 15 FPC 793.
[5] See footnote 1, *supra*.
[6] In pertinent part, § 157.6 requires the filing of

(2) The facts relied upon by applicant to show that the proposed service, sale, operation, construction, extension or acquisition is or will be required by the present or future public convenience and necessity.

(3) A concise description of applicant's existing operations.

(4) A concise description of the proposed service, sale, operation, construction, extension, or acquisition, including the proposed dates for the beginning and completion of construction, the commencement of operations and of acquisition where involved.

It is obvious that § 157.6 is a pertinent regulation and must apply in the absence of any contrary provisions. East Tennessee advances two theories under which it seeks to avoid the requirements of § 157.6. Primarily, East Tennessee asserts that the behavior and practice of the Commission since the issuance of Order No. 185 indicates that that order was intended to authorize and encourage the filing of applications such as that filed herein.

Order No. 185 was issued February 8, 1956, at the conclusion of a rule-making proceeding in Docket No. R–145. In the main, Order No. 185 was concerned with a myriad of minor changes in Parts 154 and 157 of the Regulations. In addition, the Order briefly discussed the broad problem of relaxing the Regulations with respect to rate filings and certificate applications. The Order stated:

> The whole problem of possible changes in the Commission's regulations permitting greater flexibility in its procedures with respect to rate filings and certification of natural-gas facilities subject to the Natural Gas Act is and will continue to be a prime concern. One recommendation, among others, was to the effect that the Commission define "facilities" requiring certificates under the Act so as to exclude minor installations or changes in connection with the rendition of service to existing customers or markets. The Commission recognizes the desirability of dealing with minor installations on a practical basis but doubts that the Natural Gas Act authorizes it to further expand its rule excluding certain facilities from the certification requirements (18 CFR 2.55). It has recommended to the Congress that it be given such authority.
>
> In the meantime and as a substitute, the Commission advises any interested natural gas company subject to the Natural Gas Act that it may file *under Section 157.6 of the Rules* a single certificate application covering in general outline along the lines of a budget estimate the proposed routine construction intended to be undertaken by it during the current or ensuing fiscal year, *listing the facilities proposed, the estimated cost of each item, the capacity, purpose, and time of intended construction, customers affected by each facility proposed, effect of proposals upon gas supply and deliverability, rates, service, and other pertinent information.* A hearing could then be held on such a proposal and a certificate issued in accordance with the general application. At the end of the period, a statement shall be filed showing the actions taken under the certificate and any authority thereunder which was not exercised.[7]

There is nothing in the language just quoted that suggests any relief from the provisions of §157.6, except insofar as it permits the filing of a single application to cover all routine construction. On the contrary, §157.6 is expressly made applicable, and the Commission describes with some detail the information which it deemed appropriate to require "under Section 157.6." It is clear, therefore, that Order No. 185 did not relieve certificate applicants from the requirements of §157.6. Rather, it delineated exactly what the Commission thought proper to require under the provisions of that section. The Commission defined § 157.6 so that, as a minimum, the requirements of that section were read to include all of the requirements enumerated in Order No. 185.

In its *Reply Brief*, East Tennessee suggests (for the first time) that by complying with §157.7 of the Regulations it has avoided the necessity of filing the information required by §157.6.[8] It is significant that §157.7 permits the filing of an abbreviated application only "when the operations, sales, service, construction, extensions, or acquisitions proposed by an application do not require all the data and information specified by § 157.5 through § 157.16 *to*

[7] 15 FPC 794. Italics added.
[8] *Reply Brief*, p. 13.

disclose fully the nature and extent of the proposed undertaking." [Emphasis added.] Stated another way, it is only when full disclosure is otherwise effected that §157.7 permits the filing of an abbreviated application. It is clear, however, that there has been no full disclosure in the instant case. Indeed, East Tennessee alleges that it has not filed the requisite data because it "cannot know until as late as mid-September whether or not a particular lateral must be looped for service during the coming winter or can be postponed until the following winter."[9] Neither Section 157.7 nor Order No. 185 deal with *this* situation—*i.e.* the inability of an applicant to supply the information and data required by §157.6 sufficiently in advance of the requested date of construction to provide the Commission adequate time to process the application and to hold the requisite hearing (abridged or formal). Instead the obvious remedy for East Tennessee in such a situation is full disclosure in its certificate application, accompanied by a request for temporary authority with respect to items on which construction allegedly should start before a permanent certificate could be issued.[10] In view of the foregoing, East Tennessee's reliance on §157.7 and on Order No. 185 is entirely misplaced.

Both East Tennessee and the Presiding Examiner have relied to some extent on § 2.58 of Part 2 of the Commission's Rules. It is clear, however, that § 2.58 by its own terms permits budget-type applications for gas purchase facilities *only*. It is apparent that the considerations which have led us to be particularly lenient with respect to the construction of facilities to pick up gas from independent producers, who will have separately secured certificates to sell the gas (after full consideration of the terms of the sales contract), are not necessarily present with respect to proposed pipeline facilities to be utilized to make sales to unnamed new customers or even to increase volumes of sales to unnamed existing customers. In this latter case, problems of possible discrimination between customers, serious issues raised by the recent decision in *Granite City Steel Co.* v. *F.P.C.*, 320 F. 2d 711 (CADC, 1963), and questions of the economic effect of certain sales and/or construction upon other customers of the pipeline, may be presented.[11]

Despite these real differences between blanket authorization of minor gas purchase facilities and of sales facilities, it may well be possible to provide for budget type applications for the construction of certain types of facilities other than those used for the purchase of gas. We have accordingly instructed the staff to study the matter with the objective of possible rule-making in this area, and would be receptive to informal suggestions thereon from interested parties. In the meantime, however, it is essential that all parties conform to our existing regulations as defined above.

The Commission finds:

(1) The Application of East Tennessee in this docket is deficient in that it does not include all of the information and data required by § 157.6 of the Regulations Under the Natural Gas Act.

---

[9] *Reply to Exceptions*, p. 9.

[10] We stress, however, that natural gas companies should normally plan their yearly construction activities sufficiently far in advance to avoid the necessity of seeking temporary authorizations, and that such authorizations cannot be counted on as a statutory right.

[11] East Tennessee points to a number of situations in which the Commission has approved in abridged hearing proceedings applications allegedly similar to that we are rejecting here. Without conceding that the situations are in fact analogous, we do not believe that any such actions, which were taken without any consideration of the questions fully treated here, can be determinative. On the contrary, a principal reason for setting this case for hearing was to clarify the apparent confusion which had arisen as to the extent to which we had authorized budget-type applications under Section 2.58.

(2) The Decision of the Presiding Examiner filed herein should be reversed.

The Commission orders:

(A) The Decision of the Presiding Examiner is reversed and the Application of East Tennessee is dismissed.

(B) Except to the extent hereinabove granted, the exceptions to said Examiner's Decision are denied.

INITIAL DECISION
OF THE PRESIDING EXAMINER UPON APPLICATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 15, 1963)

LEVY, *Presiding Examiner:* This proceeding originated in an application by East Tennessee Natural Gas Company (East Tennessee), filed January 21, 1963, for a "budget-type" certificate of public convenience and necessity authorizing the construction and operation of certain unspecified lateral facilities, the total cost of which was not to exceed $150,000, with the cost of any single installation not to exceed $50,000. The proposed facilities included looping of existing lateral lines, relocation and replacement of existing lateral lines with larger size pipe, and the installation, if needed, of a skid-mounted—150 h.p. portable compressor on its service laterals at an estimated cost of $33,750.

The application recites that East Tennessee operates its system on a pack-and-flow basis which utilizes line pack to provide peak-day deliverability and thereby maintain as low a purchase demand as possible from East Tennessee's supplier. The reduction in main line pressures required to obtain maximum use of line pack adversely affects the ability of some of East Tennessee's small laterals to service existing resale customers. The application alleges that the purpose of the authorization requested is to allow East Tennessee to assure maintenance of adequate service to existing resale customers in existing service areas and to take care of unforeseen situations which are not predictable until the beginning of the heating season when it is too late to file and have processed an application for specific facilities and construct the same in time to meet winter requirements.

Pursuant to notice issued June 4, 1963, a public hearing was held on July 8, 1963, and concluded the same day. Applicant and Staff were the sole parties, there being no interveners, and briefing was concluded on August 5, 1963.

The sole issue presented is whether the application complies with the Commission's policy and regulations in respect of "budget-type" authorizations issued pursuant to Order No. 185 (15 FPC 793, 794) dated February 8, 1956.

The Evidence

The sole witness presented and cross-examined was Applicant's Director of Sales Engineering, Franklin M. Cantrell, Jr. Applicant also introduced as Items by Reference eleven "budget-type" certificates issued by the Commission during the first four months of 1963. Mr. Cantrell testified in substance that East Tennessee is obligated to meet all its customers' requirements without volume limitations. The majority of these customers are municipalities. In many instances East Tennessee will not know of increased requirements until "in late July or early August" (Tr. 15). Once the specific lateral facilities required are determined, approximately 30 days is required for right-of-way acquisition and an additional 30 days for construction. Acquisition cannot begin until after a certificate of public convenience and necessity has been issued (Tr. 29, 30). The facilities must be installed and ready for operation by

mid-November. Thus, if East Tennessee cannot obtain a budget-type certificate and must wait until it knows what specific lateral facilities will be required, it will be unable to file an application, receive a certificate, construct the facilities, and have them in operation in time to meet 1963 customer requirements.

He also testified that the authorization sought would benefit all of East Tennessee's customers, could not operate to the detriment of any, and is the most economical method of meeting customer needs for additional gas because increasing its purchases from Tennessee Gas "would raise our demand charge and our operating costs" (Tr. 57). No testimony or evidence was presented by the Staff.

Discussion

At the conclusion of East Tennessee's presentation, Staff moved to dismiss the application on the ground that it does not meet the requirements of the Commission's rules in respect of budget-type certificates in that: (1) the proposed looping of existing laterals is not routine construction within the meaning of Order 185, and (2) the description of the proposed facilities is inadequate and deficient. On briefing, the Staff also argues that "The Court's decision in the *'Granite City Steel Company'* case requires a 'new look' at budget-type certificates". Consequently, however liberal or lax the Commission may have been with past grants of budget-type certificates for inadequately described facilities, it should now insist on "strict adherence to the requirements of Order 185 and 18 CFR 157.6 and 157.7 to protect the public convenience and necessity" (Tr. 20).

Order 185 authorizes budget-type certificates for proposed routine construction. Staff insists that "routine" means customary or regular, and argues that since East Tennessee has not looped any laterals since 1958, the proposed lateral looping on the East Tennessee system is not "routine". The pertinent language of Order 185 reads as follows:

> The whole problem of possible changes in the Commission's regulations permitting greater flexibility in its procedures with respect to rate filings and certification of natural-gas facilities subject to the Natural Gas Act is and will continue to be a prime concern. One recommendation, among others, was to the effect that the Commission define "facilities" requiring certificates under the Act so as to exclude *minor installations or changes in connection with the rendition of service to existing customers or markets.* The Commission recognizes the desirability of dealing with *minor installations* on a practical basis but doubts that the Natural Gas Act authorizes it to further expand its rule excluding certain facilities from the certification requirements (18 CFR 2.55). It has recommended to the Congress that it be given such authority.
>
> In the meantime and as substitute, the Commission advises any interested natural-gas company subject to the Natural Gas Act that it may file under section 157.6 of the Rules a single certificate application *covering in general outline along the lines of a budget estimate the proposed routine construction intended to be undertaken by it during the current or ensuing fiscal year,* listing the facilities proposed, the estimated cost of each item, the capacity, purpose, and time of intended construction, customers affected by each facility proposed, effect of proposals upon gas supply and deliverability, rates, service, and other pertinent information. A hearing could then be held on such a proposal and a certificate issued in accordance with the general application. At the end of the period, a statement shall be filed showing the actions taken under the certificate and any authority thereunder which was not exercised. [15 FPC 794; emphasis supplied.]

It seems clear from this language that budget-type certificates were intended as a method of dealing with minor installations on a practical basis in connection

with the rendition of service to existing customers or markets absent their exclusion from the certification requirements. That the Commission intended "routine construction" to include minor installations or changes is further emphasized by the press release dated February 8, 1956, which accompanied Order 185:

> One recommendation which the Commission considered was that "facilities" requiring certificates under the Natural Gas Act be defined so as to exclude minor installations or changes in connection with the rendition of service to existing customers or markets. The FPC said that while it recognized the desirability of this proposal, it doubted that the Natural Gas Act authorizes the action. As a substitute, the FPC said, natural gas companies may file a single certificate application covering proposed routine construction planned during the current or ensuing fiscal year. A hearing could then be held on the proposal and a certificate issued in accordance with the general application, the Commission said, and at the end of the period a statement would be filed showing the actions taken and any authority which was not exercised. [Release No. 8308.]

Additionally, East Tennessee emphasizes that prior to 1959 it was required to loop several of its laterals, and that because of the continued load growth of its customers it will be required to either completely or partially loop many of these laterals on its extensive system, thus rendering lateral looping common and routine.

Insofar as the quantum of specificity required in the description of these facilities, East Tennessee points out that the Commission has consistently issued numerous budget-type certificates for the construction and operation of unspecified facilities since the issuance of Order No. 185. In evidence are a number of these authorizations issued during the first four months of 1963, in which the Commission's Order specifically states that the proposed facilities were "unspecified" or "miscellaneous". (See Items by Reference B through L.) On June 13, 1962, the Commission issued Order No. 247 (Section 2.58 of the Rules) in respect of budget-type certificate applications relating to gas purchase facilities.[1] Section 2.58 does not require that the proposed facilities be specified and described in detail until after the expiration of the authorization. This has been the consistent Commission practice, imposed by condition, in respect of all budget-type authorizations. Staff does not cite any Commission authority or precedent for changing this consistent practice and interpretation. The exclusion of gas sales facilities from the scope of budget-type authorizations, would defeat the basic objective of Order No. 185—to provide a workable administrative substitute for the proposed exemption from certification of "minor installations or changes in connection with the rendition of service to existing customers or markets." This is particularly true of the instant application where the relief sought involves small amounts of money for minor installations to existing customers. The Commission and its Staff should not be burdened with additional paper work and the necessity for detailed examinations of routine, minor installations.

Moreover, current Commission rulings[2] and statements are inconsistent with Staff's position. In *Medina Gathering Corporation*, Op. No. 397, issued July 16,

---

[1] The opening paragraph reads as follows:

> In accordance with the Commission's advice in Order No. 185, issued February 8, 1956 (15 FPC 793 at 794) and unless prevented by other factors, such as interventions in opposition, we will issue budget-type authorizations to natural gas pipeline companies covering the construction and operation of gas purchase facilities, after hearing under the abridged procedure, upon applications for certificates of public convenience and necessity, filed under § 157.6 of this chapter, provided that: [etc.]

[2] The Commission has the power "to interpret its own rules and any phrase contained in them." See *Norwegian Nitrogen Co. v. U.S.*, 288 U.S. 294, 325 (1933).

1963, 30 FPC 227, after the hearing herein and prior to the filing of Staff's brief, the Commission observed: (pp. 233–234)

> * * * The record reveals very little detail of the facilities to be constructed by Medina for the understandable reason that the precise number and location of the well lines, lateral lines, etc., will largely depend on the results of the producers' drilling program. In substance the authorization which Medina requests here is similar to the "budget-type" certificates which we frequently issue to pipelines pursuant to § 2.58 of the Rules of Practice of Procedure, authorizing the construction of unspecified facilities, within a stated dollar limit, for the purpose of connecting the pipeline's system with additional sources of supply. Since Medina has manifested a clear understanding that all of its facilities will be subject to our jurisdiction except those which are solely for "gathering", it will suffice to issue the certificate in the usual form, authorizing the sale "together with the construction and operation of all facilities subject to the jurisdiction of the Commission necessary therefor". The periodic reports filed by Medina pursuant to Section 157.20(c) of the Natural Gas Regulations should state in detail the description, location, costs, etc., of *all* the facilities actually constructed. If there is then any controversy over which of the facilities are subject to our jurisdiction, it can be resolved at that time.

And a recent speech by the General Counsel discusses the routine approval of minor pipeline construction as follows:

> Recognizing the impracticality of individual processing of the myriads of minor additions or changes in pipeline facilities, the Commission, several years ago, adopted rules providing for what are known as "budget" authorizations. *Under these regulations, a pipeline may secure blanket authorization to make minor additions to its facilities during the forthcoming year, subject only to specified limitations on the total cost of all installations and the cost of any single project. The application for such a budget-type authorization is general in form, but the pipeline is required at the end of the year to file a brief description of the actual facilities installed thereunder.*
>
> With respect to most other pipeline certificate applications, our rules provide for a somewhat more elaborate application sufficient to give the Commission staff and potential inteveners sufficient information to evaluate the public-interest consequences of a grant. [Address before the Mineral Law Section of the Texas Bar Association, July 5, 1963; emphasis supplied.]

Staff also argues that the deficiencies of the original application are established by the fact that at the hearing applicant was able to supply additional details of its proposed installations that were not included in the original application. The application was filed on January 21, 1963, and the hearing was held five and one-half months later on July 8, 1963. Obviously, East Tennessee had more information and details in July than in January, as to the needs of its customers and the facilities required; and, as noted by applicant, if the hearing was delayed until the end of the calendar year, East Tennessee could then specifically describe in detail all the facilities needed during 1963 to meet customer requirements.

Finally we reach the "hard core" argument which urges in substance that the Commission change its present policy in respect of budget-type applications relative to pipeline sales facilities because of the court's decision in the *Granite City Steel* case[3] and the possibility pipeline companies may use budget-type authorizations to give preferential treatment to industrial customers. Staff brief illustrates this as follows:

---

[3] *Granite City Steel, et al.* v. *FPC*, 115 U.S. App. D.C. 392, 320 F. 2d 711, decided May 23, 1963, reversing the Commission's Opinion 355 reallocation of gas from Mississippi River Fuel's industrial customers to its utility customers.

As examples of these possibilities the following situation is presented:

A. pipeline company;

B. distribution company with large industrial consumers;

C. distribution company with no industrial consumers.

The requirements of both B and C increase. B's requirements increase by reason of new industrial demands. C's requirements increase by reasons of additional domestic and commercial demands. Both B and C request A to install facilities so as to increase deliveries to meet increases in demands. A decides that it will install additional facilities to meet B's new demands but will not install the facilities necessary to meet C's demands. A, having received a budget type certificate, without further scrutiny by the Commission, could proceed to install facilities and accord preference to B over C, thus giving preference to industrial loads over domestic and commercial loads.

If the court's opinion in the *Granite City Steel Company* case is correct, the Commission in subsequent proceedings, would be bound to consider the industrial loads of B in proceedings involving allocation of supplies. It would be required to accord those industrial loads, firm or interruptible, the same treatment as those domestic and commercial loads of C. Thus C which was denied additional gas by A would have been penalized because it had no opportunity to increase deliveries to domestic and commercial customers because A had received a budget-type certificate. [Staff br. pp. 20–21.]

Staff does not suggest that these possibilities have anything to do with this applicant or this record. The only evidence presented is to the effect that all of East Tennessee's customers will benefit from the proposed facilities and none will be adversely affected (Tr. 24). Nor does Staff dispute East Tennessee's statement that it does not discriminate, that it has never refused to meet the increased requirements of any of its customers, and that it will seek authorization for additional facilities as they are needed to meet growing requirements. No evidence was presented by Staff and it does not cite any specific cases where a budget authorization was misused as a means of discriminating among its customers.

The mere possibility of abuse not shown to be present in this record is an inadequate basis for denial of an otherwise proper application. Nor is the Commission powerless to deal with the type of discrimination and abuses outlined in the Staff's hypothetical case. Moreover, if as Staff feels, the time has come for a new look and re-evaluation of budget-type certificates, the pending application is not the appropriate vehicle for determining future Commission policy in respect of the amendment or termination of procedures authorizing budget-type certificates. This is particularly important in the light of "the impracticality of individual processing of the myriads of minor additions or changes in pipeline facilities" (see General Counsel's speech, cited *supra*) and the Commission's efforts to shorten, simplify, and expedite its practice and procedures.

Accordingly, Staff's motion to dismiss the application is denied.

ADDITIONAL FINDINGS AND CONCLUSIONS

Upon consideration of the entire record in this proceeding, including the pleadings, the evidence adduced and the briefs filed, it is found and concluded, in addition to the findings and conclusions heretofore set out, that:

(1) Applicant, East Tennessee Natural Gas Company, a Tennessee corporation having its principal place of business in Knox County, Tennessee, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of May 3, 1949, in Docket No. G–1065 (8 FPC 836).

(2) The facilities hereinbefore described, as more fully described in the application and record in this proceeding, are proposed to be used in the transportation and delivery of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed construction and operation of lateral line facilities in order to assure East Tennessee Natural Gas Company's ability to maintain adequate service to existing resale customers is required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant shall submit, within 60 days after the expiration of the authorization hereinafter granted, a statement showing by project: (a) a description of the facilities installed; (b) the location of said facilities; (c) names of customers served through said facilities; (d) final actual costs of said facilities; and, (e) estimates of increased annual and peak day deliveries to each such customer.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1963, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $150,000, with no single project to exceed a cost of $50,000.

ORDER

WHEREAS, *it is ordered*, subject to review by the Commission, that:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing East Tennessee Natural Gas Company to construct during the calendar year 1963 and operate miscellaneous lateral line facilities as may be necessary or desirable to meet the requirements of its existing customers purchasing natural gas for resale.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) The total expenditure for facilities to be constructed hereunder shall not exceed a maximum of $150,000 and the total expenditure for any one project shall not exceed a maximum of $50,000.

(D) Applicant shall submit, on or before March 1, 1964, a statement showing by project: (a) description of the facilities installed hereunder; (b) the location of said facilities; (c) names of customers served through said facilities; (d) final actual costs of said facilities; (e) estimates of increased annual and peak day deliveries to each such customer.

WILLIAM C. LEVY,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

NEW YORK STATE NATURAL GAS CORPORATION, DOCKET NO. CP64-56

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 5, 1963)

On September 4, 1963, New York State Natural Gas Corporation (Applicant) filed in Docket No. CP64-56 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity to sell and deliver natural gas at a new delivery point to The Pavilion Natural Gas Company (Pavilion), for resale and distribution in the Village of Geneseo, which is presently being served, and in the Hamlets of Greigsville, Retsof, Piffard and Wadsworth, and in the Town of York, all not presently served. The aforesaid communities are located in Livingston County, New York.

Applicant further seeks authority to construct the facilities necessary for the above-mentioned sale. The facilities include:

(1) 1.4 miles of 6⅝-inch O.D. pipeline extending from a proposed tap on its 8-inch line No. 533 to facilities to be constructed by Pavilion, all in the Town of York. The connection will be known as the Gregsville Connection.

(2) A measuring and regulating station at the proposed connection between the facilities of Applicant and those to be constructed.

The estimated cost of the proposed facilities is $43,360.00.

The increased market requirements of the Village of Geneseo and the estimated market requirements of the communities not now served will be supplied through the Greigsville Connection in the volumes shown below (at 14.73 psia):

Annual		*Peak Day*	
1963 (2 mos)	20,000	1963–64	420
1964	100,000	1964–65	835
1965	200,000	1965–66	1385
1966	225,000	1966–67	1550

Pursuant to due notice, a hearing was held on October 24, 1963 respecting the matters involved in and the issues presented by the application herein. No protest or petition to intervene has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, a New York Corporation with its principal place of business in Pittsburgh, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce for resale, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant

are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30 (c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, New York State Natural Gas Corporation, to construct and operate facilities and to sell natural gas in interstate commerce for resale as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission Regulations, within 90 days from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

SUPERIOR OIL COMPANY, DOCKET NO. G–10501

ORDER DENYING MOTION

(Issued November 5, 1963)

On August 14, 1963, Trunkline Gas Company (Trunkline) filed a motion for prompt hearing in the above-designated proceeding.[1] This proceeding is a rate investigation instituted under Section 5(a) of the Natural Gas Act by order issued June 4, 1956, 15 FPC 1495. On September 3, 1963, Superior Oil Company (Superior) filed an answer to Trunkline's motion.

In support of its motion for a prompt hearing, Trunkline states that it is a purchaser of substantial volumes of gas from Superior; that it has been several years since the proceeding was instituted; that several parties have filed petitions to intervene, evidencing interest in the proceeding; that the proceeding has not been consolidated with any pending area proceeding; that it will be many months before the Southern Louisiana area proceeding commences; that the hearing would not be lengthy or time-consuming; and would not impose any undue burden upon the Commission or its staff.

---

[1] On the same day, Trunkline also filed a petition requesting leave to intervene in the proceedings in Docket Nos. G–10501 and G–20577. Disposition of the petition will be made by separate order.

In its answer to Trunkline's motion, Superior states that the motion is contrary to the Commission's policy, as announced in the *Phillips* case[2] and the *Statement of General Policy No. 61–1*,[3] and that producer rates should be determined through area rate proceedings. Superior points out that 75% of its jurisdictional sales are being made in the Permian Basin and Southern Louisiana areas, where area rate proceedings are already under way,[4] and that 80% of Superior's sales to Trunkline are made in Southern Louisiana. Superior states that its sales to Trunkline under FPC Gas Rate Schedule Nos. 1 and 3 are subject to rate suspension proceedings in Docket Nos. G–18168 and G–20577, respectively, and that Superior should not be subject to a multiplicity of concurrent hearings with respect to the same rates. It is Superior's position that a decision with respect to the Section 5(a) investigation could not be reached more rapidly than the Southern Louisiana area rate hearing, but, even if it could, the rates determined in the 5(a) proceeding would be only interim rates until the area rate proceeding is concluded. Superior also alleges it would be injured if it should be required to participate in two such proceedings.

As we stated in the *Phillips* decision and the *Statement of General Policy No. 61–1*, it is our intention to establish just and reasonable rates for sales by independent producers on an area basis. An area rate proceeding has already been instituted and is well under way in Southern Louisiana where substantial volumes of Superior's gas are sold. Other proceedings will be initiated as time and staff resources permit. Unlike the situations involved in those producer cases that we have set for individual hearing[5] subsequent to the *Phillips* decision, *supra*, there are no exceptional circumstances presented here which would warrant similar action in the instant case. We therefore conclude that determination of the just and reasonable rates for sales by Superior should be made in applicable area rate proceedings.

The Commission finds:

For the reasons set forth above, the motion of Trunkline should be denied.

The Commission orders:

The motion filed by Trunkline for a prompt hearing in Docket No. G–10501 is hereby denied.

Commissioner Ross *not participating.*

Before Commissioners: Joseph S. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP60–36; GULF OIL CORPORATION, DOCKET NO. CI60–43; TIDEWATER OIL COMPANY, DOCKET NO. CI60–142

ORDER REJECTING OFFERS OF SETTLEMENT, DENYING APPLICATIONS FOR REHEARING, AND GRANTING STAY

(Issued November 5, 1963)

On July 17, 1963, 30 FPC 329, the Commission issued its Opinion No. 399 and order in the above-entitled proceeding. Applications for rehearing and motions

---

[2] Opinion No. 338, *Phillips Petroleum Company*, Docket No. G–1148, *et al.*, issued September 28, 1960, 24 FPC 537.

[3] Issued September 28, 1960, 24 FPC 818 (18 CFR, Chapter I, Part 2, Section 2.56).

[4] Docket Nos. AR61–1 and AR61–2, respectively.

[5] See, for instance, *H. L. Hunt, et al.*, Docket No. RI62–467, *et al.*, order issued June 14, 1962. [Not reported.]

for stay were filed August 13, 1963, by both Gulf Oil Corporation and Tidewater Oil Company. Concurrently therewith, the producers resubmitted petitions for issuance of orders granting permanent certificates of public convenience and necessity in accordance with their applications as modified by offers of settlement, as further modified in such petitions. In summary, the offers of settlement propose an initial rate of 20.625 cents per Mcf, inclusive of tax reimbursement, from June 22, 1962, to June 30, 1967; extension of the make-up period for gas paid for but not taken from one to four years; and refunds to United Gas Pipe Line Company of the full difference between the amount per Mcf actually collected and the settlement rate, with interest at 7 percent per annum. By order issued August 29, 1963, we stayed the effectiveness of our Opinion and Order and action on the rehearing applications to provide an opportunity for consideration of the settlement proposals.[1] We also requested all interested parties to submit statements by September 20, 1963, of their position on the modified offers of settlement.

On September 18, 1963, Memphis Light, Gas and Water Division of the City of Memphis, Tennessee, and Mississippi Valley Gas Company filed a joint opposition to the offers of settlement. Philadelphia Electric Company, on September 20, 1963, filed a statement indicating that it does not consider the settlement proposals as being in the public interest. The Pennsylvania Public Utility Commission, in a statement filed September 23, 1963, subsequent to the time set in our order, likewise indicated that the settlement proposals are not in the public interest.

In view of the oppositions filed, and in light of the reasons expressed in Opinion No. 383–A[2] in rejecting settlement proposals filed in that proceeding, we find that we cannot accept the offers filed by Gulf and Tidewater, nor grant the petitions for issuance of permanent certificates as modified by said offers.[3]

Review of the applications for rehearing fails to reveal any facts or principles of law which were not fully considered by us in issuing Opinion No. 399 and accompanying Order or which, having now been considered, warrant any change in or modification of said Order except as indicated in the following paragraphs. To the extent that our Order adopts the examiner's decision, all specifications of error and grounds for rehearing now advanced were contained in the exceptions to that decision. To the extent that we have applied additional conditions to the certificates, the applications do not convince us that we erred in our determinations. Accordingly, said applications for rehearing will be denied.

The accompanying motions request stay of ordering paragraphs (B) and (C) of the Order pending the outcome of judicial review. Consistent with our order in Opinion No. 398–A in the companion *Placid* proceeding, 30 FPC 682, we shall grant stay of ordering paragraph (C) to defer payment of the refunds for a period of 30 days after the conclusion of judicial review, or until the time limitation for the filing of such review has expired. On October 17, 1963, the Court of Appeals for the Fifth Circuit granted a motion sought by certain of the producers in the *Placid* proceeding for stay of the rate reductions required in that order. The court specified, however, that all monies paid by the pipeline purchasers in excess of the initial rate approved by us are to be accumulated in an escrow account pending determination of an appeal on the merits. Although we are convinced that the initial prices determined by us both in that proceeding and

[1] On October 15, 1963, a notice was issued extending to November 14, 1963, and December 16, 1963, respectively, the time for compliance with paragraphs (B) and (C) of the Order accompanying Opinion No. 399, 30 FPC 329, 335–336.

[2] *Texaco Seaboard Inc., et al.*, Docket No. CI61–118, *et al.*, order on rehearing issued August 27, 1963, 30 FPC 613, 618–619.

[3] See *Hugoton Plains Gas and Oil Company*, Docket No. RI60–102, order rejecting offer of settlement, issued August 20, 1963, 30 FPC 513.

in the present case are fully justified, and that no reason exists why the rate reductions should not be made effective immediately, we are constrained by the court's action to grant a similar stay of the rate reduction requirement in this proceeding.

We note that the fifth paragraph of the Order, page 336 of the decision, which has reference to the take-or-pay for provisions in the applicants' contracts was improperly designated. The correct designation is paragraph (E).

The Commission orders:

(A) The offers of settlement and applications for rehearing filed by Gulf and Tidewater on August 13, 1963, in the above-entitled proceeding are denied.

(B) The completion of the acts and compliance with the requirements set forth in ordering paragraph (C) of the Order accompanying Opinion No. 339, are hereby stayed for a period of 30 days after conclusion of judicial review of said Opinion, or until the time limitation for the filing of such review has expired.

(C) The completion of the acts and compliance with the requirements set forth in ordering paragraph (B) of the Order accompanying Opinion No. 399, the time for which was extended to and including November 14, 1963, are further stayed pending judicial review of said Opinion and until the further order of this Commission, provided, however, that Gulf and Tidewater shall deposit in a special account with a bank or trust company all sums received subsequent to November 14, 1963, in excess of the amounts prescribed by paragraph (B) of the Commission's order, shall hold such monies intact, and shall maintain accurate records thereof and make reports with respect thereto to the Commission in compliance with such requests as may be made.

(D) The designation (D) preceding the fourth ordering paragraph on page 8 of the decision is changed to (E).

(E) In all other respects said Opinion and Order is confirmed.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

AMERICAN LOUISIANA PIPE LINE COMPANY, DOCKET NO. G–2306;
MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. G–2327;
AMERICAN LOUISIANA PIPE LINE COMPANY, DOCKET NO. G–10396;
PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. G–11061;
TRUNKLINE GAS COMPANY, DOCKET NO. CP60–22 (PHASE TWO);
PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP60–40;
PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP60–60;
PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP61–36;
PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP61–136

ORDER DENYING APPLICATIONS FOR REHEARING

(Issued November 6, 1963)

Applications for rehearing of the Commission's Opinion No. 402 and accompanying order, issued in these proceedings on September 17, 1963, 30 FPC 698, have been filed by Trunkline Gas Company (Trunkline) and by Central Illinois Public Service Company (Cipsco). Trunkline's application asks for rehearing of that part of the Commission's opinion and order directing Trunkline to make connection with the facilities of the Village of Milford, Illinois, and to sell gas to Milford in an amount up to 906 Mcf per day. Cipsco's application seeks re-

hearing with respect to the Commission's requirement that Panhandle Eastern Pipe Line Company (Panhandle) connect its line at Canton, Illinois, with facilities of the City of Bushnell, Illinois, and sell gas to Bushnell in an amount up to 2,000 Mcf per day, as well as to the requirement that Trunkline connect its line with the facilities of Milford and sell gas to Milford.

Both Trunkline and Cipsco object to the Commission's order providing gas for Milford and Bushnell in the absence of Section 7(a) filings by the Illinois communities. This procedural point has been thoroughly covered in Opinion No. 402 and in the examiner's decision, and nothing is to be gained from any further discussion now. We emphasize, however, that for substantive purposes we have utilized the test and applied the standards set forth in the Act for Section 7(a) applicants in passing upon the requests of Milford and Bushnell for gas in these proceedings.

Trunkline contends that the facilities to be operated by Milford with which it has been ordered to make connection, are not facilities of the municipality as required by Section 7(a), since they are to be owned by the contractor building the facilities and leased to Milford. We find no merit in this contention. The record is clear, as the examiner has shown, that Milford will have complete control of the operation of facilities to be leased and will be required to pay all of the expenses of operation. Similarly, Milford will be required to maintain and to pay for the maintenance of these facilities. Moreover, Milford has the option to purchase the facilities, and it cannot be known now whether the facilities will be owned by Milford or by the contractor at the time the connection is made. It is clear, however, that regardless of who holds the legal title to these facilities, they will be facilities which will be part of Milford's municipally operated system, and for the purposes of Section 7(a) they may be considered to be the facilities of the municipality.

The main thrust of the applications of Trunkline and Cipsco for rehearing, insofar as service for Milford is concerned, is directed to the question whether Milford is engaged in, or legally authorized to engage in, the local distribution of gas as required by Section 7(a). The issues argued by the applicants, however, are issues which we have found to be properly within the jurisdiction of the Illinois courts and which we leave to those courts for decision. We reiterate our conclusion that Milford has demonstrated compliance with the procedural requirements of the Illinois law and that Milford has apparent authority to engage in the local distribution of gas as proposed.

The applicants' contentions that Cipsco could serve these communities at lower rates than the rates proposed by the municipalities and that the Commission's order is not in the public interest have already been disposed of by Opinion No. 402 and warrant no further discussion here.

The Commission finds:

The assignments of error and grounds for rehearing set forth in the applications for rehearing filed by Trunkline and Cipsco present no new facts or principles of law which were not fully considered by the Commission when it adopted its Opinion No. 402 and accompanying order, issued September 17, 1963, or which having now been considered warrant any change or modification in said opinion and order.

The Commission orders:

The applications for rehearing of Opinion No. 402 and accompanying order filed by Trunkline Gas Company and Central Illinois Public Service Company are hereby denied.

CITIZENS UTILITIES COMPANY, PROJECT NO. 2306

ORDER MODIFYING AND ADOPTING PRESIDING EXAMINER'S INITIAL DECISION ISSUING LICENSE FOR CONSTRUCTED PROJECT NO. 2306

(Issued November 6, 1963)*

Syllabus

1. Under Section 10(i) of the Federal Power Act Commission can, at its discretion, waive conditions of Part 1 of the Act (except 50-year license period) in issuing licenses for a complete project of not more than two thousand horsepower, and for those works constituting minor part only of complete project without regard to installed capacity. Pp. 1213–1214.
2. Effective date of license fixed as of approximate date unauthorized construction began in accordance with holding in *Public Service Commission of New Hampshire*. Pp. 1214; 1218.
3. Commission *issues* license for constructed project in proceeding arising under Section 4(e) of the Federal Power Act. Pp. 1214; 1220.

Clifton G. Parker and *Arthur S. Friedman* for Citizens Utilities Company.

Charles J. Adams, John H. Downs and *Charles E. Gibson* for the State of Vermont.

Thomas M. Debevoise and *John D. Lane* for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

On August 29, 1963 the presiding examiner issued an initial decision in these proceedings granting a major hydroelectric license to the Citizens Utilities Company, of Stamford, Connecticut, for existing hydroelectric facilities on the Clyde River, and a tributary, in Orleans County, Vermont.

Exceptions to the examiner's decision were filed by the Citizens Utilities Company and by Commission staff counsel, which we dispose of by our order herein.

The Citizens Utilities Company has excepted to the presiding examiner's ruling excluding evidence relating to the question of whether the Clyde River was wholly or partially navigable; to his conclusion that issuance of minor part licenses is discretionary with the Commission; and to the presiding examiner's decision that the license herein granted should have an effective date of June 1, 1956 and terminate as of December 31, 1963. The issues raised by those exceptions have been adequately disposed of by the presiding examiner in his opinion. For the reasons therein cited and upon the additional findings herein, we deny these exceptions as being without merit.

Commission staff counsel has excepted to the second paragraph on page 1217 of the presiding examiner's decision wherein he inadvertently confuses a "minor part" license with a license "for a complete project of not more than two thousand horsepower installed capacity." It is noted that the Commission has not, in the past, drawn any direct relationship between the installed horsepower capacity of a hydroelectric project and the part which the Commission might find a minor part thereof. We conclude that the presiding examiner erred in his statement that "Section 10(i) specifically limits the issuance of a 'minor part' license to a 'complete project of not more than two thousand horsepower installed capacity . . . '." While we do not find it necessary to rule on the full scope of authority granted by Section 10(i), it is clear that the Commission is therein authorized, at its discretion, to waive "conditions, provisions and requirements of this Part, except the license period of fifty years," in issuing licenses for a complete project

*Initial decision appears on p. 1214. Rehearing denied December 9, 1963, 30 FPC 1437.

of not more than two thousand horsepower installed capacity, and, in addition, in issuing licenses for those project works which it finds constitute a minor part only of a complete project, without regard to the installed capacity.

We do not find that the foregoing error has affected the validity of the presiding examiner's findings, his conclusions, or his order. Therefore, upon consideration of the evidence of record, the parties' briefs, the examiner's decision and the exceptions thereto, we are of the opinion that the examiner's decision should be adopted as our own, except for the second paragraph on page 1217 discussed above, which should be deleted.

The Commission finds:

(1) It would not be consistent with the public interest in carrying out the provisions of the Federal Power Act to waive any of the conditions, provisions, and requirements of Part I of the Act in issuing a license to Citizens for Project No. 2306.

(2) The initial decision of the presiding examiner issued herein on August 29, 1963, should be modified as set forth and should, to the extent consistent with this order, be adopted by the Commission as its decision in this case as of the date of issuance of this order.

(3) Except as herein granted, the exceptions to the examiner's decision should be denied.

The Commission orders:

(A) The initial decision of the presiding examiner issued on August 29, 1963 is modified as set forth herein and as so modified is, to the extent consistent with this order, adopted by the Commission as its decision in this case as of the date of issuance of this order.

(B) The second full paragraph, beginning with the words "There is still another and even more compelling reason" on page 1217 of the initial decision of the presiding examiner is hereby deleted.

(C) This order shall become final 30 days from the date of issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Federal Power Act, and failure to file such an application shall constitute acceptance of the license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of the issuance of this order.

(D) Except as herein granted, the exceptions to the examiner's decision are hereby denied.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON AN APPLICATION FOR LICENSE PURSUANT TO SECTION 4(e) OF THE FEDERAL POWER ACT

(Issued August 29, 1963)

RENDELMAN, *Presiding Examiner:* Pursuant to Commission order as set forth in Opinion No. 318, dated February 16, 1959, 21 FPC 233, 243, and in accordance with Section 4(e) of the Federal Power Act, Citizens Utilities Company (Citizens) on January 30, 1962, filed an application for a license to operate previously constructed hydro-electric project works on the Clyde River and a tributary thereof in Orleans County, Vermont.

The project consists principally of: Seymour Dam, a rock and concrete structure at the outlet of Seymour Lake; Echo Dam, a concrete ogee structure with spillway at about elevation 1,249 ft. U.S.G.S., at the outlet of Echo Pond, West Charleston Dam, a rock fill and masonry dam with concrete facing, spillway crest, elevation at about 1,059 ft. at the outlet of West Charleston Pond; a pen-

stock to a powerhouse containing a 1,000 horsepower horizontal turbine connected to an 800 kilowatt generator and appurtenant facilities; Newport Dam (Units 1, 2, and 3), a masonry dam with concrete buttress and concrete facing at the spillway crest, with elevation of about 878 feet, at the outlet of Clyde Pond; two penstocks, a surge tank, and powerhouse containing two 2,400 horsepower Francis turbines, each connected to a 1,500 kilowatt generator and one 1,000 horsepower Francis turbine connected to a 600 kilowatt generator, and appurtenant facilities; Newport Hydro Unit 11 Dam, approximately 1,000 feet downstream from Newport Dam on the Clyde River, a concrete gravity dam, an open flume to an intake structure and penstock; a powerhouse containing a 2,400 horsepower Francis turbine connected to a 1,600 kilowatt generator and appurtenant facilities.

In June, 1956, Citizens Utilities Company commenced construction of a new addition to its project works designated as Unit No. 11 for water power development, approximately one mile upstream from the point at which the Clyde River flows into Lake Memphremagog near Newport, Vermont. Such construction was commenced without having first filed a declaration of intention or application for a license as required by Section 23(b) of the Federal Power Act. On November 30, 1956, Citizens filed a declaration of intention. On June 24, 1957, the Commission instituted an investigation and after hearing thereon, the presiding examiner issued an opinion, holding that Lake Memphremagog and the Clyde River, up to a point about 4,800 feet above the junction thereof, but below Citizens' Unit No. 11 project was navigable, but that the Clyde River above that point was not navigable. Thereafter, on review, it was held by the Commission in *Citizens Utilities Company* 21 FPC 233, 242, Opinion No. 318, Docket Nos. E–6716 and E–6760, February 16, 1959, as follows:

* * * * * * *

(2) Clyde River from near its source at Island Pond to its mouth at Newport, Vermont, is a navigable water of the United States.

(3) The maintenance and operation of Citizens' Unit No. 11, Newport and Charleston hydro-electric developments, and the Echo Pond and Lake Seymour reservoirs referred to above, have affected and are capable of continuing to affect the navigable capacity of the Clyde River downstream from such facilities and will affect the interests of interstate or foreign commerce.

* * * * * * *

The Commission further ordered therein that:

(A) Citizens Utilities Company shall file an application for license under the Federal Power Act with the continued operation and maintenance of its project consisting of the Unit No. 11, Newport and Charleston hydro-electric developments and the Seymour Lake and Echo Pond dams. . . .

On appeal from the Commission's Opinion, the Court of Appeals in *Citizens Utilities Company* v. *F.P.C.*, 279 F. 2d 1, cert. den. 364 U.S. 893, affirmed the jurisdiction of the Commission and in the closing paragraph of its opinion stated:

Concluding as we do that all the petitioner's dams on the Clyde River do "affect" the navigability of the last mile of that river, it becomes unnecessary for us to decide how much, if any, of the river above Unit No. 11 is "navigable". That question, therefore, we leave open.

Citizens, contrary to the Commission's order in Opinion No. 318, *supra*, thereupon filed an application under Section 10(i) of the Federal Power Act for what was in effect, a minor part license for a term of years, containing no other provisions or restrictions. The Commission rejected the application as filed, and Citizens then sought review thereof in the Court of Appeals. Holding that "all issues now before us were fully decided in *Citizens Utilities Company* v. *F.P.C.*,

2 Cir., 279 F. 2d 1, and are here *res judicata*," the Court of Appeals dismissed Citizens' petition, *Citizens Utilities Company* v. *F.P.C.*, 295 F. 2d 959.

Following the institution of enforcement proceedings by the Commission, a stipulation was entered into between Citizens and the Commission whereby Citizens agreed to file its application as directed by the Commission in Opinion No. 318, *supra*, but without prejudice to its rights to apply for a minor part license. A hearing was held thereon at Montpelier, Vermont, on October 16, 1962, and at Washington, D.C., on November 15, 1962, on which date the hearing was concluded. In its "Order Fixing Hearing" dated July 12, 1962, the Commission included the following paragraph:

The Commission finds:

> It is appropriate and in the public interest to hold a public hearing respecting the issues presented. The hearing shall not include the matter of the Commission's jurisdiction, which was determined February 16, 1959 in *Citizens Utilities Company*, 21 FPC 233 and affirmed in *Citizens Utilities Co.* v. *F.P.C.*, 279 F. 2d 1 (CA2), *cert. denied*, 364 U.S. 893, said affirmance being later held by the Court (295 F. 2d 959) to constitute *res judicata*.

By direction of the Commission there is thus eliminated from consideration any matters bearing on the Commission's jurisdiction. This order coupled with the Commission's prior determination in Opinion No. 318, *supra*, that the Clyde River from source to mouth is a navigable water of the United States, makes reconsideration of these issues in this proceeding, as urged by Citizens, neither permissible nor necessary. The only issues therefore left for determination are (1) whether a major or minor part license should issue herein and (2) the effective date of such license.

Citizens claims "entitlement" to a minor part license under Section 10(i) of the Federal Power Act even if the Clyde River is deemed a "navigable water of the United States," basing its argument first, on the presumption that its dams are a minor part only of its entire hydro-electric facilities; and secondly, that the totality of Citizen's hydro-electric facilities on the Clyde River is "a minor part only of Citizens' complete project."

Section 10(i) states in pertinent part as follows:

> (i) In issuing licenses for a minor part only of a complete project, or for a complete project of not more than two thousand horsepower installed capacity, the Commission may in its discretion waive such conditions, provisions, and requirements of this Part, except the license period of fifty years, as it may deem to be to the public interest to waive under the circumstances: . . .

Before proceeding further it should be pointed out that although the language is quite plain, Citizens fails to recognize that Section 10(i) specifically makes the issuance of a minor part license a matter subject to the discretion of the Commission. Under this section of the Act there is no "entitlement", as such, or any mandatory obligation upon the Commission to issue a minor part license under any circumstances. In any case, Citizens' reliance upon Section 10(i) as the basis for entitlement to a minor part license is unwarranted.

The applicant directs attention to the fact that the Court of Appeals based its jurisdictional finding solely on the fact that Citizen's dams in the upper reaches of the river affect the flow of the water in the downstream portion; that these dams are but a minor part of the entire project works, and that Citizens is therefore entitled to a minor part license. It is not necessary to discuss the correctness of Citizens' version of the Court of Appeals' holding before noting disagreement with Citizens' basic presumption that its dams are but a minor part of its hydro-electric project. Suffice to say, that Citizens'

dams control the flow of water which operates the turbines, which drive the generators, which produce the power, which Citizens markets. The dams are an integral part of the project without which there would be no project. Under the circumstances and in the absence of any cited authority to the contrary, the dams concerned herein, clearly cannot be considered a "minor part" of Citizens' hydro facilities.

Citizens' additional claim to a minor part license because its hydroelectric generating facilities are a minor part only of its entire "project", is similarly not persuasive. Citizens urges that, based on capacity, its entire hydroelectric project on the Clyde River is but a minor part of its entire system, which includes diesel produced and purchased power. Based on the evidence in this case however, the fact of the matter is that Citizens' hydro facilities play a major role in the maintenance of an adequate supply of power in the area, and such facilities can therefore hardly be considered as eligible for a minor part license. Citizens' contention herein would be tantamount to a situation whereby Virginia Electric Power Company would apply for a "minor part" license for its hydroelectric facilities at Roanoke Rapids because such facilities produce only a minor part of the total power produced by its entire far-flung system, *U.S. ex. rel. Chapman* v. *F.P.C.*, 345 U.S. 153.

There is still another and even more compelling reason, why a minor part license cannot issue herein. Section 10(i) specifically limits the issuance of a "minor part" license to a "complete project of not more than two thousand horsepower installed capacity . . .". It is readily apparent that the respective installed horsepower of two of Citizens' three powerhouses on the Clyde, is more than two thousand horsepower. Moreover, if the definition of "project" as used in Section 3(11) of the Act is applied to Section 10(i), it becomes even more apparent that the total horsepower of Citizens' hydroelectric works far exceeds the limitation in Section 10(i).

Citizens' attempt to avoid the mandatory conditions imposed by Part I of the Act by obtaining a license for only a purportedly minor part of its hydro facilities must fail in any case. The Commission has at all times considered the issuance of a license for Citizens' entire project as a whole, and not for any particular part thereof. In its decision determining the navigability of the river, the Commission stated:

> * * * Citizens' developments on the river are plainly built to control the flow of the river so as to bring about the most efficient generation of power. * * * We have before us not five separate projects but project works at five locations physically interdependent and operated in coordination for power purposes, so that the entire group is maintained as a single, integrated unit of development for the purpose of exploiting the resources of the river. [*Citizens Utilities Co., supra*, 21 FPC at 240.]

In addition thereto the opening paragraph of the Notice of Application issued by the Commission on February 26, 1962, states that "application has been filed . . . for license for hydroelectric project works . . ." and then goes on to describe the project as including all Citizens' dams, turbines, generators, etc., located on the Clyde River. A project is defined in Section 3(11) of the Act as "a complete unit of improvement or development, consisting of powerhouse, all conduits, all dams and appurtenant works, and structures which are a part of such unit . . .". In the light of the above, the conclusion is inescapable that the Commission never contemplated the issuance of a license, major or minor, for anything other than the complete project works on the Clyde River.[1]

[1] As pointed out by Citizens on page 11 of its memorandum of law, the Commission at one time flatly rejected Citizens' application for a license for only part of its project.

The only other question left for determination is as to the effective date, and the term, of the license to be issued herein. The instant application falls squarely with the principles laid down by the Commission in *Public Service Company of New Hampshire*, 27 FPC 830, and presents no reason for not adhering thereto insofar as the term of the license is concerned. As concerns the effective date of the license, the Commission in the *Public Service Company of New Hampshire* Case, *supra*, stated:

> In the latter connection, it should be pointed out that if Applicant, subsequent to 1935, had built an entirely new project without securing the requisite authorization, we would not hesitate to adopt the date of such construction as the effective date of its license. We see no reason for different treatment merely because the unauthorized construction took the form of a replacement of an existing facility. Since the application now before us does not indicate the precise date upon which the construction was commenced, we are content to make the license effective as of July 1, 1958, the first day of the month in which we determined jurisdiction in Docket No. E–6807.

Resolving any doubt with respect thereto in favor of Citizens, and as indicated by the Commission, in Opinion No. 318, *supra*, it would appear that construction on the Clyde Pond Dam which raised its elevation one foot was undertaken in June of 1956, without benefit of license or declaration of intention. While the Commission in the *Public Service Company of New Hampshire* case issued the license therein effective as of the date the Commission determined jurisdiction, it is clearly indicated that the effective date of the license would have been the "date upon which the construction was commenced," had such date been known. Accordingly, since the date of commencement of construction herein is construed as June of 1956, the effective date of the license is fixed as June 1, 1956.

ADDITIONAL FINDINGS AND CONCLUSIONS

Upon consideration of the entire record in this proceeding, the evidence adduced, and the arguments, it is found and concluded, in addition to the findings and conclusions heretofore herein set out that:

(1) Applicant is a corporation organized under the laws of the State of Delaware and has qualified to do business in the State of Vermont.

(2) The project consists of:

(a) All lands constituting the project area and inclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the licensee or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit J: (FPC No. 2306–21) General Map of Project Area in Vermont;

Exhibit K: Sheet 1 (FPC No. 2306–15) Detail Map showing Site of Echo and Seymour Dams in Vermont;

Sheet 2 (FPC No. 2306–16) Detail Map of West Charleston Plant and Dam;

Sheet 3 (FPC 2306–17) Detailed Map of Newport Dam and Units 1, 2, 3; and

Sheet 4 (FPC No. 2306–18) Detail Map Newport Unit No. 11.

(b) The constructed development consists principally of five dams and three powerhouses described as follows:

Seymour Dam, a rock and concrete structure about 43 feet long and about 5 feet maximum height having a free overflow crest length of about 34 feet surmounted by 6-inch flashboards impounding a reservoir of about 1,750 acres at

normal full pond elevation 1,279.5 feet U.S.G.S. datum and having a usable capacity of 2,040 acre-feet within a maximum drawdown of 1.17 feet from top of flashboards elevation 1,279.5 feet U.S.G.S. The dam also contains a manually controlled gate about 5 feet wide and 5 feet high.

Echo Dam, a concrete ogee structure about 120 feet long and about 16 feet maximum height having a free overflow spillway in one section 32 feet long with crest elevation at 1,249.5 feet and one section 37 feet long and corresponding elevation of crest 1,249 feet both with reference to U.S.G.S datum impounding a reservoir having an area of about 530 acres at normal full pond elevation 1,249 feet and a usable capacity of 3,180 acre-feet within a maximum drawdown of 6.0 feet from normal full pond elevation 1,249 feet. The dam also contains a manually controlled gate about 2.5 feet wide and 4.5 feet high.

West Charleston Dam, a rock fill and masonry dam about 196 feet long and maximum height about 28 feet having a spillway about 107 feet long surmounted with 18-inch flashboards, impounding a pond about 40 acres in area at normal full pond elevation 1,060.25 feet U.S.G.S. and having a usable pond capacity of about 220 acre-feet within a maximum drawdown of 5.5 feet from top of flashboard elevation 1,060.25 feet U.S.G.S.; the dam also contains a 6-foot diameter waste gate and a sluice gate about 7 feet wide and 7.5 feet high, a 6-foot diameter steel penstock about 1,650 feet long from the dam to the West Charleston Powerhouse containing a 1,000 horsepower horizontal turbine connected to an 800 kilowatt generator operating under a design head of 57 feet and appurtenant facilities.

Newport Dam, for Units Nos. 1, 2, and 3, a masonry dam with concrete buttress and concrete facing about 365 feet long and maximum height about 22 feet having a spillway about 324 feet long surmounted by 15-inch flashboards impounding Clyde Pond having an area of about 200 acres at normal full pond elevation 881.0 feet U.S.G.S. and having a usable pond capacity of about 2,400 acre-feet within a maximum drawdown of 12.0 feet from top of flashboard elevation 881.0 feet, U.S.G.S. The dam also contains a 5-foot by 4-foot waste gate. Water is diverted through 2 steel penstocks, one 5 feet in diameter about 1,800 feet long and the other 6 feet in diameter about 2,175 feet long, and a surge tank to the Newport Powerhouse containing 3 units; Units Nos. 1 and 2 each have a 2,400 horsepower vertical Francis type turbine directly connected to a 1,500 kilowatt generator operating under a design head of 140 feet. Unit No. 3 is a 1,000 horsepower horizontal Francis type turbine directly connected to a 600 kilowatt generator operating under a design head of 132 feet and appurtenant facilities. Total installed hydroelectric capacity of the station is 3,600 kilowatts.

Newport Dam for Unit No. 11, a concrete gravity diversion dam about 114 feet long and maximum height of about 20 feet having a spillway crest about 90 feet long at elevation 741 feet U.S.G.S a canal or open flume about 2,170 feet long from the dam to an intake structure, an 8-foot diameter steel penstock about 80 feet long from the intake structure to the powerhouse, a powerhouse containing one Unit No. 11 having a 2,400 horsepower vertical fixed blade propeller type turbine directly connected to a 1,600 kilowatt generator operating under a design head of 55 feet and appurtenant facilities. The dam also contains a waste gate about 4 feet wide and 4 feet high.

The waters released by Citizens Utilities Company from their dams on Seymour Lake and Echo Pond flow downstream through the hydro-electric plant of the Village of Barton, at approximately river mile 12.2, and thence through Citizens' West Charleston plant at about mile 11.4, Newport Units 1, 2 and 3, at about mile 1.9, and finally Unit No. 11 plant about mile 1.0. The location, nature, and character of the project works are more specifically shown

and described by the exhibits hereinbefore cited and by certain other exhibits which also formed part of the application for license and which are designated and described as follows:

Exhibit L: *General Design Drawings*

Exhibit	FPC No.	Title
L-1	2306-7	Echo and Seymour Dams, Vermont.
L-2	2306-8	West Charleston Dam in Vermont.
L-3	2306-9	Newport Dams for Unit No. 11 and Units Nos. 1, 2, 3.
L-4	2306-10	West Charleston Powerhouse, Vermont.
L-5	2306-11	Powerhouse Newport—Units Nos. 1 and 2.
L-6	2306-19	Powerhouse Newport—Unit No. 3.
L-7	2306-20	Powerhouse Newport—Unit No. 11—Vermont.

Exhibit M entitled "General Description of Equipment in Project" consisting of 2 typewritten pages filed in the Commission, January 30, 1962.

(c) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as a part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance and operation of the project.

(3) No conflicting application is before the Commission. Public notice has been given. No formal protest has been received.

(4) The issuance of a license as hereinafter provided will not affect a Government dam or the development of any water resources for public purposes which should be undertaken by the United States.

(5) The project is best adapted to a comprehensive plan for improving and developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes, under the terms and conditions hereinafter imposed.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charges is 8,000 horsepower. The energy generated thereby is distributed by Applicant and sold for public utility purposes.

(7) The amount of annual charges to be paid under the license for the project for the purpose of reimbursing the United States for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(8) The exhibits designated and described in finding (2) above conform to the Commission's rules and regulations and should be approved as part of the license for the project.

ORDER

WHEREFORE, *it is ordered*, subject to review by the Commission, that:

(A) The exhibits designated and described in finding (2) above are hereby approved as part of this license order.

(B) This license is hereby issued to Citizens Utilities Company under Section 4(e) of the Federal Power Act for a period, effective as of June 1, 1956 and terminating December 31, 1993 for the continued operation and maintenance of the constructed Seymour Lake Dam, Echo Pond Dam, West Charleston Dam and Powerhouse, Units Nos. 1, 2, and 3 Dam and Powerhouse and Unit No. 11 Dam and Powerhouse and appurtenances (Project No. 2306) located on a tributary

of the Clyde River and the Clyde River, a navigable water of the United States in Orleans County, State of Vermont subject to the terms and conditions of the Act, which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(C) This license is also subject to the terms and conditions set forth in Form L–3, December 15, 1953, entitled "Terms and Conditions of License for Constructed Major Project Affecting Navigable Waters of the United States" (17 FPC 385–389) which terms and conditions, designated as Articles 1 through 17, are attached hereto and made a part hereof, except for Article 7 and the last sentence of Article 11; and subject to the following special conditions set forth herein as additional articles:

Article 18. The Licensee shall pay to the United States the following annual charge, effective as of June 1, 1956.

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act one (1) cent per horsepower on the authorized installed capacity (8,000 horsepower) plus two and one-half (2½) cents per 1,000 kilowatt-hours of gross energy generated during the calendar year for which the charge is made; or such other amounts as may hereafter be determined as necessary to reimburse the United States for the costs of administration.

Article 19. The Licensee shall for the protection of navigation, construct, maintain, and operate at its own expense such lights and other signals on fixed project structures in or over navigable waters of the United States as may be directed by the Secretary of the Department in which the Coast Guard is operating.

Article 20. The Licensee shall construct, maintain, and operate, or shall arrange for the construction, maintenance, and operation of artificial propagation facilities and such other permanent fish facilities and protective devices and shall comply with such reasonable modifications of the project structures and operation in the interest of fish and wildlife resources, provided, that such construction, maintenance and operation of artificial propagation facilities and such other permanent fish facilities and protective devices and modifications shall be reasonably consistent with the primary purpose of the project and not unduly impair the power value of the project, as may be prescribed hereafter by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the Vermont Fish and Game Commission, after notice and opportunity for hearing and upon a finding based on substantial evidence that such construction, maintenance and operation of artificial propagation facilities and protective devices and modifications are necessary and desirable, and consistent with the provisions of the Act.

Article 21. Whenever the United States shall desire, in connection with the project, to construct fish handling facilities at its expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of Licensee's lands and interests in lands, reservoirs, waterways and project works as may be reasonably required to complete such fish handling facilities or such improvements thereof. In addition, after notice and opportunity for hearing the Licensee shall modify the project operation as may be prescribed by the Commission, consistent with the primary purpose of the project, in order to permit the maintenance and operation of the fish handling facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish handling facilities or to relieve the Licensee of any obligation under this license.

Article 22. The Licensee shall at no time cause or permit the elevation of the water surface of Seymour Lake to be raised more than six inches higher or to be lowered more than eight inches below the crest of Licensee's present dam, said crest of dam being at elevation 1,279 feet U.S.G.S. datum. Maximum lake elevation shall be not higher than 1,279.5 feet U.S.G.S. datum and minimum lake elevation to be no lower than 1,278.33 feet U.S.G.S. datum.

Article 23. The Licensee shall at no time cause or permit the elevation of the surface of Echo Lake to rise above the crest of the present dam at elevation 1,249 feet U.S.G.S. datum.

Article 24. The Licensee shall make water releases in the interest of fish and wildlife in accordance with the following schedule:

(i) *At Seymour Dam*—Keep the gate continuously open at least one inch from the sill for the continuous discharge of water.

(ii) *At Echo Dam*—Keep the gate continuously open at least one inch from the sill for the continuous discharge of water.

(iii) *At Unit No. 11 Dam*

(a) Discharge at least five cubic feet per second of water continuously through the sluice gate in the dam.

(b) For the period April 15 to June 15 of every year discharge continuously at least ten cubic feet per second of water through the sluice gate in the dam.

(c) For the period September 15 to November 15 of every year discharge continuously at least ten cubic feet per second of water through the sluice gate in the dam.

Article 25. The Licensee shall raise and lower its gates at Seymour and Echo dams gradually in order to prevent scouring of the streambed.

Article 26. In order to determine the total flow of the river below Unit No. 11 Powerhouse, and to aid in determining releases from the sluice gate in Unit No. 11 dam, the Licensee shall: (1) maintain the existing stream gaging station in the by-passed section of the river; (2) install immediately in and maintain in Unit No. 11 Powerhouse a continuous recording watt meter to provide a precise record of kilowatt-hour output and rated to continuously reflect the discharge in cubic feet per second flowing through the turbine.

Article 27. The Licensee shall file for Commission approval a revised Exhibit K map showing the project boundary and Exhibit L for Seymour Dam within one year from the date of issuance of this license.

Article 28. The Licensee shall install additional capacity and make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so, after notice and opportunity for hearing.

Article 29. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, the benefits of which shall be shared equitably by the participants in such coordination.

Article 30. The Licensee shall, within one year from the date of issuance of this license, file with the Commission a recreational use plan for the project which shall include not only recreational improvements which may be provided by others, but the recreational improvements the Licensee plans to provide.

Article 31. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and recreational

purposes, including fishing and hunting, and shall allow to a reasonable extent for such purposes the construction of access roads, wharves, landings, and other facilities on its lands the occupancy of which may in appropriate circumstances be subject to payment of rent to the Licensee in a reasonable amount: *Provided*, that the Licensee may reserve from public access, such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property and *Provided further*, that the Licensee's consent to the construction of access roads, wharves, landings, and other facilities shall not, without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities. The facilities are in addition to the facilities that the Licensee may construct and maintain as required by the license.

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Federal Power Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

(E) The request of the Applicant for minor and minor part licenses is denied.

MARTIN E. RENDELMAN,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NOS. CP62–243 AND CP61–339; MISSISSIPPI RIVER TRANSMISSION CORPORATION, DOCKET NO. CP62–242, CP61–341, CP62–76 AND CP61–339; MISSISSIPPI RIVER FUEL CORPORATION, DOCKET NO. CP61–348

ORDER GRANTING REQUESTS FOR TEMPORARY AUTHORIZATION

(Issued November 6, 1963)

Natural Gas Pipeline Company of America (Natural), on September 6, 1963, and Mississippi River Transmission Corporation (Mississippi Transmission) and Mississippi River Fuel Corporation (Mississippi Fuel) on September 9, 1963, filed requests for the issuance of temporary authorization of their respective applications in the above-captioned dockets. In essence, the applicants seek an extension to December 1, 1964, of the temporary certificates issued by this Commission on October 15, 1962, as modified on November 20, 1962, in the above-docketed applications which authorizations are due to expire on December 1, 1963. On October 9, 1963, Trunkline Gas Company (Trunkline) filed an answer in opposition to the requested temporary authorizations.

In our afore-mentioned order of October 15, 1962, we set forth, extensively, our reasons for granting the temporary authorizations then requested making specific findings that, among other things, (1) there was a natural gas supply shortage in the St. Louis, Missouri, area, (2) an emergency existed within the meaning of Section 7 of the Act and (3) that the situation could not be timely alleviated because of the anticipated protracted hearings on the applications by virtue of their involvement in a comparative proceeding. Those hearings were concluded on October 15, 1963. However, when considering the time permitted for the filing of briefs as well as the time allowed for the filing of any excep-

tions to the initial decision to be issued by the Presiding Examiner and fully recognizing the complex nature of the presentations before the Examiner, we conclude that a final decision could not issue timely so as to meet the coming winter season's emergency in the St. Louis area.

Trunkline's objections, in the main, are a reiteration of its objections filed in opposition to the granting of the original requested temporary authorizations which we previously disposed of and need not now repeat. Trunkline does make reference to a new matter in its current opposition. The Commission by a grant of the authorizations here sought would permit Natural to deliver and sell to Transmission 36,750 Mcf per day at 14.65 psia under Natural's PL–1 Rate Schedule. That is the only volume and rate schedule for which deliveries are being sought by Natural to Transmission under temporary authorization. Trunkline states however that under the revised tariff tendered for filing on September 20, 1963, Natural seeks to enlarge the scope of any temporary authorization that might be granted here to the detriment of Trunkline. Under the proposed Rate Schedule I–2, Natural could deliver and sell "surplus" gas to Transmission which would result, Trunkline claims, in a reduction of Transmission's takes from Trunkline. Our order of October 31, 1963, in Docket No. RP64–12, providing for a hearing and suspending, among other things, the proposed I–2 Rate Schedule of Natural exanimates this latter argument. However, lest there be any misconception, even if we had not suspended Natural's proposed I–2 Rate Schedule, no deliveries could be made under it by reason of our grant here. Our grant under temporary authorization to meet an existing emergency situation permits Natural to deliver to Transmission only the aforementioned volume of gas utilizing the PL–1 Rate Schedule.

The Commission orders:

The temporary authorizations granted by our order of October 15, 1962, as modified, is hereby extended so as to terminate on December 1, 1964. To effectuate this authorization Natural's service agreement with Transmission, dated September 3, 1963, is accepted to become effective December 1, 1963.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

FLORIDA GAS TRANSMISSION COMPANY, ET AL., DOCKET NO. G–18338, ET AL.

ORDER AMENDING ORDERS ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 7, 1963)

On May 1, 1963, as supplemented on May 31, 1963, Florida Gas Transmission Company (Florida Gas) filed in Docket No. G–18338, *et al.*, a "Petition To Amend Orders Issuing Certificate Of Public Convenience And Necessity" by substituting City Gas Company of Florida (City Gas) for the Brevard County Gas District (District) as the resale customer and distributor of natural gas to be sold and delivered by Florida Gas for ultimate public consumption in Brevard County, Florida.

The Commission's order issued August 9, 1961,[1] in the subject dockets, authorized Houston Texas Gas and Oil Corporation[2] to provide natural gas service to District for resale, subject to the condition that an alternate financial plan be adopted because the original plan had too low a debt-service coverage ratio to meet our standards of economic feasibility. The Board of County Commissioners of Brevard County, Florida, elected not to proceed with the construction of a municipally owned distribution system. Thereafter, the principal cities in Brevard County granted franchises to City Gas to render natural-gas distribution service, those cities being: Melbourne, Eau Gallie, Titusville, Cocoa, Cocoa Beach, and Whispering Hills. The estimated third-year annual and peak day natural-gas requirements for the areas to be served by City Gas are as follows:

Annual:		
Firm	601,068	M³Btu
Interruptible	41,670	M³Btu
Total	642,738	M³Btu
Peak day	8,350	M³Btu

These quantities represent a decrease of 133,736 M³Btu in third-year annual firm requirements, a decrease of 137,298 M³Btu in third-year annual interruptible requirements, and a decrease of 2,902 M³Btu in the third-year peak day requirements. This decrease in the quantities of gas utilized in Brevard County is a result of the somewhat smaller service area proposed by City Gas, in that outlying rural areas in the County will not be served under City Gas' proposal.

Florida Gas proposes to install four separate 4-inch lateral transmission lines, together with metering and regulating stations and appurtenant facilities, from its existing Indian River Lateral to connections with City Gas at the city gates of Melborne, Eau Gallie, Indian River City, and Cocoa—a total of approximately 11.6 miles of transmission lines.

Florida Gas has entered into service agreements dated April 23, 1963, with City Gas for general service, providing for the sale of gas under Rate Schedule G of Florida Gas' FPC Gas Tariff.

Due notice of the filing of the subject petition was issued June 20, 1963. On July 17, 1963, a timely petition to intervene in this proceeding was filed by Southeastern Propane Gas Company (Southeastern) and was granted by order permitting intervention issued on September 5, 1963. No other petition or protest has been received. Notice of the hearing was published in the Federal Register on September 11, 1963; (28 F.R. 9890). Pursuant to that notice a public hearing was held in Washington, D.C., respecting the matters involved in and the issues presented by the petition to amend on September 30, 1963, through October 3, 1963. Hearings were then recessed until October 29, 1963, and, in the interim, Southeastern moved to withdraw its intervention having disposed of its properties to City Gas. Staff counsel moved orally at the hearing of October 29, 1963, that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

[1] Coastal Transmission Corporation, *et al.*, 26 FPC 318.

[2] Houston Texas Gas and Oil Corporation was subsequently renamed as Florida Gas Transmission Company. Later, Coastal Transmission Corporation was merged into Florida Gas.

The Commission finds:

(1) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the orders heretofore issued in Docket No. G–18338, *et al.*, should be amended to substitute City Gas Company of Florida for the Brevard County Gas District as the resale customer and distributor of natural gas to be sold and delivered by Florida Gas Transmission Company in the amounts set forth for resale for ultimate public consumption in Brevard County, Florida.

(2) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convience and necessity require the construction by Florida Gas Transmission Company of the facilities set forth in their petition, those being four separate lateral transmission lines totaling approximately 11.6 miles with metering and regulating stations, and appurtenant facilities; and to deliver natural gas in the quantities set forth in their petition.

(3) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c) (1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) The order heretofore issued in Docket No. G–18338, *et al.*, be, and the same are hereby, amended to substitute City Gas Company of Florida for the Brevard County Gas District as the resale customer and distributor of natural gas to be sold and delivered by Florida Gas Transmission Company for resale for ultimate public consumption in Brevard County, Florida.

(B) Florida Gas Transmission Company is hereby authorized to construct the facilities set forth in their petition, those being four separate lateral transmission lines totaling approximately 11.6 miles with metering and regulating stations, and appurtenant facilities; and to deliver natural gas in the quantities set forth in their petition.

(C) Southeastern be and hereby is permitted to withdraw its intervention in the proceedings.

(D) In all other respects, the orders heretofore issued in Docket No. G–18338, *et al.*, shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

FLORIDA GAS TRANSMISSION COMPANY, DOCKET NO. CP64–53

FINDINGS AND ORDER PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued November 7, 1963)

On September 3, 1963, Florida Gas Transmission Company (Applicant) filed in Docket No. CP64–53 an application and supplement, pursuant to Section 7(b) of the Natural Gas Act for permission to abandon approximately 1.25 miles of 3½-inch lateral pipeline and appurtenant facilities which have been used solely for rendition of direct sales of natural gas to the municipal diesel electric generating plant of the City of Blountstown, Florida.

Applicant states that due to a major breakdown of generating facilities at the plant being served with gas the same is being closed and that no further service is desired.

The City of Blountstown has agreed to pay to Applicant the sum of $21,560 to terminate the gas purchase contracts, which sum will compensate for the cost of the construction of the facilities to be abandoned.

Pursuant to due notice a public hearing was held in Washington, D.C., on October 22, 1963, respecting the matters involved in and the issues presented by the application as supplemented. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and the Commission render a decision pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant is a natural gas company within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of December 28, 1956, in Opinion 301.

(2) The facilities to be abandoned, as heretofore described, are subject to the jurisdiction of the Commission, and abandonment of such facilities is subject to the requirements of subsection (b) of Section 7 of the Natural Gas Act.

(3) Such abandonment by Applicant, as heretofore described, is permitted by the public convenience and necessity, and an order authorizing and approving same should be issued as hereinafter ordered.

(4) A request made during the public hearing by Staff Counsel for the omission of the intermediate procedure under Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure was unopposed by any party of record, and not having been denied by the Commission is granted pursuant to Section 1.30(c)(1) of the said rules.

The Commission orders:

(A) Applicant be and is hereby permitted to abandon the facilities heretofore described, as more fully described in the application.

(B) Applicant shall advise the Commission in writing of the date of the removal of the facilities within ten days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

NORTH STAR NATURAL GAS COMPANY, DOCKET NO. CP63-268

FINDING AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued November 7, 1963)

On March 29, 1963, North Star Natural Gas Company (Applicant) filed in Docket No. CP63-268 an application, as supplemented on October 7, 1963, pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Midwestern Gas Transmission Company (Midwestern) to establish physical connection of its transmission facilities with the proposed facilities of Applicant and to sell and deliver natural gas to Applicant for resale and distribution in the municipalities of Staples and Wadena, Minnesota, all as more fully set forth in the application.

Applicant proposes to construct and to operate two lateral transmission pipelines from the point of interconnection with Midwestern's transmission line to the towns of Staples and Wadena. Applicant will also construct and operate the distribution facilities in the said communities.

Applicant estimates its peak-day requirement and sources of supply, as follows, for the first three years of service:

	Volumes in Mcf @ 14.73 psia		
	First year	Second year	Third year
Requirements	1,848	2,565	2,909
Supply:			
Midwestern	1,000	1,100	1,200
Peak shaving plant	848	1,465	1,709
Total supply	1,848	2,565	2,909

The total estimates cost of the proposed lateral lines and the distribution systems is $882,200, which will be financed through private placement, short term loans and cash generated from operations.

Applicant has received authorizations from the City of Staples and the Village of Wadena to construct and operate the gas distribution systems in each community.

On April 29, 1963, Midwestern filed an answer to the application advising that it has not objected to supplying natural gas for resale in Staples and Wadena in the amounts requested.

Applicant will construct and operate facilities to supply the additional requirements for peaking purposes.

Due notice of the filing of the application and opportunity for hearing thereon have been given by publication in the Federal Register on October 3, 1963 (28 F.R. 10695). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

(1) Midwestern Gas Transmission Company is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of May 12, 1959, in Docket No. G–16841 (21 FPC 653).

(2) Applicant, North Star Natural Gas Company, is a public utility duly organized and existing under the laws of the State of Minnesota and is authorized to engage in the business of distributing and selling natural gas in said State.

(3) It is necessary and desirable in the public interest that Midwestern be directed to establish physical connection of its natural gas transmission facilities with Applicant's proposed facilities and that it sell and deliver natural gas to Applicant for distribution in Staples and Wadena, Minnesota.

(4) Applicant should be prepared to receive natural gas from Midwestern within one year from the date of issuance of this order.

(5) The requirement that Midwestern serve Applicant, as proposed, will not place any undue burden upon Midwestern nor will it impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Midwestern Gas Transmission Company be and it is hereby directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to sell and deliver to Applicant up to 1,200 Mcf per day, all as more fully described in the application and supplement in this proceeding.

(B) Applicant shall be prepared to receive natural gas from Midwestern within one year from the date of issuance of this order.

(C) Midwestern shall report to the Commission in writing the date of commencement of service to Applicant within ten days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

NAFCO OIL AND GAS INC. (SUCCESSOR TO OIL AND GAS PROPERTY MANAGEMENT, INC.), DOCKET NOS. G-18432 AND G-3863

FINDINGS AND ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 7, 1963)

On February 7, 1958, Oil and Gas Property Management, Inc. (Oil & Gas), et al.,[1] filed in Docket No. G-14509 a certificate application seeking authorization to sell natural gas to Northern Natural Gas Company (Northern) from certain acreage in Ochiltree County, Texas, pursuant to a gas sales contract dated August 8, 1957, between J. M. Huber Corporation and Northern, as ratified by Oil & Gas on December December 1, 1957.

On April 28, 1959, Oil & Gas and NAFCO Oil and Gas Inc. (NAFCO) filed a joint application in Docket No. G-18432 for NAFCO to assume and continue all sales of natural gas made by Oil & Gas theretofore authorized in various dockets including Docket No. G-3863. By letter from the Secretary dated May 19, 1959, Oil & Gas was advised that the portion of the Commission's order issuing a certificate in Docket No. G-3863 had been vacated and the related FPC Gas Rate Schedule No. 13 had been cancelled and rejected since the sale was a "percentage sale" as defined in Section 154.91(e) of the Regulations under the Natural Gas Act.

By order issued May 20, 1963, in Docket No. G-18432 (Docket No. G-2843, *et al.*) NAFCO received certificate authorization to continue the sales initiated by Oil & Gas which service was proposed in Docket No. G-14509, and the applications filed in Docket No. G-14509 was dismissed. The certificate theretofore issued in Docket No. G-3863 is still outstanding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the order of May 20, 1963, in Docket No. G-18432 (Docket No. G-2843, *et. al.*) should be amended as hereinafter ordered.

The Commission orders:

(A) The order of May 20, 1963, in Docket No. G-18432 (Docket No. G-2843, *et al.*) be and the same is hereby amended to authorize the continuation by NAFCO Oil and Gas Inc. of the sale of natural gas theretofore rendered by Oil and Gas Property Management, Inc., *et al.*, authorized in Docket No. G-3863, with the exception of that portion of the service theretofore rendered pursuant to Oil and Gas Property Management, Inc., FPC Gas Rate Schedule No. 13; and in all other respects, said order of May 20, 1963 shall remain in full force and effect.

(B) That portion of the certificate application filed in Docket No. G-18432 relating to the sale theretofore authorized in Docket No. G-3863 be and the same is hereby dismissed insofar as said application relates to service rendered pursuant to Oil and Gas Property Management Inc., FPC Gas Rate Schedule No. 13.

(C) The certificate of public convenience and necessity heretofore issued in Docket No. G-3863 be and the same is hereby terminated.

---

[1] The additional parties are Beacon Building Corporation, Hansford Oil Company, and D. Michael Curran, cosignatory parties with Oil & Gas to the gas sales contract involved.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TEXACO INC., ET AL., DOCKET NO. G–4616, ET AL.; PAN AMERICAN PETROLEUM CORPORATION, DOCKET NO. CI61–516; TEXOMA PRODUCTION COMPANY, DOCKET NO. CI63–1042

ORDER RESCINDING IN PART ORDER ISSUED SEPTEMBER 13, 1963*

(Issued November 7, 1963)

On September 13, 1963, the Commission issued an order in Docket No. G–4616, *et al.*, granting a certificate of public convenience and necessity to Texoma Production Company in Docket No. CI63–1042 and amending the order granting a certificate in Docket No. CI61–516. The order of September 13, 1963, stated in part that all of the sales therein were either equal to or below the ceiling prices established by the Commission's Statement of Policy 61–1, as amended, or involved sales for which permanent certificates had been previously issued. Prior to the issuance of the order of September 13, 1963, Applicants in Docket Nos. CI61–516 and CI63–1042 had been requested to advise the Commission whether they would be willing to accept authorizations conditioned to a lower rate than that for which they had applied. Neither expressed willingness to do so.

It appears that Docket Nos. CI61–516 and CI63–1042 were included in the consolidated proceeding through error and that the amendment and certificate should not have been granted in the order of September 13, 1963.

The Commission finds:

These portions of the Order of the Commission issued September 13, 1963, in Docket No. G–4616, *et al.*, granting a certificate of public convenience and necessity to Texoma Production Company in Docket No. CI63–1042 and amending the order granting a certificate of public convenience and necessity to Pan American Petroleum Corporation in Docket No. CI61–516 should be rescinded.

The Commission orders:

(A) Those portions of the Order of the Commission issued September 13, 1963, in Docket No. G–4616, *et al.*, granting a certificate of public convenience and necessity to Texoma Production Company in Docket No. CI63–1042 and amending the order granting a certificate of public convenience and necessity to Pan American Petroleum Corporation in Docket No. CI61–516 be and the same are hereby rescinded.

(B) In all other respects said order of September 13, 1963, in Docket No. G–4616, *et al.*, shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

FLORIDA GAS TRANSMISSION COMPANY, DOCKET NO. CP63–346

ORDER REMANDING PROCEEDINGS FOR FURTHER HEARING

(Issued November 8, 1963)

On June 17, 1963, Florida Gas Transmission Company (Applicant) filed in Docket No. CP63–346 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the

*Rehearing denied December 27, 1963, 30 FPC 1606.

construction during the twelve-month period following date of authorization and the operation of natural gas transmission facilities to enable Applicant to connect new direct industrial customers purchasing natural gas from its interstate transmission system, all as more fully set forth in the application.

The facilities proposed to be constructed hereunder include lateral lines, taps, measuring and regulating and other necessary delivery equipment to render service to direct industrial customers for various purposes, the estimated construction costs being limited to a maximum of $1,000,000, with no single project to exceed a cost of $250,000.

Pursuant to due notice, a public hearing was held in Washington, D.C., on September 4, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The application in this proceeding is subject to the same infirmities as the application of *East Tennessee Natural Gas Company* in Docket No. CP63–212 which is the subject of our Opinion No. 409 and accompanying order issued November 5, 1963, p. 1197, *supra*, and the discussion set forth therein is, therefore, equally applicable to the instant proceeding.

In view of the fact that the Applicant herein has not had opportunity to make whatever representations it deems appropriate in the premises, the proceeding in subject Docket No. CP63–346 will be remanded to the Presiding Examiner for further hearing to enable Applicant to present such evidence as it may desire in the light of the aforesaid Opinion No. 409.

The Commission finds:

It is necessary and appropriate in the administration of the Natural Gas Act that the instant proceeding be remanded to the Presiding Examiner for further hearing for the presentation of such evidence as Applicant deems appropriate in the light of Opinion No. 409.

The Commission orders:

(A) The proceeding in Docket No. CP63–346 is hereby remanded to the Presiding Examiner for further hearing.

(B) The hearing date for the remanded proceeding shall be fixed by a notice to be issued hereafter by the Secretary of the Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

THE MANUFACTURERS LIGHT & HEAT COMPANY, DOCKET NO. CP63–300

FINDINGS AND ORDER PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued November 8, 1963)

On May 9, 1963, The Manufacturers Light and Heat Company of Pittsburgh, Pennsylvania, filed an application, supplemented on August 27, 1963, in Docket No. CP63–300 pursuant to Section 7(b) of the Natural Gas Act for permission to abandon 4.68 miles of 16-inch transmission pipeline located in Tyler and Wetzel Counties, West Virginia, all as more fully discussed in the application.

Applicant states that the pipeline, above described, is not now of use to it because of depletion of the Sedalia Field in Doddridge County, West Virginia,

and the termination of a service contract with Hope Natural Gas Company on May 31, 1960. No customers of Applicant will be deprived of gas service by reason of the abandonment proposed and the annual expense of operating the facilities amounting to approximately $3,300 will be saved. The facilities were constructed in 1903.

Pursuant to due notice a public hearing was held in Washington, D.C., on October 29, 1963, respecting the matters involved in and the issues presented by the application as supplemented. No petition to intervene in opposition to or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and the Commission render a decision pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant is a natural gas company within the meaning of the Natural Gas Act and the facilities sought to be abandoned herein are facilities within the jurisdiction of the Commission.

(2) The facilities to be abandoned, as heretofore described, are subject to the jurisdiction of the Commission, and abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) Such abandonment by Applicant, as heretofore described, is permitted by the public convenience and necessity, and an order authorizing and approving same should be issued as hereinafter ordered.

(4) A request made during the public hearing by Staff Counsel for omission of the intermediate decision procedure under Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Rules.

The Commission orders:

(A) Applicant be and is hereby permitted to abandon and remove the facilities heretofore described, as more fully described in the application.

(B) Applicant shall within ten days after removal of the said facilities from their emplacement advise the Commission thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

NEW YORK STATE NATURAL GAS CORPORATION, DOCKET NO. CP64-35

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 8, 1963)

On August 5, 1963, New York State Natural Gas Corporation (Applicant) filed in Docket No. CP64-35 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a line tap and certain metering and regulating facilities, and the sale and delivery of natural gas to New York State Electric and Gas Corporation (New York Electric) for resale and distribution, all as more fully set forth in the application.

Applicant proposes to tap its 20-inch transmission line No. 30 in the Town of Marshall, Oneida County, New York, and to construct and operate a measuring and regulating station for the sale and delivery of natural gas to New York Electric for resale to the Village of Waterville and the Towns of Marshall and

Sangerfield, and environs, all located in Oneida County. The proposed connection will be known as the Waterville Connection.

New York Electric is an existing customer of Applicant and now receives all its gas for distribution to various cities and towns in New York from Applicant from 16 delivery points. It will construct and operate the necessary connecting line and distribution systems in the above named communities.

The estimated third year annual and peak-day requirements for the proposed market area are 80,400 Mcf and 679 Mcf of natural gas, respectively. The proposed service will not affect Applicant's gas supply or capacity. New York Electric has received the necessary authorization from the New York Public Service Commission to construct the necessary gas plant and has the required franchises to distribute gas in the respective communities.

The total estimated cost of the proposed facilities to be built by Applicant is $14,436 to be financed from cash on hand. An early authorization is requested in order that New York Electric may begin acquisition of a number of rights-of-ways necessary to begin construction in the spring of 1964.

Pursuant to due notice, a public hearing was held in Washington, D.C., on October 29, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procdure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, New York State Natural Gas Corporation, a New York corporation having its principal place of business in Pittsburgh, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, New York State Natural Gas Corporation,

to construct and operate the proposed facilities and to transport and sell natural gas as hereinbefore described, all as more fully described in the application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the sale and transportation of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 10 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP62-180

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 8, 1963)

On February 6, 1962, as supplemented on April 4, 1962, Northern Natural Gas Company (Applicant) filed in Docket No. CP62-180 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain pipeline tap facilities on the Texas portion of the "West Leg" of Applicant's Permian Basin area transmission facilities; and to sell natural gas in interstate commerce to Pioneer Natural Gas Company (Pioneer) for resale, all as more fully described in the application.

Pursuant to a contract between Applicant and Pioneer, Pioneer will take over Applicant's servicing of Applicant's present and future right-of-way grantors on the said portion of the "West Leg". Pioneer additionally intends to make irrigation sales to other consumers adjacent to the "West Leg".

Under the terms of the contract, Pioneer will purchase Applicant's existing metering facilities now used for sales to right-of-way grantors. In regard to future delivery points, when requested by Pioneer, Applicant will tap its line for measuring and regulating facilities to be installed by Pioneer. Applicant is requesting "blanket authority" to construct and operate such pipeline taps as Pioneer may request for the period ending October 1, 1971, at which time the primary term of the aforementioned contract expires. It is estimated that thirty-two new delivery points will be established up to October 1, 1971.

The contract provides for the sale to Pioneer by Applicant of a maximum of 1000 Mcf per day of firm gas between April 1 and October 1 of each year, and the same amount on an interruptible basis from October 1 to April 1 of each year. The initial price is 23¢ per Mcf (at 14.73 psia).

Pursuant to due notice, a hearing was held on October 29, 1963, respecting the matters involved in and the issues presented by the application herein. No protest or petition to intervene has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and

that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware Corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce for resale, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed sale of natural gas by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) Public convenience and necessity require that Applicant limit its deliveries of natural gas to Pioneer to a maximum of 150,000 Mcf per year.

(7) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Northern Natural Gas Company, to construct and operate facilities and to sell natural gas in interstate commerce for resale as hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) Applicant shall limit its deliveries of natural gas to Pioneer to a maximum of 150,000 Mcf per year.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TRANSWESTERN PIPELINE COMPANY, DOCKET NOS. CP63-204, CP64-91; GULF PACIFIC PIPELINE COMPANY, DOCKET NO. CP63-223; EL PASO NATURAL GAS COMPANY, DOCKET NO. CP64-76

ORDER DENYING MOTION FOR RECONSIDERATION

(Issued November 8, 1963)

On September 19, 1963, we received a letter from Gulf Pacific Pipeline Company (Gulf Pacific) expressing its disagreement with the procedures specified in our "Order on Motions to Expedite Hearings" issued on August 22, 1963, in Docket No. CP63-223, 30 FPC 533. By letter issued October 9, 1963, we advised Gulf Pacific that its letter would be treated as a petition for reconsideration of our August 22, 1963, order and we allowed other interested parties until October 24, 1963, to reply to Gulf Pacific's contentions. Replies supporting Gulf Pacific's petition were filed by the City of Los Angeles and its Department of Water and Power (Los Angeles) and by Southern California Edison Company (Edison). Replies opposing the petition were filed by the Pennsylvania Public Utility Commission, Standard Oil Company of California, Western Oil and Gas Association, and jointly by Pacific Lighting Gas Supply Company, Southern California Gas Company, and Southern Counties Gas Company of California. The reply of the Pennsylvania Commission did, however, support Gulf Pacific in its request that the procedures specified in our order be revised to permit cross-examination of direct evidence and exhibits before the service of rebuttal evidence.

In our order, we specified dates and indicated procedures to be followed in a comparative proceeding which would determine the most desirable manner, from the standpoint of the public interest, of meeting the long-term needs for natural gas deliveries to Southern California. We indicated that a notice of hearing would be issued as soon after the deadline for filing applications for long-term service to Southern California as we could determine what applications, if any, acceptable for filing, would be consolidated with Gulf Pacific's:[1] a hearing conference would begin within a month of issuance of the notice; all parties would file all direct testimony and exhibits in writing within 90 days from the date of termination of the hearing conference and rebuttal testimony within 45 days thereafter; and parties would have an additional 45 days to prepare for cross-examination of all witnesses in a continuous hearing. The order expressly indicated that at this oral portion of the hearing we would permit the introduction of "such additional evidence as the examiner may permit upon being satisfied that it was not reasonably available to the offerer at the time of submitting his direct case, or in response to material submitted on rebuttal and could not properly be anticipated at the time of introduction of the submitter's direct case, and would be of substantial value in resolving the issues in the proceeding."

As we understand it, Gulf Pacific makes two basic arguments. First of all, it contends that, irrespective of the time which may be needed to prepare the

[1] That notice of hearing issued on October 21, 1963, as "Order Consolidating Proceedings, Fixing Date of Hearing Conference and Denying Motion to Consolidate and for Time to Amend," *Transwestern Pipeline Co., et al.*, Docket No. CP63-204, *et al.*

direct cases of the other applicants and parties, it will not require 90 days from the date of the hearing conference set for November 19, 1963, to prepare its case, and that the consolidated proceeding could be expedited by permitting Gulf Pacific to "go forward with the oral presentation of its case at the earliest possible moment" with the examiner being authorized to then direct the further course of the proceeding "in the light of developments as they may occur." We are convinced that *oral* presentation of the direct cases in any proceeding as complex as this can only act to waste the time of the parties and the examiner and that our requirement that the direct cases of all parties be reduced to writing is the path to expedition as well as thoroughness. Moreover, assuming that Gulf Pacific could file its direct case in writing substantially in advance of the other parties, we do not believe the overall comparative proceeding would be aided if, at that time, other parties were required to take time off from completion of their direct cases to begin preparation of rebuttal or cross-examination of Gulf Pacific's case. If there is any undue slack in the schedule we have enunciated in our August 22, 1963, order (which we doubt) then it should be used by the examiner, after clarification of the matter at the hearing conference, to cut down the 90 day period "within which" we indicated all direct cases should be filed.

The other point raised by Gulf Pacific and its supporters is with respect to our conclusion that the proceeding can be expedited by requiring the parties to file written rebuttal information in advance of cross-examination. This requirement, which, of course, parallels a similar provision in our new pipeline rate procedures (see 18 CFR 2.59(g)), reflects our view, after considerable experience with contrary procedures, that cross-examination in complex, strongly contested cases such as the present one, is all too frequently barren in result, particularly in forming the basis for rebuttal evidence, that much if not all of the rebuttal evidence which proves of real value could have been prepared prior to cross-examination, and that if it had been, the cross-examination would be less time consuming. We recognized, however, that there might well be some areas where matters clarified or brought out for the first time on cross-examination might justify additional evidence by an opposing party, and we intended to expressly provide that the examiner could authorize the introduction of such evidence upon a proper showing. To insure, however, that there can be no future question as to this matter we now wish to make clear that the "additional evidence" the examiner may permit a party to introduce at the time of the oral part of the hearing may include evidence the need for which developed only during cross-examination. With this clarification, we are convinced that the procedure we have adopted offers the best hope of bringing this necessarily complex proceeding to the earliest possible lawful conclusion.

The Commission orders:

Gulf Pacific Pipeline Company's motion for reconsideration of our "Order on Motion to Expedite Hearings" issued on August 22, 1963, is therefore denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

HALL-INTERSTATE MINING COMPANY AND WEBER APPEL, EDNA APPEL AND THEODORE R. PRATT, PROJECT NO. 568

REFERENCE TO ATTORNEY GENERAL FOR SUIT TO REVOKE LICENSE

(Issued November 12, 1963)

On June 26, 1946, the Commission issued a license to Hall-Interstate Mining Company, of Boise, Idaho, for Project No. 568 for a period of 20 years, effective as of March 10, 1945.

The project is located on Stratton Creek, a tributory of Deadwood River, in Valley County, Idaho, and affects lands of the United States within the Boise National Forest. The project consists of a log-crib, earth-and-rock-filled dam creating a small pond; a conduit, a frame powerhouse having an installed capacity of 2,000 horsepower; and a 2,200-volt transmission line 2,300 feet long.

By its order issued July 28, 1950, the Commission approved a lease agreement and assignment between the licensee and Weber Appel and Edna Appel (husband and wife), and Theodore R. Pratt and Nellie E. Pratt (husband and wife). Under the terms of the agreement, the lessees were granted the right to immediate possession of the project for the purpose of conducting a mountain tourist resort, with an option[1] to purchase the project upon making certain payments by January 1, 1955. The interest of Nellie E. Pratt in the lease agreement was transferred to Theodore R. Pratt by divorce decree of the District County of Ada County, Idaho, rendered in September 1949.

Under the provisions of the Commission's July 28, 1950 order, the lessees were made subject to all of the conditions of the license for Project No. 568, of the Federal Power Act, and of the rules and regulations of the Commission to the same extent as though the lessees were the original licensee under the license.

Article 20 of the license fixes an annual charge for reimburseing the United States for the costs of administration of Part I of the Federal Power Act, based upon the installed horsepower capacity of the project and the gross energy generated thereby during each calendar year.

Subparagraph (3) of Section 11.20 of Part 11 of the Regulations of the Commission provides that to enable the Commission to determine such administrative charge annually, each licensee shall file with the Commission, on or before February 1, of each year, a statement under oath showing the gross amount of power generated (or produced by non-electrical equipment) by the project during the preceding calendar year, expressed in kilowatt-hours.

Section 11.31 of Part 11 of the Regulations provides, among other things, that annual charges shall be paid within 30 days of rendition of a bill therefor by the Commission.

After repeated requests to the lessees for the project power generation statement required to be filed under the aforementioned Section 11.20 of the Commission's Regulations, power generation statements, not under oath, were received, and statements for the annual charges owing under the license were finally submitted to the lessees and the annual charges have been paid through the calendar year 1961.

By letters dated February 13, March 6, and April 11, 1963, the lessees[2] were

---

[1] There is no evidence in the Commission's records to indicate that the option was acted upon.

[2] Letters addressed to: Mr. Weber Appel, 2120 N. Breneman Avenue, Boise, Idaho.

requested to submit the project power generation statement for the calendar year 1962, pursuant to the aforementioned provision of the Commission's Regulations. No such statement has been received to date. This situation was called to the attention of Hall-Interstate Mining Company,[2] the licensee of record for the project, by letter dated June 13, 1963. Receiving no response thereto, we requested Hall-Interstate, by registered letter dated August 28, 1963, to submit to the Commission, within 30 days from the date of such letter, a statement, under oath, showing the gross amount of power generated by Project No. 568 during the calendar year 1962. No such statement has been received.

The Commission finds:

The licensee and lessees, by their failure to submit the aforementioned project power generation statement, have violated the terms of the license for Project No. 568 and the Regulations of the Commission under the Federal Power Act.

The Commission orders:

The licensee's and the lessees' respective violation of the terms of the license for Project No. 568 and of the Regulations of the Commission under the Federal Power Act is hereby referred to the Attorney General for the institution of proceedings under Section 26 of the Federal Power Act for revocation of the license for Project No. 568, for collection of annual charges, and for restoration of the lands of the United States involved to a condition satisfactory to the Forest Service.

[2] P.O. Box 1896, Boise, Idaho.

MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP63-230; WISCONSIN PUBLIC SERVICE CORPORATION, DOCKET NO. CP63-244

ORDER AFFIRMING EXAMINER'S DECISION AND ISSUING CONDITIONED CERTIFICATE

(Issued November 12, 1963)*

Syllabus

1. In absence of record support Commission *rejects* proposed restrictive conditions on pipeline's operations and *notes* proposed limitation on overrun authorization would in fact change tariff without notice or hearing. P. 1241.
2. Commission *issues* certificate of public convenience and necessity authorizing lease and operation of storage field in proceeding arising under Section 7 of the Natural Gas Act. P. 1241.

Charles V. Shannon and *Louis Flax* for Michigan Wisconsin Pipe Line Company

Seymour Tabin for Wisconsin Public Service Corporation

Eugene O. Gehl for Wisconsin Power & Light Company

Glen H. Bell for Wisconsin Fuel and Light Company

John Zimmermann for Wisconsin Natural Gas Company, and Wisconsin Michigan Power Company

Willard S. Stafford for Madison Gas & Electric Company

Charles R. S. Anderson for Iowa Southern Utilities Company

Reuben Goldberg and *George Spiegel* for Michigan Gas and Electric Company

Harry A. Poth, Jr., *Richard M. Merriman* and *Peyton G. Bowman* for Michigan Gas Utilities Company

Vernon A. Swanson for Milwaukee Gas Light Company

*Initial decision appears on p. 1242.

John A. McGrath and *Thomas C. Williams* for Fuels Research Council, Inc., National Coal Association, United Mine Workers of America, Midwest Coal Producers Institute, Inc., and Upper Lake Docks Coal Bureau, Inc.

C. Louis Knight for the Staff of the Federal Power Commission

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

This proceeding involves an application by Michigan-Wisconsin to lease from Michigan Consolidated Gas Company and operate the North Hamilton Storage Field in Clare County, Michigan and about 15 miles of 20-inch pipe connecting this to the Lincoln-Freeman field. Mich-Wisc. also seeks to construct about 24 miles of six-inch pipe and 1,550 additional horsepower at its Wisconsin A station to enable it to provide additional service to nine existing customers this winter.

As originally filed, the application also sought authorization to construct about 20 miles of six-inch line to provide gas to Wisconsin Public Service Coporation to serve some new communities in Wisconsin, but this was severed from the proceeding and will be tried later as Phase 2.

The cost of the facilities for serving the existing customers will be $1,186,000 and there is no question as to economic feasibility or financing. By operating the new storage field the capacity of the Mich-Wisc. system will be increased by about 45,000 Mcf per day and they will also utilize 37,200 Mcf per day which was saved by an earlier order for possible service to the upper peninsula of Michigan but which is now available for allocation to present markets.

The application was supported by Mich-Wisc.'s nine customers and the Public Service Commissions of Michigan and Wisconsin. Representatives of the coal industry[1] did not oppose authorizing the storage but sought the imposition of conditions with regard to its use. Staff counsel took no position and made no filings in the case.

The examiner found that additional gas was necessary to meet the needs of Mich-Wisc. customers this winter and that the conditions sought by the coal interests were an attempt to modify Mich-Wisc.'s overrun tariff and were not properly an issue in this proceeding.

The only exceptions to the decision were filed by the coal interests who continue to argue for the imposition of restrictive conditions on the operations of Mich-Wisc. In effect, these conditions would provide that Mich-Wisc. should not allocate any overrun gas until after the heating season is over each year and should not be allowed to sell gas from the North Hamilton field except in an emergency to continue firm service.

Based on the evidence in the record, the parties' briefs, the examiner's decision and the exceptions thereto we are of the opinion that the examiner's decision should be affirmed and the certificate should be issued conditioned upon Mich-Wisc. filing certain information with the Commission.

As a basis for their proposed conditions the coal interests argue that the facts in the record indicate that Mich-Wisc. has been using its storage to help its customers maintain service to their interruptible customers throughout the year rather than simply to meet firm demands. They argue that on the day of its greatest send-out last winter the customers of Mich-Wisc. continued to sell boiler fuel in large quantities and that no limitation was put on their overruns for this purpose.[2] The coal intersts also argue that a number of

[1] Fuels Research Council, Inc., National Coal Association, United Mine Workers of America, Midwest Coal Producers Institute, Inc., and Upper Lake Docks Coal Bureau, Inc.

[2] Michigan-Wisconsin has answered this by stating that it took one day under the contract to notify the customers that they would be cut back and that no such sales were made on the day following the maximum send-out.

customers have included interruptible service in their nominations for maximum daily quantities. Mich-Wisc. answers this by stating that if customers are willing to pay a demand charge to maintain a cushion for firm customers and sell to interruptibles, it is well within their discretion to do so.

There appears to be no real objection to authorizing the proposed facilities for Mich-Wisc. and the only question is whether any condition should be imposed on their use. The coal interests put on no witnesses to substantiate their proposed conditions and, of course, there was no chance to test their contentions by cross-examination or rebuttal evidence. In addition, the proposed limitation on authorization of overruns would in fact change the provisions of the Mich-Wisc. overrun tariff without notice to any of its customers and without a full hearing. A limitation on the use of the North Hamilton field would only result in using up other storage first rather than drawing on all storage in the most efficient manner.

However, the record does indicate that there is a substantial question as to whether in one respect Mich-Wisc. and its customers have operated in a manner wholly consistent with the public interest. Under the Mich-Wisc. tariff, customers are limited to their maximum daily quantities (MDQ) and an annual quantity (ACQ) equal to 190 times the MDQ. The contract year runs from September 1 to August 31. In 1962, almost all of the customers involved in this proceeding had used up their entire contract quantity by the early part of July and could not even have provided water heating services without authorized overruns (or unauthorized overruns at $10 per Mcf). In 1963, several of the customers had used up their ACQ in the months of May or June. We also know that last February, during the excessively cold winter, Mich-Wisc. had drawn down its storage to a point where it was forced to limit its customers to 70% of their contract entitlements.

These facts indicate that it would be advisable to obtain additional information on their operations in order to ascertain whether any proceedings to modify the tariff or condition future certificates may be necessary. We will, therefore, in granting this certificate impose a condition providing for obtaining information from Mich-Wisc. on its operating practices. Upon receipt of this information we shall determine what other proceedings, if any, may be appropriate.

The Commission orders:

(A) The additional Findings and Conclusions and the Order of the Presiding Examiner's Decision issued on August 26, 1963, in these proceedings are adopted as the findings and orders of the Commission.

(B) This certificate is expressly conditioned upon the applicant filing the following information with the Commission.

(1) Michigan-Wisconsin shall submit within thirty (30) days from the date of issuance of this order:

(a) the estimated volumes of gas by months to be withdrawn and injected in each of its owned or leased storage fields for the coming contractual year beginning September 1, 1963, and ending August 31, 1964;

(b) the estimated volumes of working gas and cushion gas planned for the end of each month for each of its owned or leased storage fields for the coming contractual year beginning September 1, 1963, and ending August 31, 1964.

(2) Michigan-Wisconsin shall submit monthly reports within (10) days of the last calander day of each month, beginning September 1, 1963 and ending August 31, 1964, stating for each month:

(a) the actual volumes of gas withdrawn and injected in each of its owned or leased storage fields at the end of the month;

(b) the actual volumes of working gas and cushion gas in each of its owned or leased storage fields, as of August 31, 1963, and the end of each succeeding month thereafter;

(c) the total volumes of gas delivered to each of its customers broken down as follows:

1. contracted-for volumes;
2. dates and volumes of authorized overrun gas;
3. dates and volumes of unauthorized overrun gas.

(d) the date of maximum delivery to each of its customers and the volumes of gas sold thereon broken down as follows:

1. contracted-for volumes;
2. authorized overrun volumes;
3. unauthorized overrun volumes.

(e) the amount of gas withdrawn from storage on:

1. the day of maximum delivery;
2. the days when any overrun gas is sold.

(f) the following information with regard to each of its customers:

1. the monthly volumes of gas sold by each customer to each of its classes of service; *i.e.*, residential, residential space heating, commercial, commercial space heating, firm industrial, interruptible industrial, unaccounted for, and company use;

2. the amount of firm and interruptible gas sold by each customer on its maximum day send-out;

3. the amount of firm and interruptible gas sold by each customer on the days when authorized and/or unauthorized overrun is purchased.

(C) The exceptions to the examiner's decision are hereby denied.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON AN APPLICATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY PURSUANT TO SECTION 7(c) OF THE NATURAL GAS ACT

(Issued August 26, 1963)

BINDER, *Presiding Examiner:* On February 18, 1963, Michigan Wisconsin filed its application in Docket No. CP63-230 in which, among other things, it sought authorization to operate under lease from Michigan Consolidated Gas Company (Michigan Consolidated) the North Hamilton Storage Field in Clare County, Michigan, as well as a 15.2 mile 20-inch pipeline connection to be built by Michigan Consolidated between that field and the Lincoln Freeman Feld. By this application Michigan Wisconsin proposes that natural gas which is presently available only on an "overrun" basis (*i.e.*, on a basis which gives no contract or other specific assurance to any distributor as to exactly how much or when such natural gas will be available) be injected into the North Hamilton Storage Field. This storage field when operation is authorized will provide initially 45,000 Mcf per day. In addition, Michigan Wisconsin will utilize 37,200 Mcf per day of its pipeline capacity which was reserved for possible service to the upper peninsula of Michigan (22 FPC 775) but is now available for allocation to its present markets (27 FPC 180). The applicant proposes to employ the above-mentioned natural gas to provide increased Maximum Daily Quantities (MDQ's) to meet the increased space heating and base load requirements of the present markets of nine of its present distributing customers for the contract year which will commence on September 1, 1963, under Michigan Wisconsin's FPC Gas Tariff.[1]

[1] The need for these additional maximum daily quantities is particularly acute for the coming winter because of the substantial increases of the customer companies to meet

[Footnote continued on p. 1243.]

In order to make the increased peak day deliveries to the present markets available, Michigan Wisconsin has also requested authorization in its application to construct and operate 13.3 miles of 6-inch partial loops of its Keokuk, Iowa, lateral; a 10.9 mile 6-inch loop of its Allegan, Michigan, lateral; and an additional 1,550 horsepower of compression at its Wisconsin A station at an estimated cost of $1,186,000. The necessity for these facilities, which for a pipeline of this magnitude are of a comparatively minor character, is not disputed. Neither is the economic feasibility nor the financing of the project in dispute.

The application as originally filed by Michigan Wisconsin also requested authorization to construct and operate a 19.3 mile 6-inch line to provide gas to Wisconsin Public Service Corporation (Public Service) for certain new communities the latter sought to serve.

In order to achieve acceleration in the processing of so much of its application as is involved in this hearing, Michigan Wisconsin filed an amendment on April 29, 1963, to set up its proposals in two phases. Phase one is limited to its proposal to meet the increased needs of the present markets, *i.e.*, to obtain authorization for the construction and operation of the North Hamilton Storage Field and appurtenant facilities, together with authorization to build facilities appropriate to accomplish the purposes of this phase of its application, namely, to increase the maximum daily quantities to some nine distributor companies to meet peak day requirements of such customers.[2]

Phase two covered service to be furnished by Public Service to several proposed new communities and is not the subject of this hearing. Phase two will be heard at a later time to be selected by the Commission.

The severity of last winter's sustained period of cold weather which was the coldest the midwest had suffered in 42 years had strained the delivery capacity of Michigan Wisconsin's storage facilities to their outermost limits. Michigan Wisconsin ascertained that the distributor customers involved in this proceeding have had a substantial increase since last year in their heating and base load requirements. The applicant and these distributor companies are not only apprehensive of a repetition this coming winter of the severity experienced last winter and its accompanying need for greater volumes for space heating and base load during peak periods but are particularly concerned that additional storage facilities be made available for the coming winter to avoid the hazards attributable to the inadequancy of present storage facilities particularly to meet the increased space heating and base load requirements which have been established to exist through uncontradicted evidence by the nine distributors seeking such increases. Such additional requirements have been established beyond cavil and are not disputed by any party to this proceeding.

Although this application had been filed on February 18, 1963, probably due to the volume of Commission business, no action had been taken insofar as setting this matter down for hearing was concerned as late as the latter part of June. Accordingly, on June 25, 1963, Michigan Wisconsin filed a motion seeking

---

[Footnote continued from p. 1242.]

peak load and base heating requirements. The demands of the customers for increased maximum daily quantities of natural gas will be discussed hereinafter.

[2] Michigan Wisconsin has contracts with some 32 customers who are either distributors or municipalities. (See Michigan Wisconsin Tariff, Item B.) Only 9 customers are involved in this proceeding. In this connection it should be noted that the Commission's Notice of Application (June 14, 1963) and Notice of Hearing Date (July 12, 1963) set forth that this matter concerns the leasing and operation of the North Hamilton Storage Field and appurtenant facilities and such additional facilities as may be needed in relation to the service of maximum daily quantities to the parties to this proceeding. There is no provision in these notices relating to any proposed overall or major change in Michigan Wisconsin's tariff and no order issued upon such notice effecting such a change would be appropriate in this case.

a hearing at the earliest possible date specifically for the purpose of obtaining an order as requested in phase one of its application. The reason why Michigan Wisconsin sought to have phase one heard immediately was so that it could satisfy the urgent need of Michigan Wisconsin's presently attached distributor customers for increased MDQ (Maximum Daily Quantity) this coming winter. A short discussion of Michigan Wisconsin and its operations may be helpful in putting this application in appropriate perspective.[2]

Michigan Wisconsin owns and operates a natural gas pipeline extending from the Hugoton Field in Texas through or into the States of Oklahoma, Kansas, Nebraska, Missouri, Iowa, Illinois, Indiana, Wisconsin, and Michigan. The company's annual supply of gas of approximately 295 billion cubic feet comes from widely diversified sources and areas. In central Wisconsin the company's pipeline connects with Midwestern Gas Transmission Company (Midwestern) and through Midwestern and its supplier, Trans-Canada Pipelines, Ltd., the company has access to important natural gas fields in western Canada. The company also receives about 75 million cubic feet of gas daily from Northern Natural Gas Company at an intersection near Janesville, Wisconsin. In addition the company has an interconnection in southwestern Michigan with its affiliate, American Louisiana Pipeline Company, from which it receives an average of approximately 100 million cubic feet of gas daily. The company at this time operates under lease from Michigan Consolidated Gas Company, an affiliate, six underground storage fields in west central Michigan with a working storage capacity of approximately 53 billion cubic feet. The distributing companies served by Michigan Wisconsin generally have high heating saturations and operate in a cold climate. Accordingly the company must be prepared to meet very large variations in its load.

One of the methods developed by the company to meet its obligation to supply large volumes of gas to its distributors during peak periods is to acquire and operate substantial storage facilities. This it has done in the past and it seeks to continue this practice in this case. By the practice of developing increased storage facilities Michigan Wisconsin has increased its ability to meet the very large demands made upon its system in cold weather. Absent this method of operation the applicant would, in order to meet high demands in very cold weather, have to increase its pipeline facilities very substantially and make contracts with producers for larger overall takes of natural gas on a year-wide basis. This, in turn, would involve substantially greater outlays of capital and greater costs of operation than the course followed by the company in the past and sought to be followed here. By following its present method of operation the company has been enabled to lower its overall costs of service. The company seeks to continue to follow this method in this proceeding.

As the Company pointed out in its 1962 Annual Report to its stockholders "As an indication of the volume of the storage fields, on a recent peak day in January 1963, the company delivered 1.5 billion cubic feet to its customers of which 650 million cubic feet or 43 percent came from storage. During the summer months when the requirements of the distributing companies are greatly reduced, the company stores large volumes of gas for use in meeting the great winter heating demand. The fields thus permit the company to operate at a high load factor throughout the year with resulting economies."

As will be observed while a high percentage of Michigan Wisconsin's gas comes from its storage facilities, a still larger percentage comes from the other sources to which we have referred hereinabove.

---

[2] See in this connection the Company's Annual Report to Stockholders for 1962 of which the Examiner takes official notice, and the Company's tariff filing (Item B by reference).

The gas which Michigan Wisconsin buys from its suppliers is purchased throughout the year. All of these sales of natural gas to Michigan Wisconsin are made subject to Commission authorization. All Michigan Wisconsin's sales involved in this proceeding, both of storage gas and the balance of the gas which it receives from its suppliers, are now being made subject to Commission authorization. No change in gas supply or authorization to sell additional gas is being sought. No additional gas supplies are to be received by the Company and no supply of additional gas beyond the total now at hand is to be sold to the distributors. Essentially what is sought is to allocate a comparatively small percentage of Michigan Wisconsin's total gas supply which is now subject to sale as "overrun" gas to storage gas so that its distributors can be assured of increased supplies of gas during peak periods and in order that such distributors may plan their overall operations on some reasonably sound business basis. In general, such proposed allocation of Michigan Wisconsin's presently authorized and existing gas supply contemplates the transferral of gas which is essentially of an interruptible character to one which is essentially of a firm character.

Applicant's major purpose in leasing and operating the Hamilton Storage Field and in constructing and operating the other facilities which have been generally described herein, is to utilize natural gas now available as "overrun" gas, including the gas not yet allocated, for the purpose of affording contractual assurance in accordance with Michigan Wisconsin's tariff, to meet certain of its customers concededly increased space heating and base load requirements on peak days.

There is nothing in Michigan Wisconsin's application and nothing in any notice put out by the Commission which reasonably could have alerted any customer or any other possible intervener to the possibility that any general change or modification of any important tariff provisions was within the purview of this proceeding. Nevertheless, the "Coal Interests" have sought the imposition in any Commission order to be issued herein of important conditions which would change the character of the applicant's OS–1 Rate Schedule.

In view of the fact that modification of Michigan Wisconsin's tariff was not within the ambit of the issues in this proceeding and since no Commission notice of hearing or order gave any indication that such an issue was even contemplated to be heard in this proceeding most of Michigan Wisconsin's customers, including Michigan Consolidated, which is by far the largest customer, have not even intervened and are not parties to this proceeding.

In view of the "Coal Interests" claims, however, the provisions of Michigan Wisconsin's tariff pertinent to a discussion of the issues will be summarized and discussed briefly herein.

Prior to the effectiveness of Michigan Wisconsin's present two-part rate the company had a straight-line commodity form of tariff covering the sale of all of its gas. It now has a two-part rate which came into existence over the strenuous objection of the Coal Interests and others following an order issued by the Commission on September 30, 1959, in Docket No. G–17512. The two-part rate became effective as of March 1, 1960.[4]

For the purposes of this proceeding Michigan Wisconsin's rates at this time may be summarized as consisting principally of the demand commodity ACQ–1 rate, the MDQ provisions, the OS–1 rate and the SGS–1 (small general service) rate.

---

[4] 22 FPC 603, 607, 1155, 1166. See also brief of the "Coal Interests" filed in Docket No. G–17512 on July 20, 1959.

The tariff filing provides that Michigan Wisconsin's contract year is the 12-months beginning each September first. For service under the ACQ-schedule, the company and each customer agree on a Maximum Daily Quantity (MDQ) for each year, which fixes the maximum volume of gas Michigan Wisconsin is obligated to deliver to the customer on any single day. These deliveries are subject to a schedule of monthly Contract Demands. During the four cold months, November through February, the buyer is entitled to demand 100 percent of his Maximum Daily Quantity but only 85 percent from March 1–March 15, and 75 percent for the other months of the year. The total volume of gas the customer is entitled to purchase during the contract year, called the Annual Contract Quantity (ACQ), may be stated in terms of the permitted number of days use of the Maximum Daily Quantity. For example, at this time each customer is entitled to a total of 190 days' use of his Maximum Daily Quantity. A customer's purchases in excess of his MDQ on a particular day (daily overrun), or in excess of his ACQ in a particular year (annual overrun), if authorized by Michigan Wisconsin, are billed as overrun gas under the OS–1 schedule. If not authorized, a penalty is charged.

Specifically, Michigan Wisconsin's Overrun (OS–1) Rate Schedule contains the following provision covering interruptible service: [5]

2. APPLICABILITY AND CHARACTER OF SERVICE:

> Gas delivered to Buyer hereunder shall be subject to curtailment or interruption on 24 hours' notice when, in the sole judgment of Seller, such gas is not available for sale and delivery hereunder. Seller shall authorize deliveries hereunder to the extent that, in Seller's judgment, surplus gas is available on Seller's system and the delivery capacity of its system will permit such delivery without jeopardizing the ability of Seller to meet its delivery obligations to other Buyers.
>
> If Seller shall receive requests for deliveries under this rate schedule in excess of the surplus gas available, Seller shall authorize deliveries hereunder on the basis of the ratio of each such Buyer's Maximum Daily Quantity to the total Maximum Daily Quantity of all such Buyers.

Furthermore, as Michigan Wisconsin has pointed out in its reply brief, ". . . Section 5 of the ACQ–1 Rate Schedule; Section 5.2 of the SGS–1 Rate Schedule; and Section 5 of the OS–1 Rate Schedule early contemplate that surplus or overrun gas may be delivered 'during any one day and during any contract year' as authorized by Seller and agreed to by Buyer and that such deliveries may be made in 'each month' of the Contract Year which commences on September 1st."

In this case Michigan Wisconsin and nine of its distributors customers offered evidence, namely (1) Michigan Gas and Electric Company (M.G. & E.); (2) Michigan Gas Utilities Company (Michigan Gas); (3) Milwaukee Gas Light Company (Milwaukee Gas); (4) Wisconsin Natural Gas Company (Wisconsin Natural); (5) Madison Gas and Electric Company (Madison Gas); (6) Wisconsin Power and Light Company (Wisconsin Power); (7) Wisconsin Public Service Corporation (Public Service); (8) Wisconsin Michigan Power Company (WMPCO); and (9) Wisconsin Fuel and Light Company (Wisconsin Fuel). The major part of this evidence including the testimony and exhibits were prepared and served prior to the hearing. In response to inquiries made by the Coal Interests additional exhibits were prepared by some of the interveners. Some further evidence was adduced by the Coal Interests and the Staff in the cross-examination of the witnesses.

---

[5] See Item B, Michigan Wisconsin Tariff.

No evidence was offered to rebut the evidence presented by the applicant and the distributor witnesses and such evidence is uncontradicted. In addition to the customers seeking additional MDQ's the Commission authorized intervention by Iowa Southern Utilities Company and Keokuk Gas Service Company, two additional customers of Michigan Wisconsin. The latter companies offered no evidence and filed no brief. In addition, the Commission authorized intervention by Fuels Research Council, National Coal Association, United Mine Workers of America, Mid-West Coal Producers Institute, Inc., and Upper Lake Docks Coal Bureau, Inc., herein jointly called the "Coal Interests." Michigan Public Service Commission and Public Service Commission of Wisconsin filed notices of intervention.

Public Hearings began on July 25, 1963, and were concluded on July 31, 1963. The presiding examiner on July 31, 1963, directed that *oral argument be held* on August 1, 1963, concerning the *merits of Michigan Wisconsin's application.* On that day all parties made argument regarding their position in this case except the staff counsel who refused to state any position with regard to the merits of Michigan Wisconsin's application whatever, although Michigan Wisconsin's application had been on file with the Commission for well over five months and the Commission had acted with expedition in granting Michigan Wisconsin's urgent request for a prompt hearing. While staff counsel made no argument directed to the merits of the application during the oral argument which had been set down on August 1, 1963, for such purpose, and while staff counsel had offered no evidence in this proceeding, and had indicated no position in the matter, he devoted his time on August 1, 1963, to an argument to the effect that he needed extensive briefing time. No specific explanation for the necessity of having extended briefing time was made by staff counsel other than he had to read this record and all the exhibits before he could make up his mind as to his position. In this connection, it should be kept in mind that the application had been on file for over five months and that the prepared testimony and the greater part of the exhibits had been prepared and served in advance of the hearing. Furthermore, the Commission had granted applicant's request for a prompt hearing. There would be no sense in granting a prompt hearing or a hearing advanced ahead of the time when it would normally be heard unless the Commission intended to see that the matter was concluded and decided promptly by the presiding examiner.

In the presiding examiner's judgment Section 1.29(a) of the Commission's Rules of Practice and Procedure was pertinent to a determination of the length of time which should be afforded for purposes of filing a brief. This section of the Commission's Rules of Practice and Procedure provides that the presiding officer shall fix the time for the filing and service of briefs, giving due regard to the nature of the proceeding, the magnitude of the record, and the complexity or importance of the issues involved.

This, in the presiding examiner's judgment, is not a complex case. Counsel for all parties, other than the staff and the Coal Interests, requested that initial briefs be filed not later than August 12, 1963. In actuality counsel for the applicants stated on the record that his oral argument was in substance his brief in this case, but that he hoped to file a brief expressing himself perhaps more elegantly than he had during the oral argument but he added that he would not state applicant's position differently than he had expressed orally. This he did. Both counsel for the Coal Interests and staff counsel sought extended briefing time although neither had offered any evidence in contradiction to the evidence offered by the parties nor expressed any position during the hearings. In the presiding examiner's judgment, particularly in view of the fact

that the application had been on file for over five months, prepared testimony and exhibits had been served in advance and since there was an urgent need for these storage facilities for the coming winter, there was no good basis for granting extended briefing time. Furthermore, the Commission had by granting applicant's request for a prompt hearing indicated that it expected a prompt disposition of the matter. Accordingly, initial briefs were directed to be filed not later than August 12, 1963, and a reply brief by applicant not later than August 16, 1963.

Simultaneous initial briefs were filed August 12, 1963, by Michigan Wisconsin Pipe Line Company, Wisconsin Fuel and Light Company, Wisconsin Power and Light Company, Madison Gas and Electric Company, Michigan Gas Utilities Company, Wisconsin Public Service Corporation, Milwaukee Gas Light Company, and by the "Coal Interests" jointly, namely, Fuels Research Council, Inc., National Coal Association, United Mine Workers of America, Mid-West Coal Producers Institute, Inc., and Upper Lake Docks Coal Bureau, Inc. Michigan Wisconsin filed its reply brief in the short time it had requested, namely, on August 16, 1963.

Michigan Gas and Electric Company filed no written brief. Its counsel stated that the filing of a written brief was ". . . an expense which is wholly unwarranted when we have presented evidence which isn't controverted, when we are told that the coal people have no objection except that they want a condition dealing with something else that has no reference to the need for Hamilton storage and the MDQ. Under those circumstances, I don't feel justified in spending the client's money to that extent and I would ask you to consider that what we have said orally on the record be considered our brief."

The Michigan Public Service Commission and the Public Service Commission of Wisconsin filed no briefs but filed statements strongly supporting the granting of Michigan Wisconsin's application and these Commissions do not support the "Coal Interests" position.

The Staff had offered no evidence and at this writing has filed no brief with the presiding examiner; accordingly, there is no basis at this time to assume that the Staff opposes Michigan Wisconsin's application or that it considers the conditions sought by the "Coal Interests" should be made a part of any order issued in this proceeding.

The nine distributing companies offering evidence in phase one will receive some 98 percent of the increased maximum daily quantities involved in this hearing.[6] The evidence offered by these distributors may be summarized as follows:

Michigan Gas & Electric Company (M.G. & E.) distributes natural gas which it purchases from Michigan Wisconsin in 14 communities in southwestern Michigan, including Niles, Buchanan, Holland, Zeeland, Dowagiac, and Three Rivers. Last winter M.G. & E., on January 23, 1963, curtailed all of its interruptible loads, employed its peak shaving facilities to their fullest capacity and it still had to take unauthorized overruns to meet its firm load requirements incurring a penalty of $10 per Mcf. It concededly has space heating and base load requirements for the coming winter greater than its requirements for last winter. It seeks an increase of 2,600 Mcf in its MDQ to meet its space heating and base load requirements. No party has offered any evidence to contradict the claims of M.G. & E. and its direct evidence supports its claim in full.

---

[6] In *Northern Natural Gas Company, et al.*, Docket No. G–20570 *et al.*, the Commission held that ". . . we believe that the requisite marketability has been shown when the customers who desire 98 percent of the gas proposed to be allocated present evidence to substantiate their need for the gas." 25 FPC 1234, 1244.

In connection with the necessity for prompt disposition of this application, the witness for M.G. & E., among other things, pointed out that ". . . until we are assured of getting the additional gas for the next heating season, we cannot connect the new customers who want it. The prospective gas users get provoked. The building tradesmen who install the heating equipment do not have available enough work force to bunch a year's heating equipment installations into a few months. Our construction of extensions of mains and facilities to serve new customers are likewise bunched into too short a period of time. Gas requirements proceedings need to be disposed of early in the year. It is already so late in the year that immediate disposition of this certificate application is essential."

As counsel for M.G. & E. pointed out, the witness for the distributor ". . . was there referring to operational problems that a distribution company faces which are often overlooked by one that may not have had experience in operating the distribution company. He testified with respect to that under oath. He was offered for cross-examination. That testimony is unchallenged and uncontroverted as is his testimony in support of the 2600 Mcf that Michigan Gas and Electric seeks."

The comments of counsel for M.G. & E. were well taken and apply to all the distributors in this proceeding, all of whom have space and base heating loads for the coming year which are substantially greater than their past requirements, and need prompt Commission action if such needs are to be satisfied in the approaching winter.

Michigan Wisconsin sells natural gas to Michigan Gas Utilities Company (Michigan Gas) which serves 24 communities in southern and western Michigan, including Benton Harbor, St. Joseph, South Haven, Grand Haven, Allegan, Plainwell and Ostego. During the last winter with all of its interruptible customers off the line it had unauthorized overrun in a single day of 1702 Mcf for which it had to pay a penalty charge of $10 an Mcf. It is undisputed that it will have a larger space heating and base load this coming winter than it had last winter. It requests an increase of 4798 Mcf in its MDQ. Its need for the additional MDQ has not been contradicted or even disputed.

Milwaukee Gas sells natural gas to approximately 293,000 customers in more than 65 cities and communities in eastern and central Wisconsin. It obtains all of its natural-gas requirements from its affiliate, Michigan Wisconsin.

Milwaukee Gas' present service agreement provides for a maximum daily quantity for the contract year commencing September 1, 1962 of 374,302 Mcf. It seeks an increase in MDQ of 20,698 Mcf. The uncontradicted evidence is that Milwaukee Gas' present attachment of firm load has increased by 11,000 Mcf since January 1963 and will increase another 11,000 Mcf by the maximum day of 1963–64 heating season. The difference between the maximum daily quantity of 374,302 Mcf and 395,000 Mcf sought here, or 20,698 Mcf, is the increased amount of gas over its 1962–63 maximum day requirements that the evidence shows Milwaukee Gas must receive to supply its 1963–64 maximum day firm load. Of this figure of 20,698 Mcf, 19,657 Mcf represents residential and commercial space heating load.

Milwaukee's witness testified that the greatest demand for gas for its firm customers during the 1962–63 heating season was on January 23, 1963, when it had a total sendout of 378,700 Mcf of which 376,200 Mcf was firm load. The latter figure exceeded its maximum daily contract by 1898 Mcf. Since there is good ground to believe that Milwaukee will require at least an additional 20,698 Mcf to meet its increased maximum day firm requirements and since there is no evidence whatever to the contrary it seems clear that Milwaukee Gas' MDQ should be increased by at least the amount which it is seeking here.

Wisconsin Natural distributes natural gas in 66 communities in southeastern Wisconsin including Racine and Kenosha. This distributor seeks an increase in its MDQ from 143,000 Mcf to 154,000 Mcf, *i.e.*, 11,000 Mcf. Its testimony shows an estimated increase in its peak day requirements of 14,313 Mcf. The company has a capacity to produce 533 Mcf of propane air gas on the peak day. There is no dispute regarding the validity or correctness of Wisconsin Natural's estimate and there is no reason to be found in this record why it should not have the 11,000 Mcf increase proposed.

For the contract year now expiring, 1962-63, Madison Gas nominated MDQ of 38,000 Mcf. Madison Gas seeks an increase in its MDQ from 38,000 Mcf to 45,000 Mcf, *i.e.*, an increase of 7,000 Mcf. The testimony of Madison Gas is to the effect that the company is now engaged in hooking up many new customers from the peripheral communities which surround Madison, Wisconsin and which have recently been certified for initial utility gas service by the Wisconsin Public Service Commission. The testimony is to the effect that the actual maximum day requirements of metered firm customers on February 21 and 22, 1963, with a −4° mean, was 39,601 Mcf and on February 20 and 21, with a −2° was 39,477 Mcf. The company was able to compute accurately what its firm requirements were on those days because it was metering its dual fuel customers. As the testimony indicates, the firm requirements were in excess of its 38,000 Mcf nominated MDQ. The additional gas was manufactured by Madison at a cost of $1.25 per Mcf. The company has limited peak shaving equipment and the $1.25 cost per Mcf of interchangeable gas produced with propane is about average for the industry although it is much higher than the cost of natural gas.

The company's requirements for base load and space heating service for the coming year are substantially in excess of its requirements for last year. Approximately 5,500 Mcf is required for space heating service.

The selection of its MDQ is based upon meeting estimated firm and dual fuel requirements on a zero degree day. Where temperatures are less than zero degrees it is the company's practice to manufacture gas so that the total maximum day requirements are substantially in excess of the nominated MDQ's.

While the company has used substantial quantities of gas in its electric generating station this application will not serve to increase future availability of overrun gas which has been used for boiler fuel, but instead more of Michigan Wisconsin's gas will be put in storage and less will then be available for overrun. The position of Madison Gas is that while the reduction in overrun availability will effect the economics of operating its generating station it is of much more importance to the company that additional firm gas be made available so that firm requirements of its customers can be satisfied.

There is nothing in Michigan Wisconsin's instant application which would tend to injure the opportunities of the "Coal Interests" to sell coal. In fact the contrary is the case.

There has been no contradiction of Madison's claims in this proceeding and, in fact, neither the Coal Interests nor anyone else makes any claim that Madison should not receive the additional MDQ's it requires and seeks in this proceeding.

Wisconsin Power distributes natural gas in 29 communities in Wisconsin and requests an increase in its MDQ from 65,000 to 70,000 Mcf *i.e.*, an increase of 5,000 Mcf. By the end of December 1962 Wisconsin Power had attached 800 space heating customers in excess of the number it had estimated would be attached by that time. As of June 1, 1963 it had attached 1,527 space heating customers in excess of the number estimated to be attached on the maximum day of the 1963–64 heating season.

It is undisputed that Wisconsin Power does not now have enough natural gas to take care of its presently attached space heating customers on the maximum day of the 1963–64 heating season. Its testimony is to the effect that if it does not receive the amount which it seeks here in increased MDQ it will not only have to apply to the Public Service Commission of Wisconsin for an emergency order stopping the attachment of space heating customers but will find it necessary to curtail the use of natural gas by its space heating customers during the coming heating season. No party disputes Wisconsin Power's needs for additional MDQ in the amount requested of 5,000 Mcf per day.

Public Service distributes natural gas in the cities and surrounding suburban areas of Green Bay, Sheboygan, Oshkosh, Stevens Point, Marinette, Two Rivers, De Pere and Merrill, Wisconsin and Menominee, Michigan, and has been authorized to serve in Tomahawk, Rhinelander and Junction City, Wisconsin. It also serves 15 smaller cities and villages scattered throughout its service area. The company's established natural-gas territory has a total estimated population based on the 1960 U.S. Census of 310,000 and as of June 30, 1963, approximately 80,000 customers were receiving natural-gas service. This company has a steam plant in which it uses overrun gas when the latter is available. On January 23, 1963, with all interruptible customers curtailed, it was necessary for Public Service to manufacture 6,130 Mcf. Public Service seeks an 11,000 Mcf increase in its MDQ from 107,000 Mcf to 118,000 Mcf. Its evidence with regard to increased space heating and base load on a maximum day shows that it requires the additional amount sought in its MDQ and its evidence has not been controverted in any respect. There is no good reason why this company should not have the additional MDQ which it is seeking, and conversely the company has established the absolute necessity for the increased MDQ it is seeking. There is no evidence to the contrary of that offered by applicant and Public Service.

Wisconsin Michigan Power Company distributes natural gas in Appleton, Neenah and Menesha, Wisconsin, and suburban areas in adjoining townships. The area served has a population of approximately 90,000 and as at the end of June 1963, it had 12,284 gas customers in all classifications. It seeks a 5,000 Mcf increase of its MDQ from 23,000 to 28,000 Mcf. Its sole supplier is the applicant. This company had 9 days of full curtailment of its interruptible sales in its 1962–1963 heating season. All such curtailments took place in February. The company in presenting its estimates in this case projected no additional interruptible customers beyond the contract year. The company operates without any peak shaving equipment in territory "where extremely low temperatures are quite probable. For that reason [the company has] to make an MDQ nomination which will assure us that on an extremely cold day when overrun probably is not available, we will have an MDQ that will cover the requirements of all firm customers." (Tr. 531) The testimony in support of Wisconsin Michigan Power Company's MDQ requirements for the coming winter of 28,000 Mcf have not been contradicted and are fully credited.

Wisconsin Fuel distributes natural gas in Manitowoc and Waussau, Wisconsin and a number of other communities in their vicinity. Wisconsin Fuel requests a 3,800 Mcf increase in its MDQ from 26,400 Mcf to 30,200 Mcf to meet its estimated requirements. One of Wisconsin Fuel's exhibits (Ex. 15) showed its estimated purchases for the 1962–1963 contract year at 6,070,293 Mcf compared with estimated purchases of only 5,738,000 Mcf for the year 1963–64. No overrun was included in the 1963–64 figure. Its requirements will increase from 6,070,293 Mcf in 1962–1963 to 6,316,907 Mcf for 1963–1964. It needs the additional MDQ to meet growing space heating and firm load requirements. In fact, the indication is that Wisconsin Fuel will be seriously short of gas to meet its firm load requirements during the 1963–1964 heating

season unless it secures the additional firm gas proposed to be made available in this proceeding.

Wisconsin Fuel's original estimated requirements (Exhibit 15) were based upon actual experience through October 1962 and estimated thereafter. The company submitted another exhibit (Exhibit 53) which shows that it had presented estimates which were substantially low. Exhibit 53 compares the estimates incorporated in Exhibit 15 for the period November 1962 to June 1963 inclusive with the actual experience of the company during the 8 month period. It was pointed out that the most significant change was an increase in new space heating customers attached. The company had estimated that they would attach 604 but instead it actually attached 907 or approximately 65 percent more than it had estimated. On a one-year basis the increase would be approximately 600 new space heating customers. In its brief, the company set forth that

> Based on the original estimates, page 2 of Exhibit 15 shows a maximum day requirement of 37,974 Mcf for 1963 with a curtailment of 7,774 Mcf, assuming that Wisconsin Fuel's maximum day allocation would be increased from 26,400 Mcf to 30,200 Mcf as proposed in this proceeding. The following figures show how disastrous it would be for Wisconsin Fuel if its MDQ were not so increased:
>
> | | |
> |---|---|
> | Max. day requirement, 1963–64 as originally estimated (p. 2 of Ex. 15) | 37,974 Mcf |
> | Add peak day requirements of 600 additional space heating customers (600×.02×75 DDD) | 900 Mcf |
> | Total firm max. day requirement | 38,874 Mcf |
> | Present peak day allocation | 26,400 Mcf |
> | Shortage on peak day | 12,474 Mcf |

The company's standby facilities are negligible *i.e.*, standby plant 800 Mcf per day and storage 500 Mcf. Failure to approve this application would result in curtailments of space heating loads by this company. The company's figures have not been contradicted or impeached and are accepted by the examiner as factually correct. It is clear that Wisconsin Fuel has established the necessity for its requested increase in MDQ.

Attached hereto as Appendix A is Exhibit 39 sponsored by a witness for Michigan Wisconsin which is a "Comparison of Requested Increase in MDQ with Increase in Firm Base Load and Heating Load on 1963–64 Maximum Day over 1962–63 Maximum Day."

The increases sought in MDQ have been amply justified.

During the oral argument held on August 1, 1963 and during the hearings held prior thereto, the Coal Interests declined to state their position fully but asked for 30 days in which to state their position in a brief. Despite the fact that this matter had been specifically set down on August 1, 1963 to afford argument *on the merits*, staff counsel declined to discuss the merits in any respect whatever but confined himself solely to a discussion of the extended length of time he considered he needed to prepare and file his brief. The oral argument set down for August 1, 1963, was not set down merely to discuss when briefs should be filed. There would, of course, have been no point whatever in setting a special period down merely for such a limited purpose. The presiding examiner pointed out, however, during the course of the oral argument had on August 1, 1963 that under Section 1.29(a) of the Commission's Rules of Practice and Procedure that in determining the amount of time which should be fixed for the

filing and service of briefs, it was incumbent upon the presiding examiner to give "due regard to the nature of the proceeding, the magnitude of the record, and the complexity or importance of the issues involved;" that the issues did not appear complex, that the applicant had urged prompt action on its application[7] and the presiding examiner further indicated that he considered that all parties, including the Staff, and the "Coal Interests" should make a frank and candid statement of their position. While the case did not appear a complex one, a frank expression of position would reflect the problems, if any, which concerned counsel and, of course, would be of assistance in determining whether or not extended briefing time should be afforded.

Counsel for the Coal Interests then finally stated that he did not oppose Michigan Wisconsin's application for the leasing and operation of the North Hamilton storage field and the appurtenant facilities sought to be constructed by the company, but that what he was really seeking was the attachment of conditions to any certificate which might be issued. When requested to state the facts with regard to the conditions which he wished to have imposed, he expressed his reluctance to do so, and never, in fact, stated specifically the conditions which he believed should be inserted in any certificate which might issue. However, at one point he made the following statement:

> Mr. Examiner, I think it is quite obvious that any conditions that we will seek will pertain to the manner in which Michigan Wisconsin should operate its storage field.

Later, in the course of his oral argument, counsel for the Coal Interests stated that:

> The facts of our position are, sir, that we are going to suggest most vehemently to this Commission that strong conditions be placed upon this certificate with respect to the operations of Michigan Wisconsin's storage field in the 1963–64 heating season, that monthly reports be made so that this Commission can keep an eye on Michigan Wisconsin's operations with respect to how they are selling their gas and are suddenly confronted with an extremely cold winter.

Finally, when the Coal Interests filed their brief in this matter they stated therein that they strongly urged ". . . that the following conditions be attached to any certificate which may be issued herein:"

> 1. THE APPLICANT SHALL CEASE ITS PRACTICE OF ALLOCATING OVERRUN GAS TO ITS DISTRIBUTOR CUSTOMERS IN THE FALL OF ANY CONTRACT YEAR.
>
> 2. THE APPLICANT SHALL NOT ALLOCATE OVERRUN GAS ON AN ANNUAL BASIS UNTIL AFTER THE HEATING SEASON IS OVER AND IN NO EVENT ANY EARLIER THAN MARCH FIRST OF THE CONTRACT YEAR.
>
> 3. PRIOR TO MARCH FIRST OF ANY CONTRACT YEAR SALES OF GAS UNDER THE OS–1 RATE SCHEDULE ON A DAILY BASIS SHALL BE MADE ONLY TO SERVE THE FIRM LOADS OF THE DISTRIBUTORS.
>
> In addition to these conditions it is respectfully submitted that the Commission should, on its own motion, institute a Section 5 investigation of Michigan Wisconsin's operations under its existing tariff to determine whether further safeguards should be incorporated into the tariff so that firm customers on the system will be assured an adequate supply of gas to meet their needs 365 days of the year. In this respect the Commission,

[7] The Commission earlier had granted applicant's application for a prompt hearing and this was the prompt hearing which the Commission held that applicant was entitled to have. The purpose of asking for prompt hearing was to enable the applicant to operate the North Hamilton Storage field so that it could inject gas therein to be used this coming winter.

after investigation, may deem it appropriate to make provisions in the tariff which would require as an example the boiler fuel sales of gas in excess of 500 Mcf per day or 10,000 Mcf per month be curtailed on days that gas is being withdrawn from underground storage.[6]

The latter suggestion stems from provisions in Michigan Wisconsin's original tariff which the company claimed in the hearing in Docket No. G–17512 were onerous and from which they sought and obtained relief in the Commission order which was issued in that case (22 FPC 603). The Coal Interests seek to have a provision which the Commission deleted, when it approved the presently existing tariff, reinstated in this proceeding which was not set down for any such purpose.

It is clear that the conditions that the Coal Interests seek to have attached are all conditions involving a change or modification in applicant's OS–1 rate schedule, and that these conditions have no relationship to the matters described in the Commission's notice of hearing or to the relief sought by Michigan Wisconsin in this proceeding, which is to improve the MDQ position of 9 of its distributors so that they could be assured of some additional firm gas to meet space heating and base load requirements for the coming winter period. In substance, the Coal Interests would retry the Commission's determination in Docket No. G–17512 (22 FPC 603) in this proceeding. In this connection it may be observed that the major effect of denying this application will be to have available gas supplies retained on the system for sale on an interruptible or overrun basis rather than on a firm basis. How this result would serve the public is not explained, and it is doubtful that it is explicable.

It is apparent from the entire cross-examination conducted by the Coal Interests that they are concerned with certain volumes of industrial gas which the 9 customers involved in this proceeding are selling on an interruptible basis, the substantial bulk of which are sold during off-peak periods. These sales are permitted under the OS–1 Rate Schedule but such sales, however, are not at issue in this proceeding.

Any change or modification in the OS–1 Rate Schedule would involve the rights of the balance of Michigan Wisconsin's customers as well as the customers who appeared in this proceeding. The Commission never issued any notice in this proceeding which could have indicated to any distributor or any other interested person that it was setting this matter down for the purpose of reconsidering the OS–1 Rate Schedule or any other general provision of the company's tariff. As a matter of fact, most of Michigan Wisconsin's customers are not parties to this proceeding which would hardly be the case had they received notice that a change in the OS–1 Rate Schedule would be an issue.

The OS–1 Rate Schedule is an integral part of the demand-commodity form of tariff which was approved by the Commission in its order of September 30, 1959 in Docket No. G–17512 after a lengthy hearing in which the Coal Interests opposed the application of Michigan Wisconsin to change from a straight commodity tariff to a two-part tariff containing provisions including the OS–1 Rate Schedule which was approved in such docket by the Commission.

In the Commission's decision in Docket No. G–17512, in which the general principles establishing this tariff were articulated and the provisions thereof specifically set down, the Commission pointed out among other things that:

> . . . The examiner found that the existing Michigan Wisconsin tariff is inadequate and unreasonable in certain respects which may be briefly summarized as follows. The tariff contains no specific limits of the daily and annual delivery obligations of the pipeline. The existing restrictions on

[6] See brief of "Coal Interests," pp. 3 and 4.

space-heating service and large volume industrial loads are no longer an adequate or appropriate means of limiting customer demand, have complicated proceeding before the Commission, and have involved the pipeline and the Commission in determinations of patterns of service which would now be more appropriate to leave to the individual distributor and the state commissions. The present flat rate for all gas delivered unduly restricts the distributors' opportunities to make off-peak and interruptible sales. * * *

Under the basic provisions of the new tariff proposed by Michigan Wisconsin the customer is required to nominate in advance a Maximum Daily Quantity on which a monthly demand charge is levied, and the pipeline's annual delivery obligations is limited to 160 times the maximum daily quantity. The commodity rate is charged for every Mcf of gas actually taken, including authorized overrun.

The examiner concluded that, with the addition of a small general service schedule, an overrun service schedule, and certain minor changes the tariff as proposed is a necessary and appropriate means of remedying the defects in Michigan Wisconsin's existing tariff. We are of the opinion that the evidence of record in this proceeding establishes the existence of the unreasonable conditions complained of and warrants the conclusion that the relief effected by means of the proposed tariff is just, reasonable, and in the public interest. [22 FPC 603, 604.]

In substance the Coal Interests are seeking material modifications of Michigan Wisconsin's tariff in a comparatively minor certificate proceeding without the issuance of any notice that such an issue would be heard. The giving of notice would be necessary to protect the interests of many interested parties who are not here represented. In this connection the Coal Interests have pointed out that within the last two years quantities of interruptible gas were made available to distributors in accordance with Michigan Wisconsin's Rate Schedule. Apparently the Coal Interests consider this fact to be a basis for seeking changes in Michigan Wisconsin's demand-commodity form of tariff particularly the OS–1 Rate Schedule.

The Commission has for years been well aware of the fact that the distributor companies of the applicant sell interruptible gas, and sometimes such interruptible gas is sold for boiler fuel. This is likewise true of every major pipeline in this country. For example, in *Michigan Wisconsin Pipe Line Company*, Docket No. G–13246 *et al.*, (22 FPC 1155) the Commission issued an order authorizing the sale of additional quantities of natural gas to Winnebago Natural Gas Co., a distributor company of Michigan Wisconsin. This allocation was made over the strong protests of the Coal Interests. The Commission pointed out that

> The only exception by any party in these proceedings to the above allocation was made by the coal interests. The coal interests herein protest the quantity allocated to Winnebago Natural Gas Company according to the above schedule. At issue is the Combined Locks Paper Company load, which service was initiated by Winnebago during December 1958. The evidence discloses that (1) this load had already been lost by the coal industry, (2) the retention of this load is important to Winnebago, both operationally and financially, (3) the availability of gas to Combined Locks is important to the financial stability of that company in that it has enabled Combined Locks to increase its production capacity without the expenditure of considerable sums of money for the reconstruction of its old and inefficient boiler plant. The evidence indicates that the plant is now geared to increased production on the assumption of availability of

gas. This is no less important in the future than in the past. [22 FPC 1156.]

The plant of Michigan Wisconsin Pipe Line Company is constructed to meet peak day requirements. However, this does not mean that the company should not make any off-peak or interruptible sales. As in the case of other pipeline companies, such off-peak and interruptible sales make a material contribution to the cost of service of the pipeline company and the cost of service of the distributors over and above the incremental costs of the gas purchased. It should be kept in mind that the major part of the plant of the pipeline is already installed and it would be a most uneconomic procedure not to make use of the capacity of such plant to the extent appropriate. This does not mean that every interruptible customer of every distributor should be served at all times. It means that interruptible customers should be served during off-peak periods and at other times when gas which the Commission has authorized the pipeline to sell them is available. The contribution in revenues received from interruptible customers is available as an offset to the pipeline and to the distributor against the cost of serving space heating customers who otherwise would have to assume full responsibility for all costs in providing service to them. The loss of such off-peak and interruptible sales by the same token would increase the cost of providing service to space heating customers and such costs could be recouped only by an increase in space heating rates. It is patently in the public interest for a distribution company when it can appropriately do so to make off-peak and interruptible sales since the rates to space heating customers would otherwise have to be increased.

It should be observed, however, that this whole problem of how much interruptible gas sales a pipeline should be permitted to sell distributor companies, is a large and important problem normally considered at a time when a company obtains additional or new gas supplies, and in such circumstances a review is made, in appropriate circumstances, of the uses to which such gas supply is to be put. This is not such a case. There is no new gas supply involved. What is sought is authority for additional storage facilities to meet additional space heating and base load requirements, which are not even controverted.

It should be observed that more than half of the gas which this company obtains is not put in storage. Gas is a fungible commodity. It is not possible, on the basis of this record, to determine whether gas sold to distributors for interruptible purposes, is gas which has been received by the distributor from storage or whether it was gas received through the other facilities of Michigan Wisconsin which bring it gas from various sources. Moreover, this whole problem cannot be considered in the context of the limited application which has been filed in this proceeding. It is a large and important economic matter totally outside the confines of the issues which were set down to be heard in this proceeding.

It should also be pointed out that the Commission in its opinion in Docket No. G–17512 further stated that the company's

> . . . new tariff will afford a vehicle for disposing of volumes of gas temporarily available as a result of warm weather, reduced business activity, storage limitations, or delays in the attachment of additional firm loads following an expansion program. The new tariff is designed to enable disposition of such gas by Michigan Wisconsin and the distributor at a rate level competitive with other fuels as contrasted with the straight line commodity level of 37.5¢ which makes competition with other fuels more difficult and in certain situations impossible to meet.

In this connection, it should be observed, however, that the past history of operations of the pipieline indicates that only about 2,000,000 Mcf per year of overrun gas would be available. However, this volume is substantial enough to be of material economic benefit to the distributors and the consuming public and to have a material economic impact on the pipeline's business.

In the cross-examination of the applicant's and the distributor's witnesses the Coal Interests developed evidence as to overrun gas being disposed of by distributors for the last two contract years (1961–62, 1962–63), and based largely on such evidence the Coal interests sought the imposition of the conditions described above.

Michigan Wisconsin pointed out in its reply brief that

> . . . the volumes of overrun gas which were available during the last two contract years reflect the fact the Michigan Wisconsin had available for sale *only on an overrun basis* 37,200 Mcf per day of MDQ which the Commission had reserved for possible service to the Upper Peninsula of Michigan in its Opinion No. 331 of October 31, 1959 in Docket No. G–18313, *et al.* (22 FPC 775). Moreover, in Opinion No. 331 the Commission allocated 61,182 Mcf of MDQ to meet the estimated third year requirements of new markets and the unneeded portion of that volume pending the development of those markets was, of course, available for sale only on an overrun basis.[5]
>
> Michigan Wisconsin was thus able to assure its customers of the volumes of annual overrun gas that would be available to them (Lincoln, T. 244–248). In utilizing their ACQ the few distributors who had a market for and were allocated overrun gas, were well aware of the facts and in no way jeopardized service to their firm customers (Lewis, T. 528–531; O'Leary, T. 559–561; Wrench, T. 334–338, 343–344; Miller, T. 631–632).

It is clear enough that the attempt to impose conditions to be attached to the certificate to be issued here is no more than a collateral attack upon Michigan Wisconsin's tariff and is wholly unrelated to the issues raised by Michigan Wisconsin's application for increased storage facilities to enable delivery of increased MDQ's for purposes of meeting peak day requirements.

Certainly if it were the Commission's intention to reconsider in this proceeding major provisions of Michigan Wisconsin's tariff it would have notified all interested persons to such effect in its notice of hearing so that persons, including Michigan Wisconsin's customers, and the public service commissions who might be affected could intervene to protect their rights. This the Commission did not do because what is involved here is a minor application seeking to protect the distributor's requirements for natural gas on peak days. No more than this is involved in this proceeding.

It may also be observed that Michigan Wisconsin's tariff was the subject of recent consideration by the Commission in Opinion No. 387, *American Louisiana Pipeline Company*, Docket No. G–18419, *Michigan Wisconsin Pipe Line Company*, Docket No. G–12292 *et al.*, 29 FPC 932. Here, also, the Coal Interests sought modifications of Michigan Wisconsin's tariff, without success.

It is hardly probable that the Commission ever intended to enlarge the issues created by the filing of Michigan Wisconsin's application in this proceeding to include an overall survey of Michigan Wisconsin's tariff. The position of the

---

[5] The availability of these additional volumes disposes of the attempt of the Coal Interests in their brief (p. 5, footnote 4) to deprecate the Presiding Examiner's statement in his decision in Docket No. G–17512 that some 2,000,000 Mcf of overrun gas would be available (22 FPC at 615).

Coal Interests in this proceeding is without merit and their requests for the attachment of their proposed conditions to the order to be issued here is denied.

ADDITIONAL FINDINGS AND CONCLUSIONS

Upon consideration of the entire record in this proceeding, the evidence adduced and the briefs filed, the presiding examiner finds and concludes, in addition to the findings and conclusions hereinbefore stated that

(1) Michigan Wisconsin Pipe Line Company ("Michigan Wisconsin") is engaged in the transportation and sale of natural gas for resale in interstate commerce and is a "natural gas company" within the meaning of the Natural Gas Act.

(2) The existing customers of Michigan Wisconsin have nominated and have executed service agreements under its F.P.C. Gas Tariff to purchase an additional 73,000 Mcf of Maximum Daily Quantities ("MDQ's") to meet the increased space heating and base load requirements of their present markets for the forthcoming contract year, commencing on September 1, 1963.

(3) In order to provide 45,000 Mcf of the additional MDQ's needed by the present markets, Michigan Wisconsin proposes to operate under lease from Michigan Consolidated Gas Company ("Michigan Consolidated") the North Hamilton storage field in Clare County, Michigan, as well as a 15.2 mile 20 inch pipeline connection to be built by Michigan Consolidated between that field and the Lincoln-Freeman field. Michigan Wisconsin also proposes to utilize 37,200 Mcf per day of its pipeline capacity which was reserved for possible service to the Upper Peninsula of Michigan (22 FPC 775) but is now available for allocation to Michigan Wisconsin's present markets (27 FPC 180).

(4) In order to make the increased peak day deliveries to the present markets Michigan Wisconsin proposes to construct and operate 13.3 miles of 6 inch partial loops of its Keokuk, Iowa lateral; a 10.9 mile 6 inch loop of its Allegan, Michigan lateral; and an additional 1,550 horsepower of compression at its Wisconsin "A" Station, with an estimated cost of $1,186,000.

(5) Michigan Wisconsin's operation of the facilities it proposed to lease from Michigan Consolidated and Michigan Wisconsin's construction and operation of its proposed facilities are subject to the requirements of the Natural Gas Act.

(6) The facilities for which a certificate is sought are adequate to render the service proposed.

(7) The estimated cost of the proposed facilities is adequate and reasonable and Michigan Wisconsin is able to finance such cost.

(8) The service which Michigan Wisconsin proposes to render to its existing markets is economically feasible and is required by the public convenience and necessity.

(9) Michigan Wisconsin is a qualified applicant and is able and willing properly to do the acts and to perfom the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(10) A certificate of public convenience and necessity should be issued authorizing the construction and operation of the facilities and the rendering of the proposed service for which Michigan Wisconsin seeks authorization in this proceeding.

ORDER

WHEREFORE, *it is ordered*, subject to review by the Commission:

(A) A certificate of public convenience and necessity be. and the same is hereby issued, authorizing Michigan Wisconsin Pipe Line Company to lease

and operate the North Hamilton Storage Field and appurtenant facilities, and to construct and operate 13.3 miles of 6 inch partial loops of its Keokuk, Iowa lateral; a 10.9 mile 6 inch loop of its Allegan, Michigan lateral; and an additional 1,550 horsepower of compression at its Wisconsin "A" Station, all as set forth in Phase one of its application in Docket No. CP63–230, as supplemented, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of section 157.20 of such Regulations.

(C) The construction of the facilities and the operations authorized by paragraph (A) above shall be completed and shall be actually undertaken and regularly performed, respectively, by Applicant within six months from the date on which this order issues.

SAMUEL BINDER,
Presiding Examiner.

APPENDIX A

MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP63–230

COMPARISON OF REQUIRED INCREASE IN MDQ WITH INCREASE IN FIRM BASE LOAD AND HEATING LOAD ON 1963–64 MAXIMUM DAY OVER 1962–63 MAXIMUM DAY

APPENDIX A

(Col. 1)	Maximum day increase 1963–64 over 1962–63			Requested MDQ increase
	Firm base load (Col. 2)	Heating load (Col. 3)	Total cols. 2 and 3 (Col. 4)	(Col. 5)
Milwaukee Gas Light Co	2,449	19,657	22,156	20,698
Michigan Gas Electric Co	583	2,133	2,716	2,600
Michigan Gas Utilities Co	1,503	3,353	4,856	4,798
Wisconsin Natural Gas Co	4,701	9,612	14,313	11,000
Madison Gas & Electric Co	460	4,994	5,454	7,000
Wisconsin Power & Light Co	1,295	4,819	6,114	5,000
Wisconsin Public Service Corp	3,830	6,669	10,499	11,000
Wisconsin Michigan Power Co	506	2,040	2,546	5,000
Wisconsin Fuel & Light Co	430	1,950	2,380	3,800
Stoughton Light & Fuel Co	311	129	440	500
Wisconsin Southern Gas Co	9	183	192	43
Illinois Power Co	4	131	135	65
City of Aledo	9	91	100	100
Keokuk Gas Service Co	19	522	541	573
City of Bloomfield		126	126	60
City of Lamoni	59	28	87	97
New London Gas Co		39	39	30
City of Bethany	32	247	279	96
Total	16,250	56,723	72,973	72,460

OPINION NO. 410

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP63-159

OPINION AND ORDER ADOPTING IN PART AND MODIFYING IN PART THE INITIAL DECISION OF THE PRESIDING EXAMINER

(Issued November 12, 1963)*

Syllabus

1. Transportation of "shrinkage" volumes of gas is subject to Commission jurisdiction—fact that helium and hydrocarbon components are part of mainsteam prior to delivery is immaterial. P. 1263.
2. *Northern* did not hold that Commission has no jurisdiction over transportation of "shrinkage" volumes of gas. P. 1264.
3. Contention that Helium Act restricts Commission jurisdiction over transportation of "helium-bearing gas" *rejected*. PP. 1264–1265.
4. Citing *Panhandle* and *Northern*, Commission *holds* that mere movement of residual gas within extraction plant is not transportation of natural gas requiring certification. PP. 1266–1267.
5. Determination here (*supra* 4) will not affect question of crediting extraction plant revenues against Panhandle's costs in any future rate case. P. 1267.
6. Under Section 7 of the Natural Gas Act, Commission issues certificate of public convenience and necessity, conditioned on Panhandle's filing application for authority to transport natural gas for extraction purposes. P. 1268.

G. R. Redding and *Raymond N. Shibley* for Panhandle Eastern Pipe Line Company.

William I. Harkaway for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

WOODWARD, *Commissioner:*

This case is before us on exceptions filed by the Commission Staff, the only exceptions, to the Presiding Examiner's Initial Decision issued on July 24, 1963. That decision would grant a certificate of public convenience and necessity under Section 7(c) of the Natural Gas Act to Panhandle Eastern Pipe Line Company (Panhandle) authorizing the transportation of natural gas for sale to the National Helium Corporation (National Helium) for use as fuel[1] in a helium-hydrocarbon extraction plant which National Helium is constructing at Liberal, Kansas. National Helium's plant is designed to process up to 850,000 Mcf of gas per day. Panhandle estimates the average fuel need of National Helium to be 1,000 Mcf per day, and the maximum fuel need at 2,000 Mcf per day.

Panhandle filed its application on December 7, 1962, and the proceeding came on for hearing on May 6, 7, and 9, 1963. There were no protests or interventions by any of Panhandle's customers nor by any other party. At the close of the hearing, Panhandle made a motion to omit the intermediate decision procedure. The Commission denied this motion on May 28, 1963.

The facts, more fully described in the Examiner's Decision reveal that Panhandle is engaged in the production, transportation and sale of natural gas both to utility companies for resale and to industrial customers for direct consumption. The company's sources of supply are located in Texas, Oklahoma, and

*Initial decision appears on p. 1269. Rehearing denied December 20, 1963, 30 FPC 1567. Petition to Review pending in CA8. No. 17872, *Panhandle Eastern Pipe Line Co.* v. *F.P.C.*

[1] Panhandle's application did not include a request for authority to transport and deliver gas for processing, *i.e.*, the extraction of helium and other hydrocarbons, which would result in shrinkage in volume and Btu content of the gas.

Kansas and its transportation system extends from Liberal, Kansas, through Missouri, Illinois, Indiana, Ohio, to Detroit, Michigan, and the Canadian border. Panhandle's average daily mainline input at Liberal is approximately 870,000 Mcf of gas which contains helium,[2] liquefiable hydrocarbons and other components and, during the winter, the input may approximate as much as 967,000 Mcf per day. Panhandle presently owns a hydrocarbon processing plant at Liberal, Kansas. This plant is capable of processing a portion of the gas stream at that location and is not equipped to remove helium gas. The existing plant, which processes approximately 240,000 Mcf per day, probably will be retired from service when National Helium's plant achieves operational status.

Panhandle's tariff, applicable to all sales for resale to its sixty-four utility customers, provides that Panhandle "may extract or permit the extraction" of helium and hydrocarbons.[3] Characterizing helium as a "mineral resource pertaining to the national defense," the Helium Act Amendment of 1960 (50 U.S.C. 167, *et seq.*) authorizes the Secretary of the Interior to acquire helium and helium gas mixtures for use by "the Department of Defense, the Atomic Energy Commission, and other agencies of the Federal Government."

National Helium is a subsidiary of Panhandle formed to construct and operate the helium extraction plant. Fifty per cent of its stock is owned by Panhandle and the remaining fifty per cent is owned by the National Distillers and Chemical Corporation. Under designed conditions, National Helium will utilize 1,000 Mcf as fuel and the equivalent of 17,000 Mcf per day of components from Panhandle's gas stream. Plant construction commenced in 1962 and operations are scheduled to begin at an early date.

On October 2, 1961, Panhandle entered into a 20-year contract with National Helium providing for Panhandle's delivery of gas at a later date to National Helium for the purpose of removal of helium gas and certain hydrocarbons from its gas stream. On October 13, 1961, National Helium executed a contract with the United States for the sale to the United States of the helium gas to be extracted.

The primary purpose of National Helium's plant will be to remove helium. This process entails the temporary removal of virtually all of the other components of the gas stream leaving a residue mixture containing the helium and other inerts, principally nitrogen. In general, the gas is refrigerated in several steps to a temperature of minus 270 degrees Fahrenheit, thereby liquefying certain of its components. When these steps are completed, National will retain the helium gas mixture and a portion of the liquefied hydrocarbons. The balance will be restored to the gas stream, which, less the shrinkage volume, will be returned to Panhandle for transmission and sale.

Panhandle is not required to install any facilities at Liberal since all new equipment needed will be constructed by National Helium. National Helium is required to return the residual gas to Panhandle at the pressure no less than that which existed upon delivery. As stated above, the plant will remove 17,000 Mcf daily which, together with the 1,000 Mcf used as fuel, will constitute a shrinkage of 18,000 Mcf per day.

At the hearing, staff counsel agreed to stipulate that the extraction of helium as planned by Panhandle and National Helium is in the public interest, and that there is no issue as to gas supply. Further, no issue exists as to the ele-

---

[2] The helium content is approximately 0.4%.

[3] "2.1 *Extraction of Hydrocarbons.* The gas delivered by Seller to Buyer shall be natural gas; provided, however, that Seller may extract or permit the extraction of moisture, helium, natural gasoline, butane, propane, other hydrocarbons or inerts (except methane) from said natural gas."

ments of financing and facilities since Panhandle is not required to finance or install any facilities. The market for this gas is established by the 20-year contract between Panhandle and National Helium and since the sale of the fuel gas is for direct consumption and not for resale, the question of price is not an issue except to the extent indicated below that it enters into the question of whether authorization of any transmission facilities are in the public interest. The issue of economic feasibility is not present in the conventional manner since it will not be necessary for Panhandle to construct or finance any facilities.

The Presiding Examiner issued his initial decision finding that:

(1) The helium project will not adversely affect Panhandle's existing service, but, on the contrary, it will be economically feasible and in the public interest.

(2) There is no need to require Panhandle to secure a certificate for the transportation of so-called "shrinkage" volumes of natural gas expended in the extraction process.

(3) Under previous decisions of the Commission, National Helium is not engaged in transportation of natural gas and need not secure a certificate.

As set forth below, we are granting the application with modifications.

The examiner found that Panhandle's evidence satisfied the conventional elements of public convenience and necessity, that Panhandle is able and willing to perform the service proposed and that a certificate accordingly should be issued.

In a recent proceeding involving helium extraction, the Commission designated the elements properly to be considered in granting a certificate of public convenience and necessity.[4]

Considering the facts of record, we find that the basic elements properly to be considered in determining public convenience and necessity, as contained in the Natural Gas Act and as applied in the Commission and judicial decisions, have been amply satisfied. Staff's exceptions do not reveal any material error in the examiner's decision in this regard.

The principal issues presented in this proceeding may be briefly summarized as follows:

(1) Does the proposal to transport "shrinkage" volumes of gas—representing the difference in the amounts of natural gas exclusive of fuel gas, entering and leaving National's plant—require Panhandle to obtain a certificate of public convenience and necessity covering such transportaion?

(2) Does the movement of natural gas through the National Helium plant during the extraction operation constitute the transportation of natural gas in interstate commerce within the meaning of the Naural Gas Act, requiring Commission authorization therefor?

The issues will be discussed seriatim.

---

[4] Under Section 7(e) of the Act, we must grant Northern's requested authorization if we find, *inter alia*, that it "is or will be required by the present or future public convenience and necessity." In the usual case, "public convenience and necessity" embrace the conventional elements of gas supply, financing, facilities, markets, economic feasibility, and rates, although in a certificate proceeding we need not determine the "just and reasonable" rate for the service. The particular facts of a case may justify considering other elements. Judgment is reached on weighing all relevant considerations for and against the authorization; as the Supreme Court has said, "the term 'public convenience and necessity' connotes a flexible balancing process, in the course of which all the factors are weighed prior to final determination." And to be sure the standards of the statute and Commission policy are met, we may attach to a certificate such reasonable conditions as the public convenience and necessity require. *Northern Natural Gas Company*, Docket No. CP61-132, Opinion No. 374, issued December 28, 1962, 28 FPC 1155 (footnotes omitted).

Staff takes exception to the examiner's finding that the transportation of "shrinkage volumes" by Panhandle does not require certification. They argue that the transportation in interstate commerce of natural gas, including those gaseous elements contained therein which may be liquefiable by treatment[6] is subject to Commission jurisdiction and therefore a certificate of public convenience and necessity is necessary.

The examiner found that under the plan of operation approximately 850,000 Mcf per day will be available to National Helium for processing. Further, it is only after the large stream of gas is processed through the hydrocarbon-helium plant that there is a depletion or shrinkage amounting to 18,000 Mcf per day having a 2,000 Btu content. This is the result of the processing and extraction operation. Prior to the extraction process and so long as the shrinkage volumes of gas are part of the mainstream, the examiner states it is the mainstream of gas which Panhandle is delivering and it is unrealistic to speak of Panhandle's transportation of shrinkage volumes of gas.

Continuing, the examiner held that even if it is assumed *arguendo* that the shrinkage volumes may be identified as gas having a 20,000 Btu content, the shrinkage includes the helium as well as the hydrocarbons which must first be removed in order to extract the helium, and it has been held that the Commission has no juridiction over the transportation of hydrocarbons to be extracted as liquids from the gas stream.[6] Morevoer, if shrinkage volumes are understood as containing the helium, nitrogen, and liquids, particularly after the extraction, then it follows that the Commission's jurisdiction is open to serious question by reason of the restrictions contained in Section 11 of the Helium Act.[7] Accordingly, the examiner concluded that the "shrinkage" is not natural gas as generally understood and that there is no justification for requiring Panhandle to secure a certificate for its transportation.

For reasons hereinafter stated, we conclude that the examiner erred by failing to assert jurisdiction over the transportation of "shrinkage" volumes of gas.

The mere fact that prior to the delivery by Panhandle of natural gas to National Helium, the helium and hydrocarbon components are part of the mainstream of gas is immaterial. On a similar basis any "transportation" of gas for sale to a direct industrial customer (as distinguished from a sale thereof) would be non-jurisdictional for, prior to the utilization of that gas by the direct industrial customers. it is transported as a part of the mainstream. The Commission has jurisdiction over the "transportation" of gas in interstate commerce even where the "sale" of the gas may not be jurisdictional.[8] In *F.P.C.* v. *East Ohio Gas Co.*, 338 U.S. 464, the Supreme Court found that "transportation" and "sale" of natural gas, as used in the Natural Gas Act were separate subjects of regulation. 338 U.S. at 468. It held that "the word 'transportation' like the phrase 'interstate commerce' aptly describes the movements of gas in East Ohio's high pressure lines." 338 U.S. at 469. In the instant proceeding. "transportation" by Panhandle of gas to National Helium's facilities, like "interstate commerce," aptly describes the movements of gas in Panhandle's lines.

---

[6] "Natural gas" was defined in *Deep South Oil Company* v. *F.P.C.*, 247 F. 2d 882, 888, as a mixture of gaseous hydrocarbons found in nature in many places connected with deposits of petroleum to which the gaseous compounds are closely related.

[6] *Northern Natural Gas Co., supra.*

[7] Section 11 of the Helium Act Amendment of 1960 (Helium Act) provides that: "The provisions of the Natural Gas Act of June 21, 1938 . . . , as amended, shall not be applicable to the sale, extraction, processing, transportation, or storage of helium either prior to or subsequent to the separation of such helium from the natural gas with which it is commingled . . ."

[8] See Natural Gas Act, Section 1(b); 15 U.S.C. § 717(b).

Assuredly, the Commission has jurisdiction over the transportation of natural gas in interstate commerce for the purpose of making direct industrial sales.[9] The transportation of the "shrinkage" volumes is no less than the transportation of volumes for direct industrial consumption. The fiction of the gas merely being part of the mainstream cannot attach to relieve Panhandle of a commitment required by the Natural Gas Act.

The *Northern* case (Docket No. CP61–132) cited by the examiner in support of his finding that the Commission has no power to entertain jurisdiction over volumes delivered for "shrinkage", did not hold that the Commission has no jurisdiction over the transportation of "shrinkage" volumes. In that proceeding Northern specifically applied for a certificate of public convenience and necessity seeking "authority to construct and operate certain mainline facilities at its Bushton Compressor Station and at various points south of the station to enable it to deliver natural gas to Northern Gas Products Company, a wholly owned subsidiary, for use as fuel and *shrinkage* in the latter's hydrocarbon products extraction plant near the Applicant's Bushton Compressor Station." Northern specifically requested authorization to construct facilities to transport shrinkage volumes and that authorization was granted. Panhandle is in the same position as Northern; Panhandle must also obtain Commission authorization for the transportation of shrinkage volumes.

In answer to the examiner's contention that there is a "serious question" concerning jurisdiction of the Commission over "shrinkage" volumes by reason of the restrictions contained in Section 11 of the Helium Act, we point out that the legislative history of the Amendment makes it abundantly clear that our jurisdiction was not thereby erased. In Senate Report No. 1814, accompanying H.R. 10548 of the 86th Congress, reported at 86th Congress 1960, 2 U.S. Code Cong. & Ad. News 3599, the following statement is made:

> Section 11 covers the jurisdiction of the Federal Power Commission in this area. The section makes it clear that the Federal Power Commission retains its jurisdiction over natural gas containing helium but has no jurisdiction over helium itself.

In discussing the measure, Senator Carroll stated: "I wish the Record to be crystal clear, so that any court which reads this Record will know what is the specific legislative intent, namely, that we are not exempting helium-bearing gas from jurisdiction by the Federal Power Commission under the Natural Gas Act. There can now be no question about that." [1960 Congressional Record 18603.]

The examiner's position, carried to the extreme, would mean that the Commission has no jurisdiction over the transportation of "shrinkage" volumes, which contain helium destined to be extracted, from the time the gas is first produced until the helium is extracted; that Commission jurisdiction would not attach until the tailgate of the extraction plant. This is obvious error. Senator Carroll and the Senate Report were careful to note that Commission jurisdiction still attaches to the "helium-bearing gas."

By asserting jurisdiction over the transportation of "shrinkage" volumes the Commission does not apply the provisions of the Natural Gas Act to the "sale, extraction, processing, transportation or storage of helium either prior to or subsequent to the separation of such helium from the natural gas with which it is commingled . . ." (Section 11, Helium Act Amendments of 1960; 75 Stat. 922), as interpreted in light of the legislative history to the effect that the

---

[9] See *Panhandle Eastern Pipe Line Co.* v. *F.P.C.*, 232 F. 2d 467, certiorari denied, 352 U.S. 891.

"Commission retains its jurisdiction over natural gas containing helium but has no jurisdiction over helium itself."

We conclude that we have jurisdiction over the transportation of "shrinkage" volumes and that Panhandle must be required to obtain certificate authorization from the Commission in order to transport, for consumption by National Helium, the 17,000 Mcf per day of natural gas which Panhandle will be delivering to National Helium and our order herein will so provide.

We note that with the completion of the helium plant, liquid hydrocarbons will be extracted from 850,000 Mcf instead of 240,000 Mcf per day. Thus, the net effect of the new operation will be a lowering in the Btu content of gas delivered to Panhandle's customers. If the removal were limited to the 6,670 Mcf of inert substance per day, the Btu content of Panhandle's gas would rise but the removal also of heavier hydrocarbons will, in fact, result in a net reduction of Panhandle's ability to deliver energy to its customers,[10] Panhandle's witness, who made studies of the content of its gas, testified that the composite average heat content of the gas delivered to its jurisdictional customers as a group for the five years 1958 to 1962 inclusive was 982 Btu per cubic foot. Further, he testified that as a result of the expansion of Panhandle's system recently approved in Docket No. CP60–60,[11] which became operative by the end of 1962, and the introduction of high Btu content gas from the Elk City extension of its line certificated in Docket No. CP60–103, which became operative in May 1962, the Btu content of the gas delivered by Panhandle has been substantially higher than in previous years. The weighted average Btu content of the gas estimated to be delivered to these customers as a group in 1964, after the helium extraction plant is in full operation, will be 983 Btu, and after the plant is operated to full design capacity, there will be no significant change in the overall Btu content.

The substantial increase in the total volumes of gas to be processed at the new plant will unquestionably affect the heating value of the gas to be delivered from the various parts of Panhandle's transmission system. Although as shown, the system-wide weighted average will be affected by the operation of the National Helium plant, the record does not disclose how individual customers may be affected.

It may well be that the recent addition of high Btu content gas to the Panhandle system and its expansion activities will offset as whole or part the increased extraction activities at Liberal. This, however, does not mean that the heating value of the gas to be delivered to the various parts of Panhandle's transmission system will be unaffected by the substantial increase in the total volumes of gas to be processed at the new plant. While the present record indicates that in some instances this impact may be substantial, it does not disclose exactly how individual customers may be affected; this, however, is the result of the fact that in the absence of any application to transmit the shrinkage volume the matter was not fully developed at the hearing.

Nor is it necessarily controlling that any reduction in heating value to any of Panhandle's customers may still be within the existing 975–1025 Btu rate bracket established by Panhandle's existing tariff.[12] Exactly the same situation

[10] Panhandle's tariff provides that gas delivered to its customers "shall not have a total heating value above one thousand fifty (1050) or below nine hundred fifty (950) British Thermal units per cubic foot" and no adjustment in price is provided for except that "in the event the arithmetic average total heating value of the gas delivered—in any month is less than 975 or more than 1025 Btu per cubic foot" then the total charge for such month shall be decreased in proportion to the increase above 1025 Btu per cubic foot.

[11] 28 FPC 211.

[12] While this is not the place to examine into the continuing validity or appropriateness of the bracket Btu tariff provision, it is clear that it was based upon the value of gas at the 1000 Btu midpoint rather than at the relatively stable 980–985 Btu content gas which Panhandle has apparently succeeded in achieving.

prevailed in the recent *Northern* case, Opinion 374, *supra*. (See 28 FPC 1155, 1184–1185 (Examiner's Decision).) We there recognized that if as a result of the shrinkage (or the loss of available pipeline expandibility—a matter also not fully developed in this record) Northern's existing resale customers would suffer as a result of the proposed extraction operation, the public interest required them to be compensated therefor.

We accordingly conditioned the part of the authority to transmit gas for *both* fuel and shrinkage purposes upon the agreement to a higher payment by the extraction company to Northern than had been originally proposed and consequent rate reductions to the existing Northern customers. Whether any such condition would be necessary or appropriate here, will of course have to await consideration of a more complete record on this point made in hearing upon any application to transport the shrinkage volumes which Panhandle may choose to file.[13]

This brings us to the consideration of staff's argument that the residual gas is in interstate commerce when moving through National Helium's facilities, that National Helium is engaged in interstate commerce, and that its facilities are therefore jurisdictional. Staff argues that National Helium must be required to prosecute an application for a certificate of public convenience and necessity.

The evidence of record compels the examiner's finding that the primary purpose and end result of National Helium's plant is to extract helium and hydrocarbons rather than to transport natural gas. The mere movement of the residual gas within the National Helium plant is not to be equated with interstate commerce. The movement of the gas stream through the helium plant is simply incidental to the helium extraction process and is a necessary step in the method of extraction.

Commission precedent supports this finding, as in *Panhandle Eastern Pipe Line Company*, 12 FPC 686, where the Commission considered similar issues with respect to the extraction and retention of hydrocarbons from Panhandle's gas stream by National Petrochemicals Corporation. The Commission found that National Petrochemical's facilities and operations were not subject to the Act nor to the jurisdiction of the Commission; that the flow of the gas stream through the extraction plant was for the purpose of permitting the extraction of hydrocarbons and did not constitute the transportation of natural gas in interstate commerce.

Moreover, the Commission has issued 4 orders from June 23, 1961 to March 12, 1963 which support the view expressed in *Panhandle*, *supra*, concerning Northern Natural Gas Company's project. On June 23, 1961,[14] the Commission held:

> The construction and operation of the proposed hydrocarbon extraction plant at Bushton, Kansas, is not essential to the transportation of natural gas in interstate commerce or to the sale in interestate commerce for re-sale, and is, therefore, not subject to the jurisdiction of this Commission.

By order of August 23, 1961, denying rehearing with respect to the Northern Natural matter, the Commission stated:[15]

---

[13] The examiner thought that these questions could and should be left to a subsequent Panhandle rate case. We disagree. As indicated in Northern where the immediate effect of Commission action certificating a new sale may be to harm existing jurisdictional customers our responsibilities under the public convenience and necessity standard of Section 7 justify prompt remedial action. *Cf. Atlantic Refining Co.* v. *Public Service Commission* (*CATCO*), 360 U.S. 378.

[14] Order of June 23, 1961, 25 FPC 1205.

[15] 26 FPC 418.

This issue of jurisdiction was before the Commission in the case of *In re Panhandle Eastern Pipe Line Company*, 12 FPC 686, 697, affirmed by the Commission on October 23, 1953 and reported at 12 FPC 706. The Commission in that case made a specific finding that the proposed extraction plant to be constructed and owned by National Petro-Chemicals Corps. but operated by Panhandle at the entire expense of Petro-Chemicals, and through which a continuous stream of natural gas would flow, as well as the facilities incidental to said extraction plant were not facilities for the transportation or the sale for resale of natural gas in interstate commerce. Instead, the Commission said that the primary function of the extraction plant and the facilities incidental thereto *was extraction of hydrocarbons, not transportation.*

On December 28, 1962, reaffirming its views that the facilities and operations associated with the plant are not subject to the Commission's jurisdiction:[16]

These matters raised by Mid-American are beyond the scope of the Commission's inquiry in certificating the jurisdictional facilities proposed by Northern. They pertain to the Products company operation which, although directly related to the Northern proposal, *is non-jurisdictional* and therefore not subject to the same scrutiny of Section 7 as to public need, etc. as are jurisdictional facilities. Rather in the case of such a non-jurisdictional operation which is integrated with a jurisdictional proposal, we must merely determine if it entails any violation of public policy or abuse of a jurisdictional proposal which would compel rejection of the jurisdictional proposal.

On application for rehearing, the Commission issued an order on March 12, 1963, affirming its prior determination.[17]

We conclude, following previous decision of the Commission, that National Helium is not engaged in the transportation of natural gas and need not secure a certificate of public convenience and necessity.

We wish to make clear that this holding that National Helium is not itself engaged in the transportation of natural gas does not mean that its extraction operations are unrelated to the transportation of natural gas by Panhandle. On the contrary it has been determined that the existing Liberal extraction plant (which extracts less hydrocarbons than the new plant will) does perform a significant function in aid of Panhandle's transportation of natural gas, as does the extraction plant owned by Phillips Petroleum Co. at Sneed, Texas, which also had no certificate to transport gas. *Panhandle Eastern Pipe Line Co.* Opinion 344, 25 FPC 787, approved on this point but remanded for reconsideration of the extent of crediting, *Panhandle Eastern Pipe Line Co.* v. *F.P.C.*, 305 F. 2d 763, see *City of Detroit* v. *F.P.C.*, 230 F. 2d 810, certiorari denied, 352 U.S. 829. Our determination here will thus not affect the question of crediting possible revenues of National Helium against Panhandle's costs in any future rate case involving the latter.

The Commission further finds:

(1) Applicant, Panhandle Eastern Pipe Line Company, a Delaware Corporation, having its principal offices in New York, New York, and Kansas City, Missouri, is engaged in the transportation of natural gas in interstate commerce and in the sale of natural gas in interstate commerce for resale for ultimate public consumption and is a "natural gas company" within the meaning of the Natural Gas Act, as amended. (4 FPC 1081.)

---

[16] Opinion No. 374, 28 FPC 1155, 1161.

[17] Order of March 12, 1963, Docket No. CP61-132, 29 FPC 450.

(2) The service proposed to be rendered by Panhandle, *i.e.* the transportation of up to 2,000 Mcf of gas for use as fuel by National Helium Corporation is required by the public convenience and necessity only upon the conditions hereinafter set forth.

(3) The National Helium Corporation is a Delaware corporation and is presently constructing a helium extraction plant in the vicinity of Liberal, Kansas.

(4) The transportation of volumes of natural gas to National Helium Corporation by Panhandle for the purpose of extraction of liquid hydrocarbons and inerts is transportation of natural gas in interstate commerce and is subject to the jurisdiction of the Commission.

(5) Panhandle will have an adequate supply of natural gas in excess of its contract commitments from which to supply the fuel and shrinkage volumes of gas to National Helium Corporation.

(6) Panhandle is able and willing to perform the service called for in its application and to conform to the provisions of the Natural Gas Act and the Commission's regulations thereunder.

(7) National Helium Corporation's proposed extraction plant is not engaged in the transportation of natural gas and therefore is not subject to the jurisdiction of the Commission.

(8) Panhandle has failed to file an application for the transportation of natural gas for the purpose of extraction of liquid hydrocarbons and the proposal in this docket is dependent upon such extraction.

(9) Unless a certificate of public convenience and necessity is applied for and issued for the purpose set forth in Finding (8) above, it would not be in the public interest to authorize the transportation of natural gas as herein proposed.

(10) The public convenience and necessity require the attachment to the certificate issued Panhandle, and to the exercise of the rights granted thereunder, the further conditions hereinafter ordered, which are found to be reasonable and necessary.

(11) All material exceptions, arguments and objections not discussed or granted herein have been considered but are without substantial support in the record or a reasonable basis in law or are immaterial to the proper disposition of this case and are denied. The Presiding Examiner's initial decision issued herein on July 24, 1963, is, to the extent consistent with this opinion, adopted by the Commission as of the date of issuance of this order, to constitute with this opinion its decision in this proceeding.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to the applicant, Panhandle Eastern Pipe Line Company, for the transportation in interstate commerce of an average of 1,000 Mcf of natural gas per day and up to 2,000 Mcf of natural gas per day to the National Helium Corporation plant located near Liberal, Kansas, to be used as fuel, space heating, and other miscellaneous purposes, subject to the following conditions:

(1) That within 45 days from the date of this order, Panhandle submit an application for a certificate of public convenience and necessity for the operation of the Panhandle interstate pipeline system to transport natural gas for the purpose of extracting therefrom liquefiable hydrocarbons, in the National Helium Corporation plant located near Liberal, Kansas.

(2) The certificate issued herein shall become ineffective unless Panhandle shall file its application within 45 days as required by condition (1) above.

(3) As a further condition attached to the certificate issued Panhandle, Panhandle shall transport from its gas stream to National Helium for processing not more than 850,000 Mcf of natural gas per day.

(4) As a further condition, Panhandle shall cause to be returned to the gas transmission system the natural gas permitted by Paragraph 2 above to be delivered to National Helium up to 850,000 Mcf per day, less shrinkage, subject to the terms and conditions of this order.

(5) As a further such condition, until changed by further order of the Commission, for purposes of future proceedings, Panhandle shall file with the Commission, in writing, an original and four conformed copies of a report of the initiation of deliveries of natural gas to National Helium, such report to be filed within 30 days of the initial deliveries; and a quarterly report showing by month or any portion thereof (a) the total volume of gas delivered to National Helium for processing and the total Btu content before and after processing, and (b) the total volumes of gas delivered or used for fuel purposes, and (c) the volumes of gas redelivered to Panhandle, such quarterly report to be filed not later than 30 days following each quarter.

(6) The general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of the Commission's Regulations under the Natural Gas Act shall attach to the issuance of the certificate granted herein, and to the exercise of the rights thereunder.

(7) The initial decision of the Presiding Examiner issued herein on July 24, 1963, is, to the extent consistent with this opinion hereby adopted by the Commission as of the date of issuance of this opinion, to constitute with this opinion the Commission's decision in this proceeding.

(8) The exceptions filed to the Presiding Examiner's decision are, except to the extent herein granted, denied.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY PURSUANT TO SECTION 7(C) OF THE NATURAL GAS ACT

(Issued July 24, 1963)

SHRIVER, *Presiding Examiner:* This proceeding results from an application filed by the Panhandle Eastern Pipe Line Company pursuant to Section 7(c) of the Natural Gas Act. Panhandle seeks a certificate of public convenience and necessity authorizing the transportation of natural gas for sale to the National Helium Corporation for use as fuel in an extraction plant which National Helium is constructing at Liberal, Kansas. National Helium's plant, as will be shown hereafter, is designed to process up to 850,000 Mcf of natural gas per day. Panhandle estimates the average fuel need of National Helium at 1000 Mcf per day and the maximum fuel need at 2000 Mcf.

Panhandle filed its application on December 7, 1962 and the proceeding came on for hearing before this examiner on May 6, 7, and 9, 1963. There were no interveners. Evidence and testimony were adduced by the applicant. Staff counsel cross-examined applicant's witnesses and produced one witness who briefly testified for the Commission. At the close of the hearing the applicant made a motion to omit the intermediate decision procedure. The Commission denied this motion on May 28, 1963.

Panhandle is a natural-gas company within the meaning of the Natural Gas Act. It is engaged in the production, and in the transportation and sale of natural gas both to utility companies for resale and to industrial customers for direct consumption. Its sources of supply are extensive, and are located in Texas, Oklahoma and Kansas. Its transportation system extends from Liberal

Kansas, through Missouri, Illinois, Indiana, Ohio, and to Detroit, Michigan. Its customers east of Liberal, Kansas, number some 64 cities, towns, and utility companies. Panhandle's average daily main line input at Liberal is approximately 870,000 Mcf of gas per day and during the winters it is as much as 967,000 Mcf.

On October 2, 1961, Panhandle entered into a contract with National Helium providing for Panhandle's delivery of natural gas at a later date to National Helium for the purpose of removal of helium-gas and certain hydrocarbons from its gas stream. Shortly afterwards on October 13, 1961, and pursuant to the Helium Act as amended (50 U.S.C. 167 *et seq.*), National Helium executed a contract with United States for the sale to the United States of the helium gas to be extracted. This contract is one of several entered into by United States acting through the Director, Bureau of Mines, Department of Interior under the Helium Act for the gathering and conservation of helium gas.

National Helium is a subsidiary of Panhandle. It was formed to construct the extraction plant and to participate in the government program for the conservation of helium. Fifty percent of its stock is owned by Panhandle and another fifty percent is owned by National Distillers and Chemical Corporation. Work was begun on construction of the extraction plant in 1962; operations are to commence at an early date.

As already intimated, the main portion of the gas transported through Panhandle's system is obtained from the Texas-Panhandle, western Oklahoma, and southwestern Kansas. But Panhandle also gets large deliveries of gas east of Liberal both from its Elk City source, and from its subsidiary the Trunkline Gas Company near Tuscola, Illinois. The peak day supply from Elk City is about 150,000 Mcf and from Trunkline about 470,000 Mcf. The blended stream is transported eastward from Liberal through three large pipe lines. Hydrocarbon processing plants presently exist at Sneed, Texas, Liberal, Kansas, and Tuscola, Illinois. The Tuscola plant is owned by the National Distillers and Chemical Corporation, the Sneed plant is owned by the Phillips Petroleum Company, and the Liberal plant is owned and operated by Panhandle. The existing plant at Liberal removed a total of 36,633,943 gallons of gasoline, butane, and propane for the 12-month period ending September 30, 1959. During the calendar year 1961 the company extracted 38,419,915 gallons of liquid products and in 1962 the hydrocarbon mixture extracted totalled 35,581,037 gallons. The existing plant at Liberal is capable of processing only a portion of the gas stream at that location and is not equipped to remove helium gas. Panhandle here processes about 240,000 Mcf per day. The new plant being constructed adjacent to the existing one will extract not only helium but other hydrocarbons. When the new plant is put in operation the existing plant will go out of use.

The function of the new Liberal plant is primarily to remove the helium. In performing this function, however, the process will entail the temporary removal of virtually all of the other components of the gas stream leaving a residue mixture containing the helium and other inerts, principally nitrogen. The process involves refrigeration of the gas to an extremely low temperature, about 270 degrees minus fahrenheit, thereby liquefying certain of its components. After performing this step National Helium will retain the helium gas mixture and a portion of the liquefied hydrocarbons. The balance will be combined so that the gas stream, less the shrinkage volume, will be returned to Panhandle for transmission and sale.

Panhandle is not required to install any facilities at Liberal. All new equipment needed will be constructed by National Helium. National Helium is required to return the residual gas to Panhandle at a pressure no less than that which existed upon the delivery.

As already indicated Panhandle's average main line input at Liberal is about 870,000 Mcf of gas per day. National Helium's plant is designed to process approximately 850,000 Mcf per day when in full operation and when so operated it will remove 17,000 Mcf which together with the 1000 Mcf used as fuel will constitute a shrinkage of 18,000 Mcf per day. Panhandle says that the helium content of its combined gas stream at Liberal is approximately .4 percent.

At the hearing, Staff counsel agreed to stipulate that the extraction of helium as planned by Panhandle and National Helium was in the public interest, and that there was no issue in the proceeding as to gas supply.

The primary issue in the proceeding is whether public convenience and necessity will be served by Panhandle's delivery of the proposed fuel to National Helium. In another case involving helium extraction the Commission recently stated what elements might appropriately be considered in granting a certificate.

> Under Section 7(e) of the Act we must grant Northern's requested authorization if we find, *inter alia*, that it is or will be required by the present or future "public convenience and necessity." In the usual case, "public convenience and necessity" embrace the conventional elements of gas supply, financing, facilities, markets, economic feasibility, and rates although in a certificate proceeding we need not determine the "just and reasonable" rate of the service. The particular facts of a case only justify considering other elements. Judgment is reached on weighing all relevant considerations for and against the authorization . . . . [*Northern Natural Gas Company*, Docket No. CP61–132, Opinion No. 374, issued December 28, 1962, 28 FPC 1155.]

As to the gas supply Panhandle and the Staff have stipulated that this is adequate. Since Panhandle will provide no new facilities or installations there is no issue in regard to facilities or financing. The market for the gas is established by the twenty-two year contract between Panhandle and National Helium. As this contract is dependent, at least in part, upon National Helium's contract with the Department of the Interior the sale is highly desirable and the deliveries will serve a necessary and useful purpose.

Since Panhandle will not construct or finance any installations the question of economic feasibility is not presented in the conventional manner. Also, since the sale of the fuel gas is for direct consumption and not for resale the question of price is not an issue under section 1(b) of the Natural Gas Act. Under the contract between Panhandle and National Helium, Panhandle is to be paid 35 cents per Mcf at 14.65 psia or 34.58 cents per Mcf at 14.73 psia for the gas used as fuel or for shrinkage. Panhandle says that its main line deliveries to utility customers will produce average revenues of 33.07 cents per Mcf so that the unit revenues from its sale to National Helium will be in excess thereof and therefore will be compensatory.

As helium is an inert its extraction from Panhandle's gas stream at Liberal admittedly is desirable, unless such extraction would have a materially adverse effect upon Panhandle's ability otherwise to serve its jurisdictional customers. The latter is not established by the testimony. Accordingly, in view of the foregoing, and the evidence of record it is concluded that the helium project will not adversely affect Panhandle's existing service but on the contrary it will be economically feasible and in the public interest.

Staff counsel, however, raises two major issues in the proceeding, first, that Panhandle failed to apply for a certificate of public convenience and necessity covering the transportation of the so-called shrinkage volumes of gas, and second, that no request was made for a certificate by National Helium for the transportation in interstate commerce of natural gas through its plant.

Staff's position is that Panhandle must have a certificate for the transportation of those volumes of gas to be used in the operation of National Helium's plant, as a result of the removal of hydrocarbons and other matter, and that in transporting the gas through the plant National Helium is engaged in interstate commerce. Staff suggests that any certificate that may be issued to Panhandle should be conditioned upon the successful prosecution of applications for the issuance of other certificates which Staff feels must be obtained.

Reverting to the question of interstate commerce, the Staff says that when operative virtually the entire stream of Panhandle's gas will move through the National Helium facilities, that the gas will move physically in a continuous flow from Panhandle's interstate lines through National Helium's processing facilities and back into the Panhandle system's jurisdictional facilities at the Liberal compressor station, and that National Helium's plant is essential to the transportation of the gas from its main source of supply. The Staff claims that this residual gas is in interstate commerce when moving through National Helium's facilities, that National Helium is engaged in interstate commerce, and that its facilities are therefore jurisdictional. Staff argues that the Natural Gas Act does not dictate that the provisions of the Act apply only when the facilities are designed and the function performed is primarily "transportation", and further that the provisions of the Act apply specifically to the transportation of natural gas in interstate commerce.

Panhandle on the other hand denies that the extraction is essential to the transportation of its gas in interstate commerce, but says that on a peak day 167,000 Mcf will bypass the National Helium plant, that approximately 620,000 Mcf received into Panhandle's stream east to the plant and from Trunkline and from the Elk City line will also bypass the extraction plant daily, and that in an emergency the extraction plant may be bypassed entirely.

It should not be overlooked in this connection that by the terms of the contract between Panhandle and National Helium, title to the residual gas redelivered to Panhandle and not a part of the "shrinkage" remains in Panhandle. National Helium cannot dispose of this gas to anyone else nor does it transport the gas after it leaves its plant. The movement of the gas stream through the helium plant is simply incidental to the helium extraction process and is a necessary step in the method of extraction.

In support of its contentions the Staff cites: *Saturn Oil & Gas Company*, 250 F. 2d 61, 69; *Phillips Petroleum Co.*, v. *Wisconsin*, 347 U.S. 672, 681; *Missouri* v. *Kansas Natural Gas Co.*, 265 U.S. 298, 309; and *Panhandle Eastern Pipe Line Co.* v. *Federal Power Commission*, 232 F. 2d 467. These cases, however, are not dispositive of the present issue. In the *Saturn* case the court found that facilities necessary to effect a sale of gas in interstate commerce are facilities used in interstate commerce and are within the jurisdiction of the Commission. Staff suggests that facilities necessary to effect transportation of gas in interstate commerce should also be jurisdictional. The answer is that in the *Saturn* case the petitioner was engaged in the *sale* in interstate commerce of natural gas for resale not the transportation of gas simply through its Christmas tree facilities. Based on the *Phillips* case, it is said that the transportation of natural gas is accomplished by National Helium; that "the gas is in interstate commerce"; hence the transportation is jurisdictional. But National Helium is not engaged in the sale of natural gas for resale in interstate commerce nor in the business of transporting gas. *Missouri* v. *Kansas* has no application here. There the business of the respondent was wholly interstate; it was engaged in the transportation of gas from one state to another for sale to resale customers. In the *Panhandle* case the court was concerned with the effect of extraction revenues and the cost of service.

The extraction process of the helium plant has been described as follows: the gas moves through a series of increasingly colder processes in the course of which the progressive liquefaction of the components of the stream is effected; when the remaining stream reaches the final cold box, the helium-gas mixture is removed as a vapor and the remainder of the stream leaves the bottom of the cold box as a liquid; the revaporization of the liquids following their liquefaction during the various stages of the process, is effected in heat exchanges which assist in maintaining the necessary refrigeration of the incoming gas stream; and following such revaporization, the residual gas stream is returned to the Liberal compressor station where it is compressed and put into the lines comprizing Panhandle's main line system, for movement of the gas to Panhandle's markets. It will be seen from this that the primary purpose and end result of National Helium's plant is to extract helium and hydrocarbons rather than to transport natural gas.

Thus the mere movement of the residual gas within the National Helium plant is not to be equated with interstate commerce. The manner, the purpose of movement, and the activity of the person responsible for it is determinative.

It could hardly be said that if someone else's gas were passed through a single valve or perhaps through a water separator that this constitutes interstate commerce or that the owner or operator of such equipment was so engaged. It therefore decided following previous actions of the Commission that National Helium is not engaged in interstate commerce and need not secure a certificate of convenience and necessity, *Panhandle Eastern Pipe Line Co., et al.*, 12 FPC 686, 697; *Northern Natural Gas Company*, 25 FPC 1205, 1207; *ibid*, 26 FPC 418, 419; *ibid*, Opinion No. 374, 28 FPC 1155, 1161; *ibid*, Docket No. CP61-132, order issued March 12, 1963, 29 FPC 450.

This conclusion also finds support in the Helium Act (Act of September 13, 1960, 50 U.S.C. 167 i). Section 11 of that Act provides that:

> The provision of the Natural Gas Act of June 21, 1938, as amended, shall not be applicable to the sale, extraction, processing, transportation, or storage of helium either prior to or subsequent to the separation of such helium from the natural gas with which it is commingled, whether or not the provisions of such act apply to such natural gas, and in determining the rates of a natural gas company under Section 717c and 717d of Title 13, whenever helium is extracted from helium-bearing natural gas, there shall be excluded (1) all income received from the sale of helium; (2) all direct costs incurred in the extraction, processing, compression, transportation or storage of helium; and (3) that portion of joint costs of exploration, production, gathering, extraction, processing, compression, transportation or storage divided and allocated to helium on a volumetric basis.

Panhandle says that every operation of National Helium from the time it takes possession of the stream of gas from Panhandle's supply lines at its Liberal compressor station, until it returns the stream of gas to those lines, has as its one end purpose the extraction and preservation of the helium product, so that there is no part of the process to which the Commission's jurisdiction could apply and thus no reason for National Helium obtaining a certificate.

In opposition to this, however, it is said that the legislative history of the amendment to the Helium Act makes it clear that Section 11 did not erase the Commission's jurisdiction over natural gas. The Senate Report accompanying the Amendment reads in part:

> Section 11 covers the jurisdiction of the Federal Power Commission in this area. The section makes it clear that the Federal Power Commission retains its jurisdiction over natural gas containing helium but has no

jurisdiction over helium itself. [Senate Report No. 1814 on H.R. 10548, 86th Cong.]

Senator Carroll made this statement in explanation of the bill:

> I wish the Record to be crystal clear, so that any court which reads this Record will know what is the specific legislative intent, namely, that we are not exempting helium-bearing gas from jurisdiction by the Federal Power Commission under the Natural Gas Act. There can now be no question about that. [1960 Cong. Record 18603.]

On the first reading it would seem as if the explanatory statements as to the meaning of Section 11 and the language of the section itself were irreconcilable. Senator Carroll's statement means that Congress intended that the Commission should retain its jurisdiction over the sale and transportation in interstate commerce of natural gas containing helium or helium-bearing gas. The statement from the Senate Report though clear enough does not reach the precise issue here. But as the Helium Amendment was enacted subsequent to the Natural Gas Act and the Commission was familiar with the draft bill, it may be concluded that Congress had full knowledge of the bill. The plausible meaning of Section 11 is that Congress intended that the Commission retain its authority over natural gas as provided by the language of the Natural Gas Act, including natural gas containing helium, but that it exercise no jurisdiction over helium itself, nor interfere with or exercise authority over the program of conservation of helium, its sale, transportation, storage, and processing, and that because of the manner in which helium is obtained that this be so in so far as practicable in respect to its extraction both immediately prior to and subsequent to its separation from natural gas. The Helium Act accordingly limits the Commission's jurisdiction over the activities of National Helium and under the view here taken there is no ground for requiring National Helium to obtain a certificate.

Reference is now made to the question of whether Panhandle is required to secure a certificate of public convenience and necessity for the transportation of "shrinkage" or so-called shrinkage volumes of gas. Staff says that the gas stream going into the National Helium plant will have a higher Btu content than that leaving the plant, after the helium and other products are extracted, so that the net effect is that 18,000 Mcf of 2000 Btu gas, the "shrinkage", is delivered by Panhandle to National Helium. Staff's position is "that the transportation of natural gas, including those gaseous elements contained therein which may be liquefiable by treatment, in interstate commerce is subject to Commission jurisdiction for which a certificate of public convenience and necessity is necessary".

But under the plan of operations approximately 850,000 Mcf of natural gas per day will be available to National Helium and be utilized for processing. It is only after the large stream of gas is processed through the hydrocarbon-helium plant that there is a depletion or shrinkage amounting to 18,000 Mcf per day having a 2000 Btu content. This is the resultant of the processing and extraction operations. The breakdown or components of the shrinkage will consist of approximately 5840 Mcf of helium, 1000 Mcf of fuel gas, 830 Mcf of purge stream principally nitrogen, and 10,330 Mcf representing higher hydrocarbons.

Prior to the extraction process and so long as the shrinkage volumes of natural gas are a part of the main stream it is the main stream of natural gas which Panhandle is delivering and it is unrealistic to speak of Panhandle's transportation of shrinkage volumes of gas. However, it is assumed *arguendo* that the shrinkage volumes of gas (18,000 Mcf exclusive of 1000 Mcf of fuel) may be identified as natural gas having a 2000 Btu content, this shrinkage includes the

helium as well as the hydrocarbons which must first be removed in order to extract the helium and it has been held that the Commission has no jurisdiction over the transportation of hydrocarbons to be extracted, as liquids from the gas stream. *Northern Natural Gas Co.*, Docket No. CP61–132 issued December 28, 1962. Moreover, if the shrinkage volumes of gas is understood as containing the helium, nitrogen, and liquids, particularly after the extraction, then it follows from what has been already said as to the application of the Helium Act, that the Commission's jurisdiction is open to serious question by reason of the restrictions contained in Section 11 of that Act. 50 USC 1671. From the circumstances it is plain that the "shrinkage" is not natural gas as generally understood, and it is accordingly concluded that there is no justification for requiring Panhandle to secure a certificate of public convenience and necessity for its transportation.

Staff argues that the Btu content of Panhandle's gas hereafter to be supplied its jurisdictional customers will be reduced. Under its existing tariff and agreements with its customers Panhandle is permitted to extract helium, natural gasoline, butane, propane, and other hydrocarbons or inerts, except methane, from its natural gas but it is specifically agreed that the gas delivered to such customers "shall not have a total heating value above one thousand fifty (1,050) or below nine hundred fifty (950) British Thermal units per cubic foot" and no adjustment in price is provided for except that "in the event the arithmetic average total heating value of the gas delivered—in any month is less than 975 or more than 1,025 Btu per cubic foot" then the total charge for such month shall be decreased in proportion to the decrease below 975 or increased in proportion to the increase above 1,025 Btu per cubic foot.

Panhandle says that under its contract with National Helium the latter is required to redeliver the residual gas with a Btu content of at least 975, and Panhandle says its deliveries to its customers will exceed this level and be substantially identical with that which Panhandle has been distributing during the past several years.

Panhandle has about sixty-four utility customers east of Liberal in Kansas, Missouri, Illinois, Indiana, Ohio and Michigan which purchase gas from its main line for resale. Panhandle's witness who made studies of the content of its gas, testified at the hearing that the composite average heat content of the gas delivered to its jurisdictional customers as a group for the five years 1958 to 1962 inclusive was 982 Btu per cubic foot, that the weighted average Btu content of the gas estimated to be delivered to these customers as a group in 1964, after the helium extraction plant is in full operation will be 983 Btu, and that even when the helium plant is operated to full design capacity there will be no significant change in the overall Btu content of the gas deliveries to its jurisdictional customers as compared with the past several years. The witness testified that although the historical system-wide annual average Btu content of Panhandle's gas deliveries remained rather steady at or near 982 Btu per cubic foot, there had been significant variations as between customers and as to given customers from month to month in a given year, that the disparity as between customers was as much as 10 to 12 Btu in the same month or year, and there was a variation of up to 20 Btu as to a given customer from month to month or in a single year. He said this was normal in Panhandle's system, and concluded that the helium plant when under full design operation will have a considerably lesser impact on the Btu content of gas delivered to Panhandle's jurisdictional customers than the normal variations among its customers in the past.

But it is complained, that with the completion of the helium plant liquid hydrocarbons will be extracted from 850,000 Mcf instead of 240,000 Mcf per day

and that the net effect of the operations will be a lowering in the Btu content of the gas delivered to Panhandle's customers; that with the removal of only 6,670 Mcf of inert substance per day the Btu Content of Panhandle's gas should rise but the removal of the heavier hydrocarbons will in fact result in a reduction of Panhandle's ability to deliver energy to its customers. It is urged that the Commission should have control over the Btu content of the gas to be delivered to Panhandle's customers.

At present Panhandle processes about 240,000 Mcf of gas per day at its Liberal plant and extracts or uses about 4,000 Mcf of hydrocarbons. In 1962 it extracted 35,381,037 gallons of liquid hydrocarbons. The helium plant is designed to process 850,000 Mcf of gas per day, 18,000 of which will represent shrinkage. As already stated the shrinkage will be made up of the following: approximately 5,840 Mcf will represent the helium product, 1,000 Mcf fuel and miscellaneous streams, 830 Mcf purge stream principally nitrogen, and 10,330 will represent higher hydrocarbons. It is estimated that after the helium plant is placed in operation approximately 122,165,500 gallons of liquid hydrocarbons will be extracted from the gas stream which will be processed.

The volume of liquid hydrocarbons extracted per Mcf of gas processed therefore will be substantially the same after the operation of the helium plant as in the past.

But this alone will not determine the heat value of the gas to be delivered to Panhandle's future customers. The substantial increase in the total volumes of gas to be processed at the new plant will unquestionably affect the heating value of the gas to be delivered from the various parts of Panhandle's Transmission system. Even though the system-wide weighted average may be virtually unaffected, the evidence shows that the composite average heating value of the gas deliveries to Panhandle's jurisdictional customers located between Liberal and Tuscola will decrease from 993 Btu to about 983 Btu and for those customers east of Tuscola will rise from about 980 Btu to 983 Btu per cubic foot. The record does not disclose how individual customers may be affected.

The foregoing would indicate that Panhandle intends to more nearly equalize the heat content of the gas deliveries to its customers in the two sections of its system. Since no rate adjustment is required by its tariffs for variations of heat content within the range of 975 Btu to 1025 Btu, the contemplated equalization would seem to be in the public interest. However, the volume of gas to be processed at the new plant and the amount of liquid hydrocarbons to be returned by National Helium to Panhandle will have an important bearing on Panhandle's ability to effect and maintain the heat content indicated in support of its application. For this reason it is considered appropriate to condition the issuance of the certificate which Panhandle seeks in this proceeding so as to limit the volume of gas to be delivered for processing and to insure the maintenance of the composite heating value of the gas to be delivered to Panhandle's jurisdictional customers consistent with indicated operations.

One additional item deserves attention. The Staff contends that, to the extent additional liquid hydrocarbons are extracted at the Helium plant, Panhandle's jurisdictional customers and their ratepayers lose heat energy and the additional revenues or profits derived from the sale of the liquid hydrocarbons beyond costs should be reflected in Panhandle's cost of service or in an adjustment of rates. Whatever may be said for or against this contention on principle, the evidence in the proceeding is inadequate to support a proper determination. This issue it would also appear can more appropriately be resolved in a rate case rather than in this proceeding.

FINDINGS AND CONCLUSIONS

Upon consideration of the record and the briefs and arguments of counsel, it is found and concluded, in addition to the findings and conclusions heretofore stated, that:

(1) The Panhandle Eastern Pipe Line Company, a Delaware Corporation, having its principal offices in New York, New York and in Kansas City, Missouri, is engaged in the transportation of natural gas in interstate commerce and in the sale of natural gas in interstate commerce for resale for ultimate public consumption and is a "natural-gas company" within the meaning of the Natural Gas Act, as amended. (4 FPC 1081.)

(2) The National Helium Corporation is a Delaware corporation and is presently constructing a helium extraction plant in the vicinity of Liberal, Kansas.

(3) Pursant to a contract executed between Panhandle and National Helium dated October 2, 1961, Panhandle will make available its natural gas stream (west end) for the purpose of enabling National Helium to extract helium, nitrogen and certain liquefiable hydrocarbons. It is estimated and intended that National Helium will process not more than 850,000 Mcf of natural gas per day of which an average of 1000 Mcf per day will be used for fuel and 17,000 Mcf for extraction and loss or a total of 18,000 Mcf per day of shrinkage.

(4) Panhandle will have an adequate supply of natural gas in excess of its contract commitments from which to supply the fuel and shrinkage volume of gas to National Helium.

(5) The removal of the helium and hydrocarbons from Panhandle's gas stream by National Helium will not prevent Panhandle from complying with its customer obligations as contained in its tariff rate schedules and in sales contracts on file with the Commission.

(6) Panhandle is ready and willing to perform the service called for in its application and to conform to the provisions of the Natural Gas Act and the Commission's regulations thereunder.

(7) National Helium's proposed extraction plant is not engaged in the transportation of natural gas in interstate commerce and as such is not subject to the Commission's jurisdiction.

(8) The proposed transportation by Panhandle to National Helium of an average of 1000 Mcf and up to 2000 Mcf of natural gas per day for use as fuel is in the public interest and is required by public convenience and necessity, and a certificate therefor should be issued.

ORDER

WHEREFORE, *it is ordered*, subject to review by the Commission on appeal, or review on its own motion, as provided in its Rules of Practice, that:

(A) A certificate of public convenience and necessity be and the same is hereby issued to the applicant, Panhandle Eastern Pipe Line Company, for the transportation in interstate commerce of an average of 1000 Mcf of natural gas per day and up to 2000 Mcf per day to the National Helium Corporation plant located near Liberal, Kansas, to be used as fuel, space heating, and other miscellaneous purposes, subject to the following conditions:

(1) That Panhandle deliver from its gas stream to National Helium for processing not more than 850,000 Mcf of natural gas per day.

(2) That the weighted average annual heating value of all gas delivered by Panhandle (a) to its jurisdictional customers west of Tuscola shall be not less than 982 Btu per cubic foot, and (b) to its jurisdictional customers east of

Tuscola shall be not less than 982 Btu per cubic foot. Panhandle, in a manner satisfactory to the Commission, shall file evidence of its compliance with these requirements.

(3) Panhandle shall file with the Commission, in writing and under oath, an original and four conformed copies of a report of the initiation of deliveries of natural gas to National Helium, such report to be filed within 30-days of the initial deliveries; and an annual report showing by month or any portion thereof (a) the total volumes of gas delivered to National Helium for processing, (b) the volumes of gas delivered or used for fuel purposes, and (c) the volumes of gas redelivered to Panhandle, such annual report to be filed not later than February 1st of each year.

(4) That the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of the Commission's Regulations under the Natural Gas Act shall attach to the issuance of the certificate granted herein, and to the exercise of the rights thereunder.

HARRY C. SHRIVER,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

SOCONY MOBIL OIL COMPANY, INC., DOCKET NO. G–17625; CONTINENTAL OIL COMPANY, DOCKET NO. G–17649; NEWMONT OIL COMPANY, DOCKET NO. G–17765; TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. RP64–4

ORDER UPON REHEARING AND RECONSIDERATION AMENDING ORDER CONDITIONALLY APPROVING PROPOSED SETTLEMENT, CONDITIONALLY ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND IMPOSING REPORTING REQUIREMENTS

(Issued November 12, 1963)

On September 5, 1963, Tennessee Gas Transmission Company (Tennessee) filed an application for rehearing of our order of August 7, 1963, conditionally approving proposed settlement, conditionally issuing certificates of public convenience and necessity and imposing reporting requirements in the above-captioned proceedings.

The amended settlement proposal and the Commission's order provide in part that the price to be paid to producers Socony Mobil Oil Company (Socony), Continental Oil Company and Newmont Oil Company (collectively as MCN) is 19¢ per Mcf at 15.025 psia; and in addition, Tennessee shall pay 1.5¢ per Mcf to an escrow agent as tax reimbursement to provide for the contingency of the producing acreage being finally adjudicated as lying within the taxing jurisdiction of the State of Louisiana. The order further requires Tennessee to make special reports to the Commission in Docket No. RP64–4, concerning the status of the escrow account.

Tennessee stated in its application for rehearing that recent investigation by Tennessee disclosed that the Block 62 Field which contains the acreage covered by the certificate applications in these proceedings is not within the area which is the subject of dispute between the State of Louisiana and the United States and further, that this acreage is approximately 22 miles from the shoreline of the State of Louisiana and is unquestionably all Federally owned lands.

Tennessee therefore requested that the Commission:

(1) Eliminate the requirement by Tennessee to place 1.5¢ per Mcf in an escrow account.

(2) Amend said order to provide that the 1.5¢ per Mcf collected by MCN on the 160 acre tract to be paid to Tennessee from initial delivery to date of said order be refunded to Tennessee without any requirement that it be placed in an escrow account.

(3) Amend ordering Paragraph (I) to eliminate the requirement by Tennessee of filing an escrow agreement and special report of Block 62 Field, East Cameron Area, offshore Louisiana.

By order issued October 4, 1963, in the above-captioned proceedings the Commission granted rehearing for the purpose of reconsideration of our order of August 7, 1963.

On October 25, 1963, Socony filed a letter agreement with the Commission signed by Tennessee and the MCN producers. The letter agreement provides that the producers have no objection to the Commission's granting Tennessee's request, provided that the MCN producers shall have the right to file prospectively during the moratorium period for the 1.5¢ per Mcf reimbursement of State taxes if the acreage covered by these applications is judicially determined to be within the taxing jurisdiction of the State of Louisiana.

Under the terms of the amended settlement proposal of June 19, 1963, and the above-mentioned letter agreement, MCN will refund to Tennessee all amounts collected as reimbursement for State taxes and Tennessee, in turn, will refund such monies to its customers in accordance with its rate settlement conditionally approved by the Commission by order of December 21, 1962.[1]

The immediate reduction in the payment of higher prices for gas is of greater benefit to the rate-paying consumer than would be the potential refunds represented by the monies to be held in escrow. *F.P.C.* v. *Tennessee Gas Transmission Co.*, 371 U.S. 145, 154. Accordingly, we shall amend our order of August 7, 1963 in these proceedings as requested by Tennessee in its application for rehearing. In addition, since several months have passed since the date of issuance of our order of August 7, 1963, we shall extend the period for compliance with the terms of that order.

The Commission finds:

It is appropriate in carrying out the provisions of the Natural Gas Act that the order of the Commission conditionally approving proposed settlement, conditionally issuing certificates of public convenience and necessity and imposing reporting requirements, issued in the above-captioned matters on August 7, 1963, be amended as ordered below.

The Commission orders:

(A) Ordering paragraph (C) of the order conditionally approving proposed settlement, conditionally issuing certificates of public convenience and necessity and imposing reporting requirements issued in the above-captioned matters on August 7, 1963, is hereby amended to read as follows:

(C) The certificates issued by paragraph (B) above, are granted upon the express condition that MCN comply fully with the terms of this order, and the amended settlement agreement filed in this matter on June 19, 1963, as further amended by the letter agreement filed by MCN in this matter on October 25, 1963, and upon the further express condition that interest be paid on all amounts to be refunded to Tennessee. Such interest shall accrue through the last day of the month in which the amended settlement agreement was filed, June 30, 1963, and such interest shall be computed at a rate of 6 percent per annum on amounts attributable to deliveries made prior to March 1, 1960 and

[1] *Tennessee Gas Transmission Company*, 28 FPC 1100, amended 29 FPC 65.

at a rate of 7 percent per annum on amounts attributable to deliveries made thereafter. The refunds and interest required to be paid by the terms of the amended settlement agreement as further amended and the terms of this order shall be paid to Tennessee on or before January 31, 1964.

(B) Ordering paragraph (I) of said order is hereby amended to read as follows:

(I) On or before December 31, 1963, Tennessee shall file with the Commission conformed copies of the escrow agreement entered into pursuant to the Commission's orders of December 21, 1962, and January 2, 1963, *supra*, and special reports of the amounts paid into escrow thereunder. Each year thereafter and until the escrow agreements terminate, Tennessee shall file contemporaneously with its Form 2 Annual Report a report of the amounts in the escrow accounts as of the last day of the reporting year. In addition, whenever the escrow agent pays out monies from the escrow accounts, Tennessee shall file a special report of the principal and interest so paid out, the reason for such payments, and the manner of distribution and basis therefor. Whenever the escrow agent pays out monies, Tennessee shall serve a copy of its special report on each interested state commission. All filings and reports required by this paragraph shall be made by a responsible corporate official in Docket No. RP64-4 and shall include a statement of the amounts attributable to each rate schedule and field.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G-13221, ET AL.; MISSISSIPPI RIVER FUEL CORPORATION, DOCKET NO. CP61-141; HOPE NATURAL GAS COMPANY, DOCKET NO. CP61-152; OCEAN DRILLING & EXPLORATION COMPANY, DOCKET NO. CI61-1162; AMERICAN NATURAL GAS PRODUCING COMPANY (OPERATOR), ET AL., DOCKET NO. CI61-1246; TEX-STAR OIL & GAS CORPORATION, ET AL., DOCKET NO. CI61-1524

ORDER SEVERING PROCEEDINGS, CONDITIONALLY APPROVING SETTLEMENT PROPOSALS AND CONDITIONALLY ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 12, 1963)

Motions for severance, for approval of settlement proposals and for issuance of certificates of public convenience and necessity in their respective dockets were filed in the above-captioned proceedings on August 7, 1963, by Hope Natural Gas Company (Hope); August 19, 1963, by Mississippi River Fuel Corporation (Mississippi) and Ocean Drilling & Exploration Company (Odeco); September 4, 1963, by Tex-Star Oil & Gas Corporation, et al. (Tex-Star); and September 11, 1963, by American Natural Gas Production Company (Operator), *et al.* (American).

The settlement proposals are similar to those previously approved by the Commission[1] and provide for the issuance of permanent certificates at initial rates of 20.625¢ per Mcf[2] five year moratoria on rate increase filings (subject to the usual exceptions) extension of take-or-pay make-up periods to 4 years

---

[1] See *e.g.*, orders issued August 7, 1963, and October 9, 1963, in *Union Texas Petroleum, et al.*, Docket No. G-13221, *et al.*, 30 FPC 456 and 979, respectively.

[2] All rates expressed inclusive of applicable tax reimbursement and all volumes expressed at 15.025 psia.

in all contracts which provide lesser make-up periods, and refunds of amounts above the settlement rates collected since the dates of initial deliveries.[3]

A temporary authorization containing a refund condition has been issued to each of the Applicants in each of the dockets proposed to be settled herein. Each Applicant proposes to make refunds of all amounts above the settlement rates collected since the dates of initial deliveries with interest at 7 percent per annum to accrue through June 30, 1963, in the case of Hope, August 31, 1963, in the cases of Odeco and Mississippi and September 30, 1963, in the case of American. Tex-Star's offer contains no cut-off date for the accrual of interest.

These proposals, generally are in the public interest and we shall approve them subject to the following reservations and conditions.

In the context of the proposals, we interpret the term "delivered" as used in paragraph 1 of each proposal to include gas required to be taken during the moratorium periods but paid for and not taken. Our approval of these settlements is conditioned upon such interpretation.

In keeping with our present policy, we shall require that interest on all amounts to be refunded accrue through the last day of the month in which the respective settlement proposals were filed, August 31, 1963, in the cases of Mississippi, Hope and Odeco and September 30, 1963, in the cases of American and Tex-Star.

The settlement provisions for adjustments in rates according to our order or orders in Area Rate Proceeding, Docket No. AR61–2, seek to anticipate in part the nature of our final determinations in that matter. It is clear that we shall make no determinations in this matter which will control our conclusions in Docket No. AR61–2. The settlement proposal also provides that adjustments in price growing out of the Area Rate Proceeding, Docket No. AR61–2, should go into effect upon conclusion of judicial review of our final order.

However, we cannot now commit the Commission to conditionally staying the effectiveness of its final order in Docket No. AR61–2. These matters should be decided at the conclusion of that proceeding and our approval of the settlement will be so conditioned.

The pipeline purchasers which will receive refunds and whose gas purchase costs will be affected by these settlements are Texas Gas Transmission Corporation (Texas Gas), Tennessee Gas Transmission Company (Tennessee) and Transcontinental Gas Pipe Line Corporation (Transco). Texas Gas and Tennessee will flow through the refunds and adjust their rates in accordance with the Commission's orders approving their latest rate settlements.[4]

Transco the purchaser in Docket Nos. CI61–1162 and CI61–1524 contended, in the recent Socony and Gulf settlements[5] that the flow through provisions in its settlement in Docket No. RP61–13[6] do not apply to producer rate schedules not specifically listed in its settlement agreement. Since Odeco's Rate Schedule No. 4 and Tex-Star's Rate Schedule No. 27 are not specifically referred to therein and in order to avoid a situation in which a pipeline obtains and keeps the benefits of refunds and a reduction in gas purchase costs even though it may be, in the absence of such refunds and reductions in gas purchase costs, earning a reasonable rate of return on invested capital, we shall require Transco to report to the Commission the amounts of refund and interest which it receives as a

[3] See Appendix for further details.

[4] *Texas Gas Transmission Corporation*, 26 FPC 924 (1961) and *Tennessee Gas Transmission Company*, 28 FPC 1100 (1962), amended 29 FPC 65 (1963).

[5] See our order of October 9, 1963, in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, 30 FPC 979.

[6] *Transcontinental Gas Pipe Line Corporation*, 27 FPC 187.

result of these settlements, the estimated annual reductions in purchased gas costs, the proposed disposition of the refunds and the proposed rate adjustments, if any, to reflect the reduction in gas purchase costs. We shall require Transco to hold the refunds and amounts equal to the reductions in purchased gas costs which will accrue as a result of this settlement in a special account subject to further orders of the Commission.

In accordance with the above we shall sever these individual dockets from the consolidated proceeding, Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*, omit the intermediate decision in regard to these dockets [7] and issue certificates of public convenience and necessity in accordance with the applications, settlement proposals and conditions of this order.

The Commission finds:

(1) Each of the applicants herein is a "natural-gas" company within the meaning of the Natural Gas Act, and is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(2) The proposed sales of natural gas are subject to the jurisdiction of the Commission, and such sales, together with the contribution and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Each of the applicants herein is able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, are required by the public convenience and necessity and are in the public interest upon the conditions set forth below, and certificates should be issued as ordered below.

(5) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

(6) No party has opposed the waiver of the intermediate decisions in these proceedings.

(7) It is in the public interest and it is appropriate in carrying out the provisions of the Natural Gas Act that Transco be required to submit the reports and to account for the refunds, interest and purchased gas cost reductions as ordered below.

The Commission orders:

(A) The motions for waiver of the intermediate decision are granted.

(B) The matters in Docket Nos. CP61–141, CP61–152, CI61–1162, CI61–1246 and CI61–1524 are hereby severed from the consolidated proceeding, Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*

(C) Certificates of public convenience and necessity are hereby issued upon the conditions set forth herein to the applicants for the sales of natural gas in interstate commerce for resale as proposed and as modified by the settlement proposals and this order, and for the construction and operation of any facil-

[7] The hearings in the Union Texas Petroleum, *et al.*, consolidated proceeding concluded July 25, 1963.

ities subject to the jurisdiction of the Commission necessary therefor, as more fully described in the applications and settlement proposals herein.

(D) The certificates issued by paragraph (C) above, are granted upon the express condition that the applicants comply fully with the terms of this order and the settlement proposals which settlement proposals are expressly approved as modified by this order. The certificates issued to Hope and Tex-Star are granted upon the further condition that the interest to be paid by each accrue through the last day of the month in which the respective proposals were filed, August 31, 1963, in the case of Hope and September 30, 1963, in the case of Tex-Star.

(E) The refunds required by the settlement proposals and this order shall be made within 90 days from the date of issuance of this order.

(F) Within 30 days after making the refunds required by the terms and conditions of this order and the settlement proposals the applicants shall report to the Commission, in triplicate, the amount of the refunds made to each pipeline purchaser, showing separately the amount of principal and interest so paid and the bases used for such determinations, together with releases from the purchasers showing receipt of the refunds in conformity with the settlements and the conditions of this order.

(G) Upon full compliance of the applicants with all the terms of this order and of the settlement proposals as modified, the applicants shall be relieved of any further refund obligations in these certificate proceedings and said proceedings shall terminate.

(H) The certificates herein issued are not transferable and shall be effective only so long as the applicants continue the acts and operations hereby authorized in accordance with the provisions of the National Gas Act and the applicable rules, regulations and orders of the Commission.

(I) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or Part 154 of the Regulations thereunder; *Provided, however*, that the 30-day notice provision of Part 154.94(b) and the detailed submittal requirements of Part 154.94(f) are hereby waived insofar as they apply to the filing of reductions in rates as required by this order and the settlement proposals.

(J) The grant of certificates herein and approval of the settlement proposals is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the applicants, particularly any proceeding under Section 5 of the Natural Gas Act and is without prejudice to claims or contentions which may be made by the Commission, applicants, the Commission staff, or any affected party herein in any other proceeding.

(K) Within 15 days from the date of receipt of refunds and interest required by this order, Transco shall submit a report to the Commission and serve a copy on its jurisdictional customers, and the various state utility commissions wherein it does business, setting forth the amount of refund and interest received, and the estimated annual reduction in purchased gas costs due to the rate reductions herein, and the proposed disposition of such refunds and interest and the proposed rate adjustments to reflect the reductions in gas purchase costs. Pending Commission action and further orders respecting such proposed dispositions and adjustments, Transco shall hold such refunds, interest and amounts equal to the reduction in purchased gas costs which accrue as a result of these settlements in a special account (without interest obligation).

APPENDIX

Producer	Rate schedule No.	Docket No.	Purchaser	Present rate (¢/Mcf)	Proposed settlement (¢/Mcf)
Odeco	4	CI61-1162	Transco	23.25	20.625
Tex-Star	27	CI61-1524	Transco	23.25	20.625
Mississippi	20 and 21	CP61-141	Texas Gas	23.25	20.625
Hope	IP-16 and IP-17	CP61-152	Texas Gas	23.25	20.625
American Natural	2	CI61-1246	Tennessee	22.8333	20.625

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

FRED BAHOVEC, PROJECT NO. 1185

ORDER ISSUING NEW LICENSE (MINOR)

(Issued November 13, 1963)

Application was filed on April 8, 1963 by Fred Bahovec (Applicant) of Sitka, Alaska, for a new license under the Federal Power Act (Act) for constructed minor Project No. 1185, located on Baranof River at Warm Springs Bay, Baranof Island, Alaska, and affecting lands of the United States.

The fourth and last license for the project was issued to Applicant without charge, for a period of 10 years, effective as of August 23, 1952, and expired on August 22, 1962.

The Department of the Interior has advised that the project does not adversely affect the interests of the Department.

The Department of Health, Education, and Welfare has advised that it has no objection to the issuance of a new license.

The Department of Fish and Game, State of Alaska, has advised that the project does not adversely affect fishery resources.

The Commission finds:

(1) Applicant is a citizen of the United States and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effect the purposes of a new license for the project.

(2) No conflicting application is before the Commission.

(3) The project does not affect any Government dam, nor will the issuance of a new license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(4) The issuance of a new license for the project as hereinafter provided will not interfere or be inconsistent with any reservation of withdrawal of public lands.

(5) The installed capacity of the project is four horsepower and the power generated thereby is used mostly for domestic purposes.

(6) The exhibits described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of the new license for the project.

(7) It will be in the public interest to waive the terms and conditions contained in the following sections of Part I of the Act:

Sections 4(b), except the second sentence thereof; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance

and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(a), 10(c), insofar as it relates to depreciation reserves; 10(d), 10(f); 11; 12; 14; except insofar as the power of condemnation is reserved; 15; 18; except insofar as it relates to fishways; 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

The Commission orders:

(A) This new license is hereby issued to Fred Bahovec, of Sitka, Alaska, under Section 4(e) of the Federal Power Act, for a period of 10 years, effective as of August 23, 1962, for the operation and maintenance of minor Project No. 1185, located on lands of the United States on Baranof Island, Alaska, subject to the terms and conditions of the Act insofar as not expressly waived herein, which Act is hereby incorporated by reference as a part of this new license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) The project consists of:

(i) All lands constituting the project area and enclosed by the project boundary.

(ii) Project structures comprising a small diversion dam, a wood flume about 80 feet long, a wooden overshot water wheel, a generator of three kilowatts capacity (four horsepower), and about 200 feet of power line extending to the Licensee's residence and mink pens.

(iii) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, and all rights and interests, the possession of which is necessary or appropriate in the maintenance and operation of the project:

the lands and project works being more specifically shown and described by the certain exhibits forming part by reference of the application for new license and which are hereby redesignated and described as follows:

Exhibit E (FPC No. 1185–1), redesignated as Exhibit K (FPC No. 1185–1) Map in one sheet entitled "Bahovec Power Project, Warm Springs Bay, Alaska, Tongass National Forest" signed on November 10, 1931, by Fred Bahovec, and approved by the Commission on December 16, 1952; and

Exhibit D, redesignated as Exhibit M, specifications in one typewritten sheet entitled "General Description of Project Works and Power Equipment," signed on November 10, 1931, by Fred Bahovec, and approved by the Commission on December 16, 1952.

(C) The terms and conditions of the Act, which it has been found above to be in the public interest to waive, are hereby excluded from this license.

(D) This new license is also subject to the terms and conditions set forth in Form L–7, December 15, 1953, entitled "Terms and Conditions of License for Minor Project Affecting Lands of the United States" (17 FPC 486), which terms and conditions are attached hereto and made a part hereof and also subject to the following special condition:

Article 15. The amount of water to be diverted from the Baranof River for this project shall not exceed seven cubic feet per second, the approximate hydraulic capacity of the existing project works. In the event that the Commission shall issue another license comprehending a more complete development of the power and water resources of said river which other license may create a conflict of rights, privileges or interests between the licensee herein and the new licensee, then and in that event the applicant for the larger project may elect whether to supply electric power to the licensee of this project (No. 1185) until the expiration date hereof, or he will otherwise compensate the licensee for the interference with Project No. 1185 for the remaining term of this license.

737–370—66——84

(E) The exhibits described in paragraph (B) above are hereby approved as part of this new license.

(F) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this new license. In acknowledgement of the acceptance of this new license, it shall be signed by the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

INDIANA & MICHIGAN ELECTRIC COMPANY, DOCKET NO. E-7089

ORDER DENYING AND REJECTING APPEALS

(Issued November 13, 1963)

On October 18, 1963, Indiana & Michigan Electric Company (Indiana-Michigan) filed an appeal to the Commission from the presiding examiner's ruling of October 8, 1963 in the above captioned docket. The order appealed from denied Indiana-Michigan's motion for the production of data underlying the Commission's issuance of the order to show cause initiating this proceeding, as well as for other allegedly related data, and denied its motion that the presiding examiner certify the above ruling to the Commission for determination. Indiana-Michigan's appeal alleges: that the data requested is relevant; that the presiding examiner denied the motion on the erroneous grounds that he has no authority to grant it, notwithstanding the order of October 4, 1963, in this proceeding clarifying the scope of the examiner's authority respecting such matters arising in the course of a hearing; that by virtue of the Commission's acceptance of the staff's appeal resulting in the order of October 4, 1963, precedent has been established for recognizing the Company's motion for the production of documents as involving an extraordinary circumstance requiring prompt decision of this Commission under Rule 1.28 of the Rules of Practice and Procedure; and, that the examiner had refused to accord the Company treatment equal to that afforded the staff with respect to the production of documentary evidence.

On October 28, 1963 Indiana-Michigan filed an appeal to the Commission from the presiding examiner's rulings of October 19, 1963 in the above captioned docket: fixing the schedule for presentation of the parties' cases in writing and denying Indiana-Michigan's application for the subpoena requiring the Secretary or records officer to produce certain data. A request to certify this latter ruling was refused.

Indiana-Michigan's motions of October 8th and October 14th, requesting the examiner to order the production of data, seek no material essentially different from that earlier rejected by this Commission nor are any significant new grounds advanced for seeking material. Further, the material requested by Indiana-Michigan in these motions is not at all comparable to the factual information as to its operations previously secured by the staff but instead consists of the intra-agency working papers of the Commission leading to the institution of this proceeding along with other material of even more questionable relevance. It is doubtful whether such material could ever properly be

subject to examination by Indiana-Michigan. *A fortiori*, it can hardly be said that its inspection was necessary prior to the filing by staff of its direct case, which was accomplished on November 4, 1963. Thus, were this material properly before us we would not be predisposed to reverse the examiner. This is equally true with respect to the scheduling of the dates for the parties to file their direct cases—a matter which the examiner obviously is in a far better position to evaluate than we are.

However, we do not reject the merits of these motions. We recognize that in a few recent situations we have accepted and considered interlocutory appeals in cases pending in hearing despite the fact that the examiner had refused to certify that extraordinary circumstances existed necessitating prompt decision by the Commission to prevent detriment to the public interest. But in those cases the pleadings submitted to us demonstrated a real need for early Commission intervention as well as probable cause for modifying the action taken below. Here there is no such showing: certainly the strong presumption against interlocutory appeals is not met by the mere allegation of extraordinary circumstances nor by a score card tally of the number of motions granted to other parties. Indiana-Michigan's appeals should, therefore, be rejected.

The Commission orders:

(A) The appeals of Indiana-Michigan of October 18 and 28, 1963 for production of data in Docket No. E–7089 are rejected.

(B) The appeal of Indiana-Michigan seeking to set aside the presiding examiner's ruling fixing a hearing schedule in E–7089 is rejected.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NOS. G–16842, CP60–94; TENNESSEE NATURAL GAS LINES, INC., DOCKET NO. CP61–27; MIDWESTERN GAS TRANSMISSION COMPANY, DOCKET NO. CP62–116; ALABAMA-TENNESSEE NATURAL GAS COMPANY, DOCKET NO. CP62–133; CITY OF MARSHALL, ILLINOIS, DOCKET NO. CP62–187; CITY OF CASEY, ILLINOIS, DOCKET NO. CP62–188; CITY OF MARTINSVILLE, ILLINOIS, DOCKET NO. CP62–189

ORDER DENYING APPLICATION FOR REHEARING AND DENYING MOTION TO STRIKE APPLICATION FOR REHEARING

(Issued November 13, 1963)

On October 18, 1963, Central Illinois Public Service Company (CIPSCO) filed an application for rehearing of our opinion and order herein issued on September 19, 1963, 30 FPC 759 (Op. 403). On October 21, 1963, the Cities of Marshall, Casey and Martinsville, Illinois filed a motion to strike CIPSCO's application on the ground that CIPSCO was no longer a party to the above-styled proceedings, as contemplated by Section 19 of the Act, as a result of the Commission's order of April 24, 1963, severing that company's application in Docket No. CP62–168 from the case.

Our order of severance served only to dispose of CIPSCO's application with reference to this proceeding. It did not preclude CIPSCO from being con-

sidered as a party regarding those issues remaining in the case with respect to which it has shown an adequate interest.[1]

The issues raised by CIPSCO in its application are repetitive of arguments fully considered in our opinion herein. Accordingly, its application will be denied.

The Commission orders:

(A) The application for rehearing filed by the Central Illinois Public Service Company be and hereby is denied.

(B) The motion to strike the application for rehearing filed by the Cities of Marshall, Casey, and Martinsville be and hereby is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G–13221, ET AL.; SOHIO PETROLEUM COMPANY, DOCKET NOS. G–14247, G–14569, CI60–489, CI61–638, AND CI62–337

ORDER SEVERING PROCEEDINGS, CONDITIONALLY APPROVING SETTLEMENT PROPOSAL, CONDITIONALLY ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND AMENDING ORDERS ISSUING CERTIFICATES

(Issued November 13, 1963)

On September 10, 1963, Sohio Petroleum Company (Sohio) filed a motion for severance of the above-entitled Sohio proceedings from the consolidated proceeding, Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.* (hereinafter referred to as the Union Texas Proceeding), for approval of the attached settlement proposal and for the prompt issuance of certificates of public convenience and necessity and amendment of certificates heretofore issued in accordance with the applications and the settlement proposal.

No answers to Sohio's motion and offer have been filed.

The terms of the Sohio proposal conform, generally, to the other settlements emanating from the Union Texas Proceeding which have been approved by the Commission[1] and provide for maximum initial rates of 20.625¢ per Mcf[2] for sales from south Louisiana, effective April 1, 1963; a five-year moratorium on rate increase filings (subject to the usual exceptions); and, with the exceptions noted below, extension of the make-up periods to four years in the rate schedules or suplements which provide for lesser make-up periods.[3]

The matters in Docket Nos. G–14247 (Rate Schedule No. 42, Supplement No. 6) and G–14569 (Rate Schedule No. 43, Supplement No. 3) concern applications to amend certificates heretofore issued to Sohio, by adding acreage; the matters in the remaining three dockets concern initial applications for certificates.

The temporary authorization heretofore issued to Sohio in Docket No. CI61–638 contains an express refund condition and Sohio proposes to make refunds of

---

[1] CIPSCO adequately showed its entitlement to such a status as to the applications of these cities. (Docket Nos. CP62–187, CP62–188 and CP62–189. Tr. 2169–2176.)

[1] See orders issued August 7, 1963 (Humble Oil & Refining Company) and October 9, 1963 (Gulf Oil Corporation and Socony Mobile Oil Company, Inc.), in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, 30 FPC 456 and 979, respectively.

[2] All rates expressed inclusive of applicable tax reimbursement and all volumes expressed at 15.025 psia.

[3] See appendix for further details.

amounts collected above that which would have been collected at the settlement rate from the date of initial delivery. Sohio proposes to pay interest at a rate of 7 percent per annum on the amounts to be refunded, such interest to accrue through March 31, 1963.

Sohio proposes to refund amounts collected above the settlement rates for gas delivered since April 1, 1963, without interest, except for amounts collected under Rate Schedule No. 42, Supplement No. 6.[4]

Although Rate Schedules Nos. 42 (G–14247) and 43 (G–14569) contain take-or-pay-make-up periods of less than four years, Sohio does not propose to extend these periods under Supplement No. 6 to Rate Schedule No. 42 or Supplement No. 3 to Rate Schedule No. 43, the add-acreage applications here under consideration. Sohio proposes, in the interest of uniform administration of these contracts, that the provisions of the settlement proposal filed July 8, 1963, in Docket No. G–8488, *et al.*, covering all other volumes delivered under these rate schedules apply to Supplement No. 6 to Rate Schedule No. 42 and Supplement No. 3 to Rate Schedule No. 43 with respect to this matter.

We find this proposal, generally, to be in the public interest and shall approve it subject to the following reservations and conditions.

In the context of the proposal, we interpret the term "delivered" as used in paragraph 1. of the proposal to include gas required to be taken during the moratorium period but paid for and not taken and our approval is conditioned upon such interpretation.

We are not persuaded that the four-year make-up period should not apply to gas required to be taken from the acreage dedicated under Supplement No. 6 to Rate Schedule No. 42 and Supplement No. 3 to Rate Schedule No. 43. Prior settlements in the Union Texas Proceeding have uniformly applied the four-year make-up period extension to all acreage under consideration in the respective proceedings settled.

In keeping with our present policy, we shall require that Sohio pay interest on all amounts to be refunded at a rate of 7 percent per annum, such interest to accrue through the last day of the month in which the settlement proposal was filed, September 30, 1963.

The settlement provisions for adjustments in rates according to our order or orders in Area Rate Proceeding, Docket No. AR61–2, seek to anticipate in part the nature of our final determinations in that matter. It is clear that we shall make no determinations in this matter which will control our conclusions in Docket No. AR61–2. The settlement proposal also provides that adjustments in price growing out of the Area Rate Proceeding, Docket No. AR61–2, should go into effect upon conclusion of judicial review of our final order.

However, we cannot now commit the Commission to conditionally staying the effectiveness of its final order in Docket No. AR61–2. These matters should be decided at the conclusion of that proceeding and our approval of the settlement will be so conditioned.

The pipeline purchasers which will receive substantial refunds and whose purchase costs will be substantially affected by this settlement are Texas Gas

---

[4] The present rate in effect, subject to refund in Docket No. RI62–320, under Rate Schedule No. 42 is 22.24¢ per Mcf. Sohio proposes to reduce this rate insofar as it applies to the acreage added under Supplement No. 6, to the initial contract price of 20.25¢ per Mcf. Any refunds will be made in the Section 4(e) proceeding in Docket No. RI62–320. Sohio notes that it proposes to make full refunds of all amounts in excess of the contract initial rate in its company-wide settlement proposal filed July 8, 1963, Docket No. G–8488, *et al.*

Transmission Corporation (Texas Gas), Transcontinental Gas Pipe Line Corporation (Transco) and United Gas Pipe Line Company (United).[5]

Texas Gas will flow through the refunds and adjust its rates in accordance with the provisions of our order approving its latest rate settlement.[6] United's rate case in Docket No. RP63–1 is presently pending before the Commission. Any adjustments in United's rates necessary to reflect the Sohio settlement will be made in that proceeding.

Transcontinental Gas Pipe Line Corporation (Transco) the purchaser in Docket No. CI62–337 contended, in the recent Socony and Gulf settlements[7] that the flow through provisions in its settlement in Docket No. RP61–13 do not apply to producer rate schedules not specifically included in its settlement agreement. Since Sohio's Rate Schedule No. 60 (CI62–337) is not specifically referred to therein and in order to avoid a situation in which a pipeline obtains and keeps the benefits of refunds and a reduction in gas purchase costs even though it may be, in the absence of such refunds and reductions in gas purchase costs, earning a reasonable rate of return on invested capital, we shall require Transco to report to the Commission the amount of refund and interest which it receives as a result of this settlement, the estimated annual reductions in purchased gas costs, the proposed disposition of the refunds and the proposed rate adjustments, if any, to reflect the reduction in gas purchase costs. We shall require Transco to hold the refunds and amounts equal to the reductions in purchased gas costs which will accrue as a result of this settlement in a special account subject to further orders of the Commission.

In accordance with the above we shall sever these Sohio dockets from the consolidated proceeding Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*, omit the intermediate decision in regard to these dockets[8] and issue certificates of public convenience and necessity and amend the orders issuing the certificates in accordance with the applications, settlement proposal and conditions of this order.

The Commission finds:

(1) Sohio Petroleum Company is a natural-gas company within the meaning of the Natural Gas Act, and is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(2) The proposed sales of natural gas are subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Sohio is able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, are required by the public convenience and necessity and are in the public

---

[5] The effects of the settlement on Southern Natural Gas Company, the remaining purchaser, will be *de minimis*.

[6] *Texas Gas Transmission Corporation*, 26 FPC 924.

[7] See our order of October 9, 1963, in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, 30 FPC 979.

[8] The hearings in the *Union Texas Petroleum, et al.*, consolidated proceeding concluded July 25, 1963.

interest upon the conditions set forth below, and certificates should be issued and amendments granted as ordered below.

(5) The conditions attached to the certificates herein issued and the amendments herein granted are required by the public convenience and necessity.

(6) It is in the public interest and it is appropriate in carrying out the provisions of the Natural Gas Act that Transco be required to submit the reports and account for the refunds, interest and purchase gas cost reductions as ordered below.

(7) No party has opposed the waiver of the intermediate decisions in these proceedings.

The Commission orders:

(A) The motion for waiver of the intermediate decisions is granted.

(B) The matters in the Sohio dockets listed in the caption to this order are hereby severed from the consolidated proceeding, Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*

(C) Certificates of public convenience and necessity are hereby issued to Sohio Petroleum Company in Docket Nos. CI60–489, CI61–638 and CI62–337, and the order granting the certificate in Docket No. G–14247, issued September 28, 1959 and the order granting the certificate in Docket No. G–14569, issued August 5, 1958 are hereby amended, upon the conditions set forth herein authorizing the sales of natural gas in interstate commerce for resale as proposed and as modified by the settlement proposal and this order, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in Sohio's applications and settlement proposal herein.

(D) The certificates and the amendments granted by paragraph (C) above, are granted upon the express condition that Sohio comply fully with the terms of this order and the settlement proposal, as modified, which settlement is expressly approved, under the conditions of this order.

(E) Within 90 days from the date of issuance of this order, Sohio shall refund to the respective pipeline purchasers the difference between the amounts collected for gas delivered subsequent to March 31, 1963, and the amounts that would have been collected under the settlement rates for gas delivered since that time except under Rate Schedule No. 42 together with interest computed at a rate of 7 percent per annum, such interest to accrue through the last day of the month in which the settlement proposal was filed, September 30, 1963.

(F) The certificates issued and the amendments granted by paragraph (C) above are granted upon the express condition that the make-up period in the take-or-pay provisions related to the acreage added by Supplement No. 6 to Rate Schedule No. 42 and Supplement No. 3 to Rate Schedule No. 43 be changed to a minimum of four years.

(G) Within 30 days after making the refunds required by the terms and conditions of this order and the settlement proposal as modified, Sohio shall report to the Commission, in triplicate, the amount of the refunds made to its pipeline purchasers, showing separately the amount of principal and interest so paid and the bases used for such determination, together with releases from the purchasers showing receipt of the refunds in conformity with the settlement as approved.

(H) Upon full compliance of Sohio with all the terms of this order and of the settlement proposal, Sohio shall be relieved of any further refund obligations in these certificate proceedings and said proceedings shall terminate.

(I) The certificates herein issued are not transferable and shall be effective only so long as Sohio continues the acts and operations hereby authorized in

accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(J) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or Part 154 of the Regulations thereunder; *Provided, however,* that the 30-day notice provision of Part 154.94(b) and the detailed submittal requirements of Part 154.94(f) are hereby waived insofar as they apply to the filing of reductions in rate as required by this order and the settlement proposal.

(K) The grant of certificates herein and approval of the settlement proposal is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Sohio, particularly any proceeding under Section 5 of the Natural Gas Act and is without prejudice to claims or contentions which may be made by the Commission, Applicant, the Commission staff, or any affected party herein in any other proceeding.

(L) Within 15 days from the date of receipt of refunds and interest required by this order, Transco shall submit a report to the Commission and serve a copy on its jurisdictional customers and the various state utility commissions wherein it does business, setting forth the amount of refund and interest received, the estimated annual reduction in purchased gas costs due to Sohio's rate reduction, its proposed disposition of such refunds and its proposed rate adjustments to reflect the reduction in gas purchase costs. Pending Commission action and further orders respecting such proposed disposition and adjustments, Transco shall hold such refunds, interest and amounts equal to the reductions in purchased gas costs which accrue as a result of this settlement in a special account (without interest obligation).

APPENDIX

Rate schedule No.	Docket No.	Buyer	Present rate (¢/Mcf) [1]	Settlement rate (¢/Mcf)
Supplement No. 6 to R/S No. 42.	G-14247	United Gas Pipe Line Co.	[2] 22.25	20.25
Supplement No. 3 to R/S No. 43.	G-14569	Texas Gas	[2] [3] 21.75	20.625
54	CI60-489	Southern Natural	20.75	20.625
57	CI61-638	Texas Gas	23.25	20.625
60	CI62-337	Transco	21.25	20.625

[1] All rates expressed inclusive of tax reimbursement and all volumes expressed at 15.025 psia.
[2] This rate is in effect subject to refund in docket No. RI62-320.
[3] Sales have not yet commenced.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

GENERAL AMERICAN OIL COMPANY OF TEXAS, DOCKET NO. RI62-213

ORDER PARTIALLY TERMINATING PROCEEDING, PERMITTING WITHDRAWAL OF RATE SCHEDULE, AND TRANSFERRING REFUND OBLIGATION

(Issued November 14, 1963)

On May 28, 1962, General American Oil Company of Texas (General American) filed a motion requesting that the Commission (1) permit General American to withdraw its FPC Gas Rate Schedule No. 15; (2) have J. M. Huber Corporation (Operator), *et al.*, FPC Gas Rate Schedule No. 9 cover General American's interest in the sale of natural gas to Panhandle Eastern Pipe Line Company

from the Light "B" Unit, Light Field, Beaver County, Oklahoma;[1] and (3) terminate that part of the proceeding in Docket No. RI62–213 which relates to General American's FPC Gas Rate Schedule No. 15.

In support of its motion, General American states that because J. M. Huber Corporation, operator of the gas properties, originally believed it could not make filings for non-operators, General American made its own certificate and rate filings and was issued a certificate covering its interest in the subject sale in Docket No. G–3895, and had accepted for filing its related FPC Gas Rate Schedule No. 15. For the sale of the same gas to the same buyer under the same contract, Huber made rate schedule and certificate filings and was issued a certificate in Docket No. G–6287, and had accepted for filing its related J. M. Huber Corporation (Operator), *et al.*, FPC Gas Rate Schedule No. 9.

On October 9, 1961, Huber filed under its FPC Gas Rate Schedule No. 9 a proposed increase in rate from 12.2828¢ to 13.1761¢ per Mcf, which was suspended in Docket No. RI62–167 and subsequently placed in effect, subject to refund under an agreement and undertaking, on April 9, 1962. On November 13, 1961, General American filed an identical increase in rate under its FPC Gas Rate Schedule No. 15, which was suspended in Docket No. RI62–213 and subsequently placed in effect, subject to refund under an agreement and undertaking, on May 21, 1962.

Pursuant to General American's May 28, 1962 motion, on November 30, 1962, Huber filed a motion stating that it would consider its certificate and rate schedule filings to cover General American's interests and would assume under its agreement and undertaking filed in Docket No. RI62–167 the obligation to make any refunds ordered by the Commission regarding General American's interests in the subject sale. In its motion, Huber requested that General American agree to indemnify Huber for payment of any such refunds, plus interest. On July 22, 1963, General American filed an indemnity agreement complying with Huber's request.

Since Section 154.91(b) of the Commission's Regulations under the Natural Gas Act permits an operator to make the certificate and rate schedule filings for other co-owners, and since Huber has agreed in Docket No. RI62–167 to assume General American's refund obligation in Docket No. RI62–213, it appears to be in the public interest to grant General American's motion.

The Commission finds:

It is necessary and appropriate in the public interest and to aid in the enforcement of the Natural Gas Act that General American be permitted to withdraw, effective as of May 21, 1962, its FPC Gas Rate Schedule No. 15, that Huber be permitted to assume General American's refund obligation incurred in Docket No. RI62–213 with respect to its FPC Gas Rate Schedule No. 15 under Huber's agreement and undertaking filed in Docket No. RI62–167, that General American's interest in the subject sale be covered by J. M. Huber Corporation (Operator), *et al.*, FPC Gas Rate Shedule No. 9, effective as of May 21, 1962, and that the proceeding in Docket No. RI62–213 be terminated with respect to General American's FPC Gas Rate Schedule No. 15.

The Commission orders:

(A) General American Oil Company of Texas is hereby permitted to withdraw its FPC Gas Rate Schedule No. 15, effective as of May 21, 1962.

(B) General American Oil Company of Texas is hereby relieved of its refund obligation in Docket No. RI62–213, insofar as it relates to sales under its FPC

[1] Such sale relates to the contract between J. M. Huber Corporation and Panhandle Eastern Pipe Line Company dated June 29, 1951.

Gas Rate Schedule No. 15, and J. M. Huber Corporation (Operator), *et al.*, is hereby permitted to assume, effective as of May 21, 1962, such obligation under its agreement and undertaking filed in Docket No. RI62–167.

(C) General American's interest in the sale of gas to Panhandle Eastern Pipe Line Company from Light "B" Unit, Light Field, Beaver County, Oklahoma is hereby covered by J. M. Huber Corporation (Operator), *et al.*, FPC Gas Rate Schedule No. 9, effective as of May 21, 1962.

(D) The proceeding in Docket No. RI62–213 is hereby terminated with respect to General American Oil Company of Texas FPC Gas Rate Schedule No. 15.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP63–219

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 14, 1963)

On August 20, 1963, Northern Natural Gas Company (Applicant) filed in Docket No. CP63–219 a petition to amend the Commission's order issued August 6, 1963, in said docket by increasing the contract demand of Coon Rapids, Iowa, from 830 Mcf of natural gas per day to 850 Mcf per day, an increase of 20 Mcf per day, all as more fully set forth in the subject motion.

On August 6, 1963, the Commission issued its order in the above docket authorizing the construction and operation of certain facilities, and the transportation and sale of increased contract demands to Applicant's existing customers for the 1963–64 heating season. Included in this amount was an increase for the Municipal Utilities of Coon Rapids, Iowa, of 30 Mcf per day increasing this contract demand from 800 to 830 Mcf per day. The Municipal Utilities of Coon Rapids, Iowa, advised Applicant that since reviewing the town's gas loads, an additional 20 Mcf per day of firm gas will be required to satisfy the anticipated demand for the coming heating season.

No additional facilities will be required to deliver these increased volumes.

Due notice of the filing of the petition to amend and opportunity for hearing thereon has been given by publication in the Federal Register on October 3, 1963 (28 F.R. 10695). No protest, petition to intervene or request for hearing has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued August 6, 1963, in Docket No. CP63–219 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued August 6, 1963, in Docket No. CP63–219 be and the same is hereby amended by authorizing Northern Natural Gas Company to transport and deliver a total of 850 Mcf of natural gas per day for the Municipal Utilities of Coon Rapids, Iowa, commencing with the heating season of 1963–64, an increase of 20 Mcf per day over the volumes of gas authorized by said order, all as heretofore described and as set forth in the subject petition.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, and David S. Black.

PACIFIC POWER & LIGHT COMPANY, DOCKET NO. E-7128

SUPPLEMENTAL ORDER AUTHORIZING THE ISSUANCE OF COMMON STOCK

(Issued November 14, 1963)

By order issued October 30, 1963, in the above-entitled matter, the Commission authorized Pacific Power & Light Company (Applicant) to issue and sell up to 732,854 shares of its common stock par value $3.25 per share, through an underwritten subscription offering, subject, among others to the provision set forth in Paragraph (B) of that order as follows:

> (B) The proposed issuance and sale of Common Stock at competitive bidding shall not be consummated until:
>
> (i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h) of those Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.
>
> (ii) The Commission, by further order, shall have approved the subscription price per share to be received by Applicant for the Common Stock and the compensation to be paid to underwriters under the proposed arrangement as described above.

Applicant, on November 13, 1963 filed an amendment, pursuant to the requirements of the aforementioned Commission order, in which it states that it has fixed $23.75 per share as a subscription price to be received by Applicant for 718,354 shares of Common Stock and that it proposes to accept, as representing the lowest aggregate amount of compensation to be paid by the Applicant to the underwriters, the bid of Blyth & Co., Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, and Paribus Corp. to purchase all of the unsubscribed shares of the proposed issuance of Common Stock at the subscription price for an aggregate compensation of $135,900.

The Commission finds:

(1) Applicant has satisfactorily complied with the requirements of Paragraph (B) of the Commission's order issued October 30, 1963, in the above-entitled docket, and the subscription price to be received by the Applicant for the Common Stock and the compensation to be paid to the underwriters under the bid referred to above are reasonable.

(2) The proposed issuance of Common Stock, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

The Commission orders:

(A) The subscription price to be received by the Applicant for the Common Stock and the compensation to be paid to the underwriters under the bid referred to above are approved as reasonable.

(B) The proposed issuance and sale of Common Stock referred to above, upon the terms and conditions, and for the purposes specified in the application,

and as supplemented by the amendment referred to above, are hereby authorized, subject only to the provisions of Paragraphs (A), (C), (D), and (E) of the Commission's order issued October 30, 1963, in the above docket.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black

THE GAS BOARD OF THE TOWN OF DORA, ALABAMA, DOCKET NO. CP63–269

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE AND DELIVERY OF NATURAL GAS

(Issued November 15, 1963)

The Gas Board of the Town of Dora, Alabama (Applicant), filed on April 3, 1963, as supplemented on September 4, 1963, an application pursuant to Section 7(a) of the Natural Gas Act, for an order directing Southern Natural Gas Company (Southern Natural) to establish physical connection of its transmission facilities with those which Applicant proposes to construct and to sell and deliver to Applicant volumes of natural gas for distribution and resale in the Town of Dora and its environs located in the State of Alabama, as more fully described in the application, as supplemented, herein.

Applicant proposes to construct and operate approximately 3 miles of 4½-inch transmission pipeline with appurtenant measuring facilities together with a complete distribution system.

The estimated cost of construction of the facilities proposed by Applicant is $410,000 which will be financed by the sale of revenue bonds.

Applicant estimates its natural gas requirements by the third year of operations to be 938 Mcf at 14.73 psia on peak days and 128,445 Mcf at 14.73 psia on an annual basis.

Southern Natural filed on September 25, 1963, its consent to the rendition of service to Applicant as herein requested.

Due notice of the filing of the application and opportunity for hearing thereon have been given by publication in the Federal Register on October 18, 1963 (28 F.R. 11205). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

(1) Southern Natural Gas Company, a Delaware corporation having its principal place of business in Birmingham, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 6, 1942, in Docket No. G–296 (3 FPC 822).

(2) Applicant, The Gas Board of the Town of Dora, Alabama, is a municipal corporation, duly organized under the laws of the State of Alabama and is legally authorized to sell and distribute natural gas therein.

(3) It is necessary and desirable in the public interest that Southern Natural Gas Company be directed to establish physical connection of its natural gas transmission system with the facilities proposed by Applicant and to render natural gas service to Applicant as set forth in the application, as supplemented, in this proceeding and as hereinafter ordered and conditioned.

(4) This order should be conditioned upon Applicant being prepared to take gas from Southern Natural, as proposed, within one year from the date on which this order issues.

(5) The requirement that Southern Natural serve Applicant as proposed, will not place any undue burden upon Southern Natural nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Southern Natural Gas Company be and it is hereby directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to render natural gas service to Applicant, all as hereinbefore described and as more fully set forth in the application, as supplemented, herein.

(B) Applicant shall be prepared to receive natural gas from Southern Natural within one year from the date of issuance of this order.

(C) Southern Natural shall report to the Commission in writing the date of commencement of service to Applicant within ten days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

COLUMBIA GULF TRANSMISSION COMPANY, DOCKET NO. CP64–1; HUMBLE OIL & REFINING COMPANY, DOCKET NO. CI64–5; ISAAC ARNOLD, ET AL., DOCKET NO. CI64–6

FINDINGS AND ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 15, 1963)

On July 1, 1963, as supplemented on July 12, 1963, Columbia Gulf Transmission Company (Columbia Gulf), Humble Oil & Refining Company (Humble) and Isaac Arnold, *et al.* (Arnold), each filed an application for a certificate of public convenience and necessity.

Humble and Arnold seek a certificate of public convenience and necessity pursuant to Section 7 of the Natural Gas Act authorizing the sale of natural gas to United Fuel Gas Company (United Fuel), an affiliate of Columbia Gulf, under the terms of contracts entered into on June 28, 1963, and a settlement offer submitted on October 15, 1963. Columbia Gulf proposes to construct and operate additional facilities which would enable it to receive these additional quantities of gas and to transport additional volumes for United Fuel, its sole customer. Notice of each application was issued by the Commission and published in the Federal Register.[1] Petitions to intervene and notices of intervention in the several dockets were submitted by:

United Fuel Gas Company
Commonwealth Natural Gas Corporation
The United Gas Improvement Company
The Dayton Power and Light Company
Washington Gas Light Company

---

[1] Notice of the application in Docket No. CP64–1 was issued on September 12, 1963 (28 F.R. 10281); Notice in Docket Nos. CI64–5 and CI64–6 was issued on July 9, 1963 (28 F.R. 7200).

Public Service Commission of the State of New York
Pennsylvania Public Utilities Commission

No party has indicated opposition to the issuance of certificates of public convenience and necessity as proposed in the applications and supplemented by the offer of settlement.

The Humble and Arnold Sales

Humble and Arnold filed applications in Docket Nos. CI64–5 and CI64–6 seeking certificates to sell in excess of 6.1 trillion cubic feet of natural gas to United Fuel from reserves underlying various fields in southern Louisiana.[2] All but one of the fields are located within the taxing jurisdiction of the State of Louisiana. A portion of the West Delta Block 27 Field lies within an area as to which the Federal Government and the State of Louisiana have not yet determined upon the demarcation of the seaward boundary of the State of Louisiana.

Under the contracts and settlement offer submitted on October 15, 1963, by Humble and adopted and joined in by Arnold and United Fuel, gas from the West Delta Block 27 Field will be delivered at the outlet of the Venice Dome Processing Plant, Plaquemines Parish, Louisiana; gas from the Lake Sand and Garden City Fields will be delivered at the outlet of Humble's Garden City Gas Plant; gas from the Lirette Field and the Pecan Island Fields (and from such other fields from which gas may be sold and delivered under the contracts) will be delivered at a central point in the field to be mutually agreed upon.

The volumes of gas which United Fuel is obligated to take are subject to a gradual buildup.

Under the terms of the Humble contract, the following daily contract quantities will be available to United Fuel:

From date of first delivery to 11/1/65	235,000 Mcf/d
11/1/65 to 11/1/66	320,000 Mcf/d
11/1/66 to 11/1/67	390,000 Mcf/d
11/1/67 to 11/1/68	500,000 Mcf/d
11/1/68 to 11/1/69	600,000 Mcf/d
11/1/69 and thereafter	765,000 Mcf/d

Under the terms of the Arnold Contract the following daily contract quantities will be available to United Fuel:

From date of first delivery to 11/1/65	39,000 Mcf/d
11/1/65 to 11/1/66	43,000 Mcf/d
11/1/66 to 11/1/67	59,000 Mcf/d
11/1/67 to 11/1/69	62,000 Mcf/d

11/1/69 and thereafter, a daily contract quantity equal to 1,000 Mcf for each each 8,000,000 Mcf of Arnold's net recoverable gas reserves, subject to certain reservations.

Should United Fuel fail to take 90 percent of the cumulative annual contract obligation,[3] it will be obligated to pay for that volume, subject, however, to the

---

[2] Humble's sale of 6.1 trillion cubic feet of gas covers reserves underlying five fields: Garden City, Lake Sand, Pecan Island, Lirette and West Delta Block 27. The estimated first month delivery from these fields is 7,050,000 Mcf of Gas.

Arnold's sale covers reserves underlying the Garden City Field. Estimated first month delivery from this field for this sale is 1,170,000 Mcf.

[3] The Annual Contract Quantity is that quantity of gas equal to the sum of the products obtained by multiplying each Daily Contract Quantity in effect during the contract year by the number of days for which it was in effect.

right to make-up those quantities over the life of the contract and subject further to any credit which should be applicable as a result of earlier excess takes by United Fuel.

The contracts as proposed to be amended by the settlement offer provide for a fixed price of 20.625 cents per Mcf for the first 23 years, subject to a limited price redetermination at that time, except that gas produced from that portion of the West Delta Block 27 Field which lies outside the taxing jurisdiction of the State of Louisiana will be conditioned to a price of 19.0¢ per Mcf, subject to the payment by United Fuel into escrow of the difference between 20.625¢ and 19.0¢ per Mcf, which would be distributed to United Fuel, together with interest earned thereon, less the fees and expenses of the escrow agent, should it be finally determined that the gas delivered was not subject to the taxing jurisdiction of the State of Louisiana, or to Humble should it be determined that the gas delivered was subject to the taxing jurisdiction of the State. However, in the latter instance interest earned in excess of fees and expenses of the escrow agent would be paid to United Fuel unless Humble should be required to pay interest on the applicable taxes to the State. In addition, Humble would be reimbursed by United Fuel for three-fourths of any new or additional taxes levied after March 28, 1963.

The contracts also provide for life of the contract make-up periods under the take-or-pay provisions, which provisions further provide for a crediting of earlier contract takes in excess of a specified amount, a swing in the daily contract quantities from not less than 65 percent to not more than 135 percent and delivery of pipeline quality gas with a downward Btu price adjustment applicable below 1,000 Btu and no upward Btu adjustment.

We find the proposed sales, as reflected in the contracts and offer of settlement to be in the public interest. The price approved herein for the sales pursuant to the settlement offer is the same as has been previously approved pursuant to other settlement proposals for sales in the southern Louisiana area.[4] The guarantee of such a substantial quantity of gas at a price which is not the subject of escalation over a 23 year period is in the public interest, as are the provisions allowing for the make-up of any take-or-pay quantities over the life of the contract and the wide daily swing in takes of gas by United Fuel and the graduated schedule of daily contract quantities. Accordingly, we shall issue certificates of public convenience and necessity to Humble and Arnold in accordance with the applications and settlement offer.

Docket No. CP64–1

Columbia Gulf has sought a certificate authorizing the construction and operation of 69.2 miles of 30-inch pipeline loops on its main line and engine-compressor additions totaling 91,500 horsepower at nine of its main line compressor stations, together with 24.0 miles of 30-inch pipeline loop on its East Lateral and a lateral to its Lirette-West Delta area comprising 61.6 miles of 30-inch pipeline and 72.8 miles of 24-inch pipeline. These facilities would increase Columbia Gulf's capacity by about 114,500 Mcf per day. The estimated cost of the facilities is about $49,046,500.

Columbia Gulf is engaged in the transportation of natural gas purchased by United Fuel, its sole customer. Both Columbia Gulf and United Fuel are wholly owned subsidiaries of the Columbia Gas System, a registered holding company under the Public Utility Holding Company Act of 1935. Columbia Gulf has

[4] See orders issued August 7, 1963 (Humble Oil & Refining Company) and October 9, 1963 (Gulf Oil Corporation and Socony Mobile Oil Company, Inc.) in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, 30 FPC 456 and 979, respectively.

stated that the construction and operation of the facilities proposed herein are necessary in order that it be able to transport the substantial volumes of gas needed to meet the estimated increased requirements of United Fuel. Columbia Gulf stated and the evidence indicates that in January, February and March of 1965 United Fuel must receive approximately 972,500 Mcf of gas per day from its system, which is in excess of Columbia Gulf's presently authorized daily design capacity of 858,000 Mcf.

Columbia Gulf further stated that while these facilities would enable it to receive and deliver the additional quantities of gas made available under the Humble and Arnold contracts, it is contemplated that Columbia Gulf will be required to construct additional facilities during the period 1965 through 1969. However, no application for the construction of such facilities has been presented and the question whether or not they would be justified is not now before us. United Fuel has indicated that it will be able to take the additional volumes of gas from Humble and Arnold without incurring take-or-pay obligations among its other suppliers or otherwise incurring higher gas costs or difficulties with its suppliers.

The Commission finds that the proposed project is in the public interest. The proposed construction will make available to United Fuel substantial supplies of gas at long-term firm prices which, under the settlement offer, are consistent with the public interest. Accordingly we shall herein grant a certificate of public convenience and necessity to Columbia Gulf to construct and operate the proposed facilities.

The several parties who have petitioned to intervene and have noticed interventions have supported the project as amended pursuant to the conditions of the settlement offer submitted by Humble. Although no party has noted objections, we shall, nonetheless, grant interventions to each party who has sought to intervene in the proceeding.

At a hearing held on November 14, 1963, the Commission, on its own motion, received and made a part of the record in these proceedings all evidence, including the applications, supplement, exhibits thereto, and the settlement offer submitted in support of the respective authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Humble Oil & Refining Company, Isaac Arnold, *et al.*, and Columbia Gulf Transmission Company are "natural-gas" companies within the meaning of the Natural Gas Act, subject to the jurisdiction of the Commission.

(2) The proposed sales of natural gas by Humble and Arnold are subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Humble and Arnold are able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The sales proposed by Humble and Arnold, together with the construction and operation of any facilities, subject to the jurisdiction of the Commission and necessary therefor, are required by the public convenience and necessity and are in the public interest upon the conditions set forth below, and certificates should be issued as ordered below.

(5) The facilities described above and more fully described in the application of Columbia Gulf in Docket No. CP64–1 will be used for the transportation of

natural gas in interstate commerce as integral parts of the pipeline system of Columbia Gulf and their construction and operation are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(6) Columbia Gulf is able and willing to do the acts and perform the services proposed and to conform to the provisions of the Natural Gas Act and the rules and regulations thereunder.

(7) The proposed construction and operation of facilities and transportation proposed by Columbia Gulf are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

The Commission orders:

(A) A certificate of public convenience and necessity is hereby issued to Columbia Gulf to construct and operate the facilities described above and more fully described in the application in Docket No. CP64–1 to transport up to 972,500 Mcf (14.73 psia) of natural gas for United Fuel Gas Company, subject to the jurisdiction of the Commission upon the terms and conditions of this order.

(B) Certificates of public convenience and necessity are hereby issued to Humble and Arnold for the sales of natural gas in interstate commerce for resale proposed in their applications as modified by the "settlement offer" (which we shall treat as an amendment to such applications) and this order, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in Humble's and Arnold's applications and the settlement offer submitted herein. The certificates issued by this paragraph are not transferable and shall be effective only so long as Humble and Arnold continue the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission, and shall be accepted in writing and under oath within thirty days after the issuance of this order.

(C) The general terms and conditions set forth in paragraphs (a), (b), (c), and (e) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, shall attach to the issuance of the certificate granted in paragraph (A) hereof and to the exercise of the rights granted thereunder.

(D) The time within which the facilities hereby authorized in paragraph (A) shall be construed and placed in actual operation as provided in paragraph (b) of Section 157.20 of the Commission's regulations is hereby fixed at 12 months from the date on which this order issues.

(E) The certificate issued by paragraph (A) to Columbia Gulf is conditioned upon Humble and Arnold accepting the certificates issued to them within thirty days after the date of this order as provided in paragraph (B) herein.

(F) The certificates issued by paragraph (B) above are granted upon the express condition that Humble and Arnold modify their contracts with Columbia Gulf and/or United Fuel and take such other action as may be necessary to comply fully with the terms of the settlement offer, which they filed herein.

(G) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or of Part 154 of the Commission's Rules and Regulations thereunder, requiring the filing of rate schedules for the services herein authorized, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the respective Applicants. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objection relating to the operation of any price or related provisions in the gas purchase contracts herein involved.

737–370—66——85

(H) The petitions to intervene submitted by Commonwealth Natural Gas Corporation, The United Gas Improvement Company, The Dayton Power and Light Company, United Fuel Gas Company and Washington Gas Light Company are granted.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP63-188 (PHASE 1),* DOCKET NO. CP64-42

FINDINGS AND ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued November 18, 1963)

On December 31, 1962, as amended and supplemented on January 7, January 28, February 12, July 3 and July 15, 1963, Cities Service Gas Company (Applicant) filed in Docket No. CP63-188 (Phase I) an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities on Applicant's transmission system in Kansas, Oklahoma and Missouri and for permission and approval to abandon certain transmission facilities to be replaced and reclaimed, all as more fully set forth in the application, as amended and supplemented.

Specifically, in Phase I, Applicant proposes the following:

Kansas-Hugoton Field

(1) To install 4000 additional horsepower at the Ulysses Compressor Station, Grant County, Kansas;

(2) To loop approximately 7 miles of the Hugoton Station 30-inch intake pipeline with 26-inch pipeline, Grant County, Kansas; and

To add 340 horsepower at the United Compressor Station, Grant County, Kansas, by turbocharging the 1100 horsepower unit presently installed at said station.

Hutchinson-Superior System

(3) To loop approximately 4 miles of the present Lyons-Ellsworth segment of the Superior 8-inch pipeline with 12-inch pipeline, Lincoln County, Kansas;

(4) To loop approximately 4 miles of the present Ellsworth-Beloit segment of the Superior 8-inch pipeline with 12-inch pipeline, Lincoln County, Kansas;

(5) To replace approximately 3-miles of the existing Minneapolis 3-inch lateral with 6-inch pipeline, Ottawa County, Kansas;

(6) To replace approximately 3 miles of the existing Osborne 4-inch lateral with 6-inch pipeline, Mitchell County, Kansas; and

(7) To replace approximately 5.38 miles of the existing Smith Center 4-inch lateral with 6-inch pipeline, Jewell County, Kansas.

Ottawa-Topeka-Tonganoxie System

(8) To replace approximately 5.75 miles of the existing Lawrence-Tonganoxie 18-inch and 20-inch pipeline and a 10-inch multiple river crossing under the Kansas River, with approximately 7.26 miles of 26-inch pipeline, all in Douglas

*The application in Docket No. CP63-188 is divided into two Phases. This order pertains exclusively to Phase I of said application.

County, Kansas. Applicant will reclaim the 5.75 miles of line and the multiple river crossing;

(9) To construct and operate approximately 4.5 miles of 3-inch pipeline and a town border meter and appurtenant regulator equipment to serve the town of Perry, Jefferson County, Kansas; and

To reclaim 2.06 miles of 2-inch pipeline beginning at the LeCompton, Kansas, town border and extending across a highway bridge over the Kansas River and thence to the present Perry, Kansas, town border meter.

Vinita Lateral

(10) To replace approximately 3.77 miles of the existing Vinita 6-inch pipeline with approximately 3.8 miles of 8-inch pipeline, Craig County, Oklahoma.

Monett Lateral

(11) To replace 3.5 miles of the existing Monett, Missouri, 3-inch and 4-inch lateral with 6-inch lateral, Lawrence County, Missouri.

Applicant states that the proposed Phase I facilities are necessary either to, (1) meet the estimated peak day demands of its existing customers, (2) replace, with larger facilities, pipelines which have become physically deteriorated to the extent that replacement is required, or (3) offset declining wellhead working pressures in the Kansas-Hugoton Field.

The total estimated cost of the subject facilities in Phase I is $2,848,800, which cost will be financed from treasury cash. Said cost reflects the cost of removal and salvage credit for facilities to be abandoned.

Applicant was issued a temporary certificate, dated May 23, 1963, as amended on August 22, 1963, authorizing the construction and operation of Phase I facilities.

On August 15, 1963, Applicant filed in Docket No. CP64–42 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities and the sale and delivery of natural gas to The Gas Service Company (Gas Service) for resale and distribution in and about the communities of Clever, Purdy, Cassville, Butterfield and Wood Heights, Missouri, and Leon, Kansas, and to domestic consumers and customers of Gas Service residing adjacent to the 4-inch Leon pipeline, all as more fully set forth in the application.

Specifically, Applicant proposes the following:

(a) To construct and operate meter and regulator facilities on, and tap, its Springfield, Monett and Augusta laterals, and to sell natural gas to Gas Service for resale in Clever, Purdy, Cassville, Butterfield and Leon and for resale to customers along Gas Service's Leon lateral;

(b) To sell natural gas to Gas Service by means of existing facilities for resale in and about Wood Heights; and

(c) To replace approximately 1.8 miles of its Old Soldiers 6-inch lateral with 8-inch pipe and to replace approximately 0.88 mile of its Girard 4-inch line with 6-inch line. It appears that these facilities are required because the existing ones are unservicable due to corrosion and leakage.

The total estimated third year peak day and annual natural gas requirements for all the communities proposed to be served in Docket No. CP64–42 are 2,021 Mcf and 189,269 Mcf, respectively.

The total estimated cost of all the proposed facilities in Docket No. CP64–42 is $56,700, which cost will be financed by treasury cash. Said estimated cost includes a net loss of $2,800 on salvage of the lines to be replaced.

It appears that Gas Service has received the appropriate authorizations from the communities to be served and from the Missouri Public Service Commission and the Kansas Corporation Commission.

Pursuant to due notice, a public hearing was held in Washington, D.C., on November 7, 1963, respecting the matters involved in and the issues presented by the application, as amended and supplemented, in Docket. No. CP63-188 (Phase I), and the application in Docket No. CP64–42. No petition to intervene or protest to the granting of the applications has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision in Docket No. CP63–188 (Phase I) and in Docket No. CP64–42 pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G–298 (4 FPC 471).

(2) The facilities hereinbefore described, as more fully described in the application, as amended and supplemented, in Docket No. CP63–188 (Phase I), and the application in Docket No. CP64–42, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant and the transportation and sale of natural gas proposed by Applicant in Docket No. CP64–42 are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The construction and operation of the proposed facilities by Applicant in Docket Nos. CP63–188 (Phase I) and CP64–42 and the proposed transportation and sale of natural gas by Applicant in Docket No. CP 64–42 are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) The facilities to be abandoned in Docket No. CP63–188 (Phase I), as hereinbefore described, are subject to the jurisdiction of the Commission, and the abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(5) Such abandonment by Applicant in Docket No. CP63–188 (Phase I), as hereinbefore described, is permitted by the public convenience and necessity, and should be approved as hereinafter ordered.

(6) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(7) Public convenience and necessity require that the certificate issued hereinafter in Docket No. CP63–188 (Phase I) and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(4) and (e) of Section 157.20 of such Regulations.

(8) Public convenience and necessity require that the certificate issued hereinafter in Docket No. CP64–42 and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(9) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Certificates of public convenience and necessity be and the same are hereby issued authorizing Applicant, Cities Service Gas Company, to construct, operate and replace the proposed facilities in Docket No. CP63–188 (Phase I), and to construct, operate and replace the proposed facilities in Docket No. CP64–42 and to transport and sell natural gas as proposed in Docket No. CP64–42, all as hereinbefore described, and as more fully described in the application, as amended and supplemented, in Docket No. CP63–188 (Phase I) and in the application in Docket No. CP64–42.

(B) The certificate issued by paragraph (A) above in Docket No. CP63–188 (Phase I) and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The certificate issued by paragraph (A) above in Docket No. CP64–42 and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(D) The facilities authorized in Docket No. CP63–188 (Phase I) shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 6 months from the date on which this order issues.

(E) The facilities authorized in Docket No. CP64–42 shall be constructed and placed in actual operation and the transportation and sale of natural gas shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 6 months from the date on which this order issues.

(F) Permission for and approval of the abandonment by Applicant of the facilities in Docket No. CP63–188 (Phase I) hereinbefore described, all as more fully described in the application, as amended and supplemented, in Docket No. CP63–188 (Phase I), be and the same is hereby granted.

(G) Applicant shall advise the Commission of the date of the aforesaid abandonment within 30 days of the date thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

ST. MICHAELS UTILITIES COMMISSION, AND COMMISSIONERS OF ST. MICHAELS, MARYLAND v. THE EASTERN SHORE PUBLIC SERVICE COMPANY OF MARYLAND, DOCKET NO. E–7114; STOCKTON LIGHT AND POWER COMPANY (OF MARYLAND) AND STOCKTON LIGHT AND POWER COMPANY (OF VIRGINIA) v. THE EASTERN SHORE PUBLIC SERVICE COMPANY OF MARYLAND, DOCKET NO. E–7117; DELAWARE POWER AND LIGHT COMPANY, THE EASTERN SHORE PUBLIC SERVICE COMPANY OF MARYLAND AND THE EASTERN SHORE PUBLIC SERVICE COMPANY OF VIRGINIA, DOCKET NO. E–7137

ORDER INSTITUTING INVESTIGATION, CONSOLIDATING PROCEEDINGS, AMENDING ORDER GRANTING MOTION FOR SEVERANCE OF ISSUES AND PROVIDING FOR HEARING

(Issued November 18, 1963)

On July 12, 1963, a complaint was filed with the Commission by St. Michaels Utilities Commission and Commissioners of St. Michaels, Maryland (St. Michaels), against the Eastern Shore Public Service Company of Maryland (Maryland Eastern Shore), alleging, *inter alia*, illegal overcharges to St. Michaels by Maryland Eastern Shore on and after May 1, 1963, and unlawful discrimination against St. Michaels and in favor of Choptank Electric Cooperative, Inc. (Choptank) and stating that St. Michaels has been and continues to be injured and damaged by the alleged illegal overcharges and discrimination.

On July 25, 1963, a complaint was filed with the Commission by Stockton Light and Power Company (of Maryland) and Stockton Light and Power Company (of Virginia) (Stockton) against Maryland Eastern Shore, alleging, *inter alia*, illegal overcharges to Stockton by Maryland Eastern Shore on and after May 1, 1963, and unlawful discrimination against Stockton and in favor of Choptank and Accomac-Northampton Electric Cooperative (Accomac), and stating that Stockton has been and continues to be injured and damaged by the alleged overcharges and discrimination. On October 7, 1963, Maryland Eastern Shore filed an answer to the Stockton complaint.

On September 17, 1963, St. Michaels filed with the Commission a motion to sever the unlawful discrimination issue and proceed immediately with hearing and decision of the illegal overcharge issue. On October 11, 1963, Maryland Eastern Shore filed an answer to St. Michaels' complaint and an answer to the motion for severance of issues, in which it stated that it had no objection to a prompt hearing and decision with respect to the illegal overcharge issue.

On October 25, 1963 the Commission issued an order in Docket No. E–7114 granting St. Michaels' motion for severance of issues and providing for hearing on the issue of alleged illegal overcharges to St. Michaels to be held November 18, 1963. The effect of granting the motion for severance of issues is only that the issue of alleged illegal overcharges be heard and decided first. The alleged discrimination issue is not separated from the proceeding, but will be heard at a later date.

Inasmuch as the complaints against Maryland Eastern Shore filed by St. Michaels and Stockton involve similar issues of fact and law, it is appropriate for purposes of the Federal Power Act that the two proceedings be consolidated for purposes of a public hearing. However, in accordance with the Commission's Order issued October 25, 1963 in Docket No. E–7114, the hearing on the issue of illegal overcharges to St. Michaels by Maryland Eastern Shore will be held first, on November 18, 1963.

Maryland Eastern Shore and the Eastern Shore Public Service Company of Virginia (Virginia Eastern Shore) are subsidiaries of Delaware Power and Light Company (Delaware Power). In an order issued March 15, 1963 allowing rate schedules of Delaware Power (for service to Delaware Electric Cooperative, Inc.), Maryland Eastern Shore (for service to Choptank) and Virginia Eastern Shore (for service to Accomac) to take effect, the Commission stated that the Commission's staff was conducting an investigation of the rates and charges of those three affiliated companies for wholesale electric service. In the light of the facts alleged in the complaints of St. Michaels and Stockton, it is appropriate that this investigation be continued. Wholesale electric rate schedules of these three companies on file with the Federal Power Commission are as follows:

Delaware Power & Light Company

Rate Schedule Designation	*Customer*
FPC No. 2	Philadelphia Electric Co.
FPC No. 8	Conowingo Power Co.
FPC No. 12	
Supp. Nos. 1, 2, 3	Middletown, Del.
FPC No. 17	
Supp. Nos. 1, 2	Eastern Shore Public Service Co. of Maryland Eastern Shore Public Service Co. of Virginia
FPC No. 19	
Supp. Nos. 1, 3, 4	Philadelphia Electric Co.
FPC No. 22	
Supp. No. 1	Conowingo Power Co.
FPC No. 24	
Supp. Nos. 1, 2, 3, 4, 5	City of Dover, Del.
FPC No. 28	
Supp. Nos. 1, 2	City of Dover, Del.
FPC No. 29	Delaware Electric Cooperative Inc.
FPC No. 31	City of Dover, Del.
FPC Electric Tariff	
Resale Service Schedule No.	
1	Board of Public Works, Lewes, Del., Town of Clayton, Del., City of Milford, Del., Town of Smyrna, Del., Town of Lewes, Del., City of Newark, Del., Town of New Castle, Del.

Eastern Shore Public Service Company of Maryland

Rate Schedule Designation	*Customer*
FPC No. 2	
Supp. Nos. 1, 2	Delaware Power & Light Co. Eastern Shore Public Service Co. of Virginia
FPC No. 4	
Supp. No. 1	Stockton Light & Power Co.
FPC No. 7	
Supp. Nos. 1, 2	St. Michaels Utilities Commission
FPC No. 8	Choptank Electric Cooperative Inc.
FPC Electric Tariff	
Resale Service Schedule No.	
1	Town of Centerville, Md. Chestertown Electric Light & Power Co.

Eastern Shore Public Service Company of Virginia

Rate Schedule Designation	*Customer*
FPC No. 2	
Supp. Nos. 1, 2	Delaware Power & Light Co. Eastern Shore Public Service Co. of Maryland
FPC No. 4	
Supp. No. 1	Accomac-Northampton Electric Cooperative

The Commission further finds:

(1) It is appropriate for purposes of the Federal Power Act, particularly Sections 205 and 206 thereof, that a general investigation and hearing be

ordered concerning the lawfulness of all wholesale electric rates and charges of the Delaware Power, Maryland Eastern Shore and Virginia Eastern Shore required to be on file with the Commission, including: Delaware Power Rate Schedule FPC Nos. 2, 8, 12, 17, 19, 22, 24, 28, 29, 31 and FPC Electric Tariff Resale Service Schedule No. 1; Maryland Eastern Shore Rate Schedule FPC Nos. 2, 4, 7, 8 and FPC Electric Tariff Resale Service Schedule No. 1; and Virginia Eastern Shore Rate Schedule FPC Nos. 2 and 4.

(2) It is appropriate for purposes of the Federal Power Act that the complaint against Maryland Eastern Shore by St. Michaels, Docket No. E–7114, and the complaint against Maryland Eastern Shore by Stockton, Docket No. E–7117, be consolidated for purposes of holding a public hearing.

(3) It is appropriate for purposes of the Federal Power Act that a prehearing conference be held before the Presiding Examiner, following the hearing on the alleged illegal overcharge to St. Michaels, for the purpose of framing the factual presentation of the issues remaining to be heard, prescribing procedure and fixing a date of hearing.

(4) It is necessary and appropriate for purposes of the Federal Power Act that Paragraph (B) of the Commission's order issued October 25, 1963, in Docket No. E–7114 be amended to provide that the date of hearing on issues other than alleged illegal overcharges be as fixed by the Presiding Examiner.

The Commission orders:

(A) A public hearing shall be held concerning the lawfulness of all wholesale electric rate schedules and contracts of Delaware Power, Maryland Eastern Shore and Virginia Eastern Shore required to be on file with this Commission, including: Delaware Power Rate Schedule FPC Nos. 2, 8, 12, 17, 19, 22, 24, 28, 29, 31, and FPC Electric Tariff Resale Service Schedule No. 1; Maryland Eastern Shore Rate Schedule FPC Nos. 2, 4, 7, 8, and FPC Electric Tariff Resale Service Schedule No. 1; and Virginia Eastern Shore Rate Schedule FPC Nos. 2 and 4, as provided in paragraph (C) below.

(B) The complaint against Maryland Eastern Shore by St. Michaels,, Docket No. E–7114, and the complaint against Maryland Eastern Shore by Stockton, Docket No. E–7117, are hereby consolidated for the purposes of holding a public hearing.

(C) A public hearing shall be held concerning the issues raised in the complaints and answers filed in Docket Nos. E–7114 and E–7117 (with the exception of the illegal overcharge alleged by St. Michaels in Docket No. E–7114), and issues raised as a result of the general investigation of the wholesale electric rates of Delaware Power, Maryland Eastern Shore and Virginia Eastern Shore subject to the jurisdiction of this Commission, at a time and place to be specified by the Presiding Examiner.

(D) A prehearing conference shall be held before the Presiding Examiner on January 15, 1964 at 10:00 a.m. (EST), in Washington, D.C., for the purpose of framing the factual presentation of the issues to be heard, prescribing procedure and fixing a date of hearing.

(E) Paragraph (B) of the Commission's order issued October 25, 1963, in Docket No. E–7114 is hereby amended so that the last sentence shall read as follows:

The hearing on all other issues raised in the complaint and answer shall be as fixed by the Presiding Examiner.

(F) Notices of intervention or petitions to intervene in this proceeding may be filed with the Federal Power Commission, Washington, D.C. 20426, on or before December 20, 1963, and in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8).

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G–13221, ET AL.; THE BRITISH-AMERICAN OIL PRODUCING COMPANY (OPERATOR), ET AL., DOCKET NO. G–14515; THE BRITISH-AMERICAN OIL PRODUCING COMPANY, DOCKET NOS. G–18445, G–18963, CI60–322, CI61–649 AND CI62–1016

ORDER SEVERING PROCEEDINGS, CONDITIONALLY APPROVING SETTLEMENT PROPOSAL, CONDITIONALLY ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND AMENDING ORDER ISSUING CERTIFICATE

(Issued November 18, 1963)

On September 16, 1963, The British-American Oil Producing Company (British-American) filed a motion for severance of the above-entitled British-American and British American (Operator), et al., dockets from the consolidated proceeding, Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.* (hereinafter referred to as the Union Texas Proceeding), for approval of the attached settlement proposal and for the prompt issuance of certificates of public convenience and necessity and amendment of a certificate heretofore issued in accordance with the applications and the settlement proposal.

No answers to British-American's motion have been filed.

The terms of the British-American proposal conform, generally, to the other settlements emanating from the Union Texas Proceeding which have been approved by the Commission [1] and provide for maximum initial rates of 20.625¢ per [2] for sales from south Louisiana (19.0¢ per Mcf for production within the Federal domain, not subject to State taxes) effective April 1, 1963; a five year moratorium on rate increase filings (subject to the usual exceptions); and extension of the make-up periods to four years in all rate schedules or supplements here under consideration which provide a lesser make-up period.[3]

The matters in Docket No. G–14515 (Rate Schedule No. 31 Supplement No. 3) concern an application to amend a certificate heretofore issued to British-American (Operator), *et al.*, to add acreage; [4] the matters in the other dockets concern initial applications for certificates.

The temporary authorization heretofore issued to British-American in Docket No. CI61–649 (R.S.–49) contains an express refund condition and British-American proposes to make refunds of amounts collected above that which would have been collected at the settlement rate since the date of initial delivery.

In each of the above-listed dockets, British-American proposes to refund all amounts collected above the settlement rate for gas delivered since April 1, 1963, the effective date of the rate reductions. Interest computed at 7 percent per annum will be paid on all amounts to be refunded, such interest to accrue

[1] See orders issued (August 7, 1963 (Humble Oil & Refining Company) and October 9, 1963 (Gulf Oil Corporation and Socony Mobil Oil Company, Inc.), in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, 30 FPC 456 and 979, respectively.

[2] All rates expressed inclusive of applicable tax reimbursement and all volumes expressed at 15.025 psia.

[3] See Appendix for further details p. 1311 *infra*.

[4] British-American's certificate, application for amendment and settlement proposal includes the interest of Harold P. Farrington, a signatory co-owner who has elected not to make his own filings. The other signatory co-owners, Southwest Gas Producing Company, Inc. and Sohio Petroleum Company have their own certificate and rate schedule filings. Sohio has filed a settlement proposal for its application to amend in Docket No. G–14569.

through the last day of the month in which the settlement proposal was filed, September 30, 1963.

The proposal, generally, is in the public interest and we shall approve it subject to the following reservations and conditions.

In the context of the proposal, we interpret the term "delivered" as used in paragraph 1 of the proposal to include gas required to be taken during the moratorium period but paid for and not taken. Our approval of this settlement is conditioned upon such interpretation.

The settlement provisions for adjustments in rates according to our order or orders in Area Rate Proceeding, Docket No. AR61–2, seek to anticipate in part the nature of our final determinations in that matter. It is clear that we shall make no determinations in this matter which will control our conclusions in Docket No. AR61–2. The settlement proposal also provides that adjustments in price growing out of the Area Rate Proceeding, Docket No. AR61–2, should go into effect upon conclusion of judicial review of our final order.

However, we cannot now commit the Commission to conditionally staying the effectiveness of its final order in Docket No. AR61–2.

*(B) The matters in the British-American and British-American (Operator), *et al.*, dockets listed in the caption to this order are hereby severed from the consolidated proceeding, Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*

(C) Certificates of public convenience and necessity are hereby issued to The British-American Oil Producing Company in Docket Nos. G–18445, G–18963, CI60–322, CI61–649 and CI62–1016 and the order granting the certificate to The British-American Oil Producing Company (Operator), *et al.*, in Docket No. G–14515, issued August 5, 1958 is hereby amended, upon the conditions set forth herein authorizing the sales of natural gas in interstate commerce for resale as proposed and as modified by the settlement proposal and this order, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in British-American's applications and settlement proposal herein.

(D) The certificates and the amendment granted by paragraph (C) above, are granted upon the express condition that British-American comply fully with the terms of this order and the settlement proposal, as modified, which settlement is expressly approved, under the conditions of this order.

(E) Within 30 days after making the refunds required by the terms and conditions of this order and the settlement proposal as modified, British-American shall report to the Commission, in triplicate, the amount of the refunds made to its pipeline purchasers, showing separately the amount of principal and interest so paid and the bases used for such determination, together with releases from the purchasers showing receipt of the refunds in conformity with the settlement as approved.

(F) Upon full compliance of British-American with all the terms of this order and of the settlement proposal, British-American shall be relieved of any further refund obligations in these certificate proceedings and said proceedings shall terminate.

(G) The certificates herein issued are not transferable and shall be effective only so long as British-American continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(H) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or Part 154 of the Regulations thereunder; *Provided, however*, that the 30-day notice provision of Part 154.94(b) and the detailed submittal requirements of Part 154.94(f)

*See *infra*, p. 1310 for portion of order inadvertently omitted.

are hereby waived insofar as they apply to the filing of reductions in rate as required by this order and the settlement proposal.

(I) The grant of certificates herein and approval of the settlement proposal is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against British-American, particularly any proceeding under Section 5 of the Natural Gas Act and is without prejudice to any claims or contentions which may be made by the Commission, Applicant, the Commission staff, or any affected party herein in any other proceeding.

APPENDIX

Rate schedule No.	Docket No.	Purchaser	Present rate (¢/Mcf)[1]	Proposed settlement rate (¢/Mcf)[1]
31, Supp. No. 3	G-14515	Texas Gas Transmission Corp.	[2]	20.625
38	G-18445	Florida Gas Transmission Co.	21.25	20.625
42 [3]	G-18963	Transcontinental Gas Pipe Line Corp.	23.55	20.625
46	CI60-322	Tennessee Gas Transmission Co.	22.1733	[4] 19.0
49	CI61-649	Texas Gas Transmission Corp.	23.25	20.625
52	CI62-1016	Texas Gas Transmission Corp.	21.25	20.625

[1] All rates at 15.025 psia.
[2] Temporary certificate conditioned to 21.25¢ per Mfc rejected. No sales made from subject acreage. Proposed rate of 21.75¢ per Mcf.
[3] Hassie Hunt Trust is a signatory co-owner of the property included under this contract. Hassie Hunt Trust has its own rate schedule and certificate application on file with the Commission. British-American does not propose to settle for Hassie Hunt Trust.
[4] Offshore sale.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

EMMITSBURG GAS COMPANY, DOCKET NO. CP64-24

FINDINGS AND ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND DIRECTING PHYSICAL CONNECTION OF FACILITIES

(Issued November 19, 1963)

On July 23, 1963, as supplemented on August 26 and September 3, 1963, Emmitsburg Gas Company (Applicant) filed in Docket No. CP64-24 an application pursuant to Subsections (a) and (c) of Section 7 of the Natural Gas Act for an order:

1. directing Manufacturers Light & Heat Company (Manufacturers) to establish physical connection of its natural gas transmission facilities with Applicant's facilities hereinafter described, and directing Manufacturers to sell to Applicant a peak-day volume of 626 Mcf of natural gas per day; and

2. granting a certificate of public convenience and necessity authorizing Applicant to construct and operate a 6" lateral pipeline extending from a point of connection with Manufacturers transmission facilities in Adams County, Pennsylvania, 5.7 miles south to Emmitsburg, Maryland.

The estimated cost of the facilities to be constructed by Applicant is $213,300, to be financed by a cash advance of $141,300 from Applicant's parent, Penn Fuel Gas, Inc., and a cash advance of $72,000 from a customer, the Sisters of Charity of St. Joseph's Central House (St. Joseph's) an educational institution. The $72,000 will be repaid by a credit of 3¢ per Mcf of gas taken by said customer. St. Joseph's has estimated its initial maximum requirement at 500 Mcf

per day, and has agreed to purchase its fuel requirements from Applicant for 20 years to the extent that Applicant can economically fill them.

Applicant has received a certificate of public convenience and necessity from the Maryland Public Service Commission authorizing it to distribute natural gas in Emmitsburg and environs, an area which presently does not have such service. Applicant has also received the requisite franchise from the City of Emmitsburg.

Manufacturers has advised the Commission that it has no objection to rendering the proposed service to Applicant provided that it shall not be required to deliver gas to Applicant at a pressure in excess of 75 psig. Applicant's lateral line is of such design that this delivery pressure will be adequate to render the service to Emmitsburg environs.

Pursuant to due notice, a public hearing was held in Washington, D.C., on November 5, 1963, respecting the matters involved in and the issues presented by the application herein. No protest or petition to intervene has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Manufacturers Light & Heat Company, a Pennsylvania Corporation having its principal place of business in Pittsburgh, Pennsylvania, is a "natural-gas company" within meaning of the Natural Gas Act as heretofore found by the Commission.

(2) Applicant, Emmitsburg Gas Company, a Maryland Corporation having its principal place of business in Oxford, Pennsylvania, is authorized to engage in, and will engage in the distribution of natural gas in the City of Emmitsburg, Maryland, upon the completion and operation of the facilities proposed to be constructed as hereinbefore described.

(3) The facilities proposed to be constructed by Applicant as hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interestate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(7) It is necessary and desirable in the public interest to direct Manufacturers Light & Heat Company to establish physical connection of its transmission facilities with those proposed to be constructed and operated by Applicant, and to sell and deliver natural gas to Applicant under Manufacturer's appropriate rate schedules on file with the Commission, for resale as described in the application in this proceeding.

(8) Manufacturers should be required to sell and deliver to Applicant a peak-day volume of 626 Mcf of natural gas per day. Such requirement will not place any undue burden on Manufacturer nor impair its ability to render adequate service to its existing customers.

(9) This order should be conditioned upon Applicant being prepared to receive natural gas from Manufacturers, as proposed, within one year from the date on which this order issues, and upon the execution of a service agreement between Applicant and Manufacturers in accordance with the Commission's Regulations under the Natural Gas Act.

(10) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Emmitsburg Gas Company to construct and operate facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission Regulations within one year from the date on which this order issues.

(D) Manufacturers Light & Heat Company be and it is hereby directed to establish physical connection of its transmission facilities with the proposed facilities of Applicant and to sell and deliver up to 626 Mcf of natural gas per day to Applicant, all as hereinbefore described and as set forth in the application in this proceeding.

(E) This order is conditioned upon Applicant being prepared to receive natural gas from Manufacturers, as proposed, within one year from the date on which this order issues, and upon the execution of a service agreement between Applicant and Manufacturers in accordance with the Commission's Regulations under the Natural Gas Act.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

MIDWESTERN GAS TRANSMISSION COMPANY, DOCKET NO. G-16841

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 19, 1963)

On October 27, 1961, Midwestern Gas Transmission Company (Midwestern) filed a motion to amend the Commission's order issued May 12, 1959, accompanying Opinion No. 320 in Docket No. G-16841, *et al.*, 21 FPC 653, by conforming the certificate authorization therein to the actual installation of facilities pursuant to said authorization.

It appears that following the original authorization Midwestern, in negotiating for its planned compressor facilities, found that substantial economies would result from a relatively small deviation from its original specifications. Following correspondence with the Commission staff explaining the circumstances, Midwestern filed the subject motion to amend requesting the adjustment of the original authorization as follows:

	Authorized 1,100 HP units	Actually installed
Portland, Tenn., compressor station	7,700 HP	9,000 HP (three 2,000 HP and one 3,000 HP units).
Petersburg, Ind., compressor station	6,000 HP	8,100 HP (three 2,000 HP units, each supercharged to 2,700 HP).
Total	13,300 HP	17,100 HP

The actual installations are shown to have cost a total of $4,896,003, as compared to the estimate of $6,206,000 for the units as originally applied for, a saving of $1,309,997, with an additional 2,800 horsepower.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued May 12, 1959, accompanying Opinion No. 320 in Docket No. G–16841, *et al.* be amended to conform the certificate authorization therein granted with the actual installation of facilities thereunder, as hereinafter ordered.

The Commission orders:

(A) The order of the Commission issued May 12, 1959, accompanying Opinion No. 320 in Docket No. G–16841, *et al.* be and the same is hereby amended by authorizing Midwestern Gas Transmission Company to install a total of 9,000 horsepower of compressor facilities at its Portland, Tennessee, Compressor Station and a total of 8,100 horsepower of compressor facilities at its Petersburg, Indiana, Compressor Station in lieu of the 7,700 horsepower and 6,000 horsepower, respectively, originally authorized.

(B) In all other respects, the aforesaid order issued May 12, 1959, in Docket No. G–16841, *et al.* shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

SINCLAIR OIL & GAS COMPANY, DOCKET NOS. G–9291 AND G–9292, ET AL.

ORDER REQUIRING ESTABLISHMENT OF ESCROW FUND TO ASSURE REFUNDS UNDER SETTLEMENT ORDER

(Issued November 19, 1963)

By order issued herein on August 23, 1963, we granted rehearing of the order issued July 1, 1963, conditionally approving a settlement agreement tendered by Sinclair Oil & Gas Company (Sinclair). Sinclair accepted the settlement as approved by the Commission but rehearing was granted for the purpose of

considering the objections of certain intervenors to the distribution of refunds required by the order of July 1, 1963. No party objected to the level of rates or the total amount of refunds required by that order.

On August 27, 1963, Sinclair filed a motion requesting that it be permitted to place the total settlement refund in escrow and that its obligation to pay interest on the refund amount be terminated as of August 1, 1963. Sinclair states that it put into effect as of July 1, 1963, the reduced rates required by our order and has been ready to make refunds since August 1, 1963. No objections have been filed to Sinclair's motion.

As heretofore noted, no objection has been made to Sinclair's future rates or its total refund obligation as set forth in our order of July 1, 1963; and it appears that the parties are agreeable to that portion of the order irrespective of future actions concerning the distribution of refunds. Accordingly, we shall grant Sinclair's motion, upon the understanding that the only remaining issue relates to distribution of refunds and that no party to these proceedings or the settlement negotiations may hereafter question the level of rates or total refund obligation imposed on Sinclair by our order of July 1, 1963.

Certain interveners insist that "Proposal A" constitutes the only appropriate method of distributing the agreed upon total amount of refunds in this case. Under their method full refunds would be made from 23.55¢ down to 20¢ under those rate schedules covering sales to Transcontinental Gas Pipe Line Corporation (Transco) which involve a triggering question (Sinclair's FPC Gas Rate Schedule Nos. 58 and 78), and, thereafter, the remaining refund dollars would be distributed to all purchasers on a Mcf basis. Their proposal is based on the claimed invalidity of favored-nation increased rates of 23.55¢ filed by Sinclair, which were allegedly triggered by Pan American Petroleum Corporation's (Pan American) sales to Transco under its FPC Gas Rate Schedule No. 242 at 23.55¢ pursuant to temporary authorization. The interveners also contend that there are certain equitable considerations involved in "Proposal A", apart from the legal question, due to the manner in which the alleged triggering occurred. Under the method adopted by us in the July 1 settlement order, refunds would be made simply by returning to the purchasers all amounts collected in excess of the settlement rates after January 1, 1962 (where refund obligations had been imposed).

Determination of the appropriate method of requiring refunds here is dependent at least in part on the validity of our order issued November 19, 1963, in Docket Nos. AR61–2, G–17613, *et al.*, involving the same triggering question raised here though Sinclair is not directly involved in that case. In the November 19 order we determined there was contractual authorization under the favored-nation clauses for the producers' 23.55¢ filings at least for the period prior to April 1, 1963, when Pan American's 23.55¢ rate was in effect. It is clear that we cannot decide the refund question until such time as the November 19 order becomes final either by the lapse of time or upon court review. We therefore must defer action on this matter at the present time, but at the appropriate time we will decide not only the legal question, but also any equitable considerations that may be involved here.

We shall provide for the filing of objections to this procedure within thirty days after the issuance of this order. If no objections are filed, Sinclair shall place the funds in escrow as required by this order.

The Commission finds:

It is necessary and proper in the public interest to require Sinclair to place in escrow the amount of refunds required by our order of July 1, 1963, herein, and to comply with the terms and conditions hereinafter prescribed.

The Commission orders:

(A) Sinclair's motion, filed August 27, 1963, to place settlement refund in escrow is granted, as hereinafter provided.

(B) Within 45 days from the date of issuance of this order, Sinclair shall execute and tender for filing with the Secretary of the Commission a trust agreement in the amount and conditioned as set out in Paragraph (C) hereof, accompanied by a certificate showing service of a copy thereof upon the parties to these proceedings. Unless notified to the contrary by the Secretary of the Commission within 30 days from the date of filing, such trust agreement shall be deemed to be satisfactory and to have been accepted for filing.

(C) Said trust agreement shall be entered into between Sinclair and any bank or trust company used as a depository for funds of the United States Government and deposit shall be made by Sinclair of the total refund obligation imposed on Sinclair by our order of July 1, 1963, herein, with interest until August 1, 1963, and said trust agreement shall be conditioned as follows:

(1) Sinclair, the bank or trust company and the successors and assigns of each, shall be held firmly bound to the Federal Power Commission for the use and benefit of those entitled thereto, with respect to the amount deposited and such bank or trust company shall be bound to pay to such parties and in such manner as may be required by the Commission in this proceeding.

(2) Such bank or trust company shall invest and reinvest such deposit, in its discretion, in any form of indebtedness of the United States or any agency thereof and in any form of obligation guaranteed by the United States with maturity of not more than three years from the date of purchase thereof by such bank or trust company.

(3) No interest on such deposit shall be charged or collected from such bank or trust company or from Sinclair, but there shall be added to such deposit the interest earned on the deposit.

(4) Any costs or charges made by the bank or trust company in connection with the trust agreement shall be paid by Sinclair.

(5) Such bank or trust company shall report to the Secretary quarterly certifying the amount deposited and the interest earned thereon.

(D) When refunds are made as required by further orders of the Commission in this proceeding, the trust agreement shall be discharged, otherwise it shall remain in full force and effect.

(E) Any party to these proceedings or the settlement negotiations having objections to the terms of this order shall, within thirty days from the date of issuance of this order, set forth such objections to the Commission and shall serve copies of such objections on all other parties.

(F) If no objections are filed pursuant to paragraph (E) of this order, the future rates and the total refund obligation established by order of July 1, 1963, herein shall be final, with distribution of such refunds being subject to further order of the Commission in these proceedings.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TEXACO INC., DOCKET NO. G–17613; SUNRAY DX OIL COMPANY, DOCKET NOS. G–17726 AND G–17727; PHILLIPS PETROLEUM COMPANY, DOCKET NO. G–17740; THE ATLANTIC REFINING COMPANY, DOCKET NO. G–17741; AUSTRAL OIL COMPANY, INC., DOCKET NO. G–17797; TEXAS GULF PRODUCING COMPANY, DOCKET NO. G–17925;

P. R. RUTHERFORD, DOCKET NO. G–17928; CONTINENTAL OIL COMPANY, DOCKET NO. G–17936; THE SUPERIOR OIL COMPANY (OPERATOR), ET AL., DOCKET NO. G–17989; TED WEINER (OPERATOR), ET AL., DOCKET NO. G–17993; JEFFERSON LAKE SULPHUR COMPANY, (OPERATOR), ET AL., DOCKET NO. G–17997; WILLARD E. WALKER, DOCKET NO. G–18099; SOUTHWEST GAS PRODUCING COMPANY, INC., DOCKET NO. G–18100; TRICE PRODUCTION COMPANY, DOCKET NO. G–18516; DAVID CROW, TRUSTEE, DOCKET NO. G–20083; J. P. OWEN (OPERATOR), ET AL., DOCKET NO. G–20555; MARACAIBO OIL EXPLORATION CORPORATION (OPERATOR), ET AL., DOCKET NO. RI60–138; SOCONY MOBIL OIL COMPANY, INC., DOCKET NO. G–17526; SUN OIL COMPANY (OPERATOR), ET AL., DOCKET NO. G–17923; HASSIE HUNT TRUST ESTATE, DOCKET NO. RI64–296; WM. HERBERT HUNT TRUST ESTATE, DOCKET NO. RI64–297; AREA RATE PROCEEDING, DOCKET NO. AR61–2*

ORDER DENYING APPLICATIONS FOR REHEARING IN PART, DENYING MOTIONS IN PART, SEVERING PROCEEDINGS FOR LIMITED PURPOSE, INITIATING PROCEEDINGS, CONSOLIDATING PROCEEDINGS, AND PROVIDING FOR HEARING

(Issued November 19, 1963)**

By order issued September 5, 1963, in Docket Nos. AR61–2, G–17613, *et al.*,[1] rehearing was granted for purposes of reconsideration of the order issued July 24, 1963, 30 FPC 402, denying UGI's motions to reject, cancel and dismiss certain favored-nation rate increases allegedly triggered by sales from Pan American Petroleum Corporation (Pan American) to Transcontinental Gas Pipe Line Corporation (Transco) under its FPC Gas Rate Schedule No. 242, among others, in the light of Pan American's settlement proposal in Docket No. G–16946. Subsequently, Pan American's proposal was approved by order issued November 19, 1963 in Docket Nos. G–13221, G–16946, *et al.* As a result thereof, a 20.625¢ per Mcf settlement rate for Pan American's instant sale was approved as of April 1, 1963, and no refunds were required for the period prior thereto.[2]

We held in the July 24, 1963, order that the producers had the right under the favored-nation provisions in their contracts to file for increased rates of 23.55¢ per Mcf based on the 23.55¢ per Mcf initial rate of Pan American at least during the period that Pan American's temporary authorization was in effect. It was also indicated that the producers' triggering rights under their contracts are not necessarily dependent solely upon the sales by Pan American and Oil Participations Inc. (Oil Participations)[3] mentioned in Transco's letter, since

*Lead docket in order of September 5, 1963, 30 FPC 647.

**Reconsideration denied, 31 FPC 400. Petition to Review pending in CADC, No. 18339, *United Gas Improvement Co.* v. *F.P.C.*

[1] As indicated elsewhere, not all of the above-entitled proceedings were included in the July 24 and September 5 orders.

[2] Under the decision in *Skelly*, Opinion No. 362, 28 FPC 401, no refunds may be ordered in a certificate proceeding involving the sale of gas under an unconditional temporary authorization even though the price is reduced for the future in a Section 7 proceeding. Pan American, therefore, in the absence of a settlement, could collect and retain the 23.55¢ rate until the Commission's decision in the certificate proceedings in *Union Texas*, Docket No. G–13221, *et al.* which involved the Pan American sale until it was severed by the settlement order of November 19, 1963. While the question of whether we could and should order refunds on the conditioned temporaries involved in *Skelly* is presently on appeal (*P.S.C. of New York* v. *F.P.C.*, Case No. 17582, C.A.D.C., argued October 25, 1963, [remanded January 23, 1964, 329 F. 2d 242]) that question would not be raised here even if we were reversed on this point on appeal since the settlement, which is controlling as accepted, does not provide for such refunds.

[3] Now Austral Oil Company, Inc.

there were other sales being made at 23.55¢ to Transco under Hassie Hunt Trust Estate FPC Gas Rate Schedule No. 3 and Wm. Herbert Hunt Trust Estate FPC Gas Rate Schedule No. 5 and under renegotiated rates involved in Docket Nos. G–17726, G–17727, G–17740 and G–17936, among others.

Long Island Lighting Company, The United Gas Improvement Company and Philadelphia Electric Company (petitioners) in their applications for rehearing argue that the Pan American sale did not trigger the producer contracts involved here claiming, *inter alia*, (1) favored-nation clauses cannot be activated by sales made under temporary authorization, (2) under the doctrine of "like suspect prices" used in certificate proceedings, *U.G.I.* v. *F.P.C.* 283 F. 2d 817, 824–825, *Placid Oil Co.*, Opinion No. 398, 30 FPC 283, there should be no triggering, (3) the Pan American rate was presumptively invalid because it would cause the very triggering condemned in *Atlantic Refining Company* v. *P.S.C.* 360 U.S. 378, and (4) favored nation clauses are illegal and contrary to public policy, citing the dissent in *Wisconsin* v. *F.P.C.*, 373 U.S. 294 at 330–331.

While it may be argued in retrospect that termporary authorization should not have been granted for the Pan American sale to Transco or if granted should earlier have been withdrawn, this situation does not deregate from the fact that Pan American has been lawfully collecting the 23.55¢ rate without refund obligation since 1958. Under the favored-nation clauses the producers had the right to file for rate increases up to 23.55¢ because Transco was lawfully paying that rate to Pan American and it makes no difference that the rate was being charged pursuant to temporary rather than permanent authorization. The important point is that the 23.55¢ rate was the legally effective rate under Pan American's rate schedule. Moreover, the doctrine of "like suspect prices", although applicable to determining what are "in-line prices" in Section 7 proceeding, has no applicability to a question of contractual authorization for a filing.

In the *Pure Oil* case, Opinion No. 341, 25 FPC 383, affirmed (7 Cir. 1962; 299 F. 2d 370, we rejected the contention that favored-nation clauses should be striken from rate schedules on file with the Commission.[4] The Supreme Court in *Wisconsin* v. *F.P.C.*, 373 U.S. 294, rejected a similar argument by California with respect to spiral escalations. The Court stated (373 U.S. at 304).

> Further, we see no merit in California's contention. It is true that the Commission has announced *prospectively* that it would not accept for filing contracts containing such clauses,[19] but it would have been quite a different matter for the Commission to have declared that past rate increases were ineffective simply because they were based on spiral provisions. The effect of a contract clause of this type, of course, is only to permit the producer to resort to the filing provisions of § 4(d) of the Act. If the increase is challenged, the producer must still establish its lawfulness wholly apart from the terms of the contract. Thus we have sustained the right of a seller to file an increase under a contract which, in effect, authorized him to do so at any time. *United Gas Pipe Line Co.* v. *Memphis Light, Gas and Water Division*, 358 U.S. 103. The spiral clauses here are far more limited in scope, depending as they do on the occurrence of external events. [Footnote omitted.]

In view of the foregoing, we hold that the producers did have the contractual right to file for increased rates of 23.55¢ at least during the period prior to April 1, 1963, when Pan American's rate of 23.55¢ was in effect.[5] For the same reasons

---

[4] *Cf.* Opinion No. 382 issued March 15, 1963, 29 FPC 498, *Shell Oil Company, et al.*

[5] Should approval of the Pan American settlement be rescinded for any reason, the effect thereof would be to permit Pan American to continue collection of the 23.55¢ initial rate, thus increasing the length of time that the triggered rates may remain in effect subject to refund under the producers' contracts.

mentioned above, we also hold that Sun Oil Company in Docket No. G–17923 and Socony Mobil Oil Company in Docket No. G–17526 had the contractual right to file the favored-nation increased rates of 23.55¢ involved therein at least during the period prior to April 1, 1963. We shall therefore deny UGI's motions filed on August 30 and September 3, 1963, respectively (which were not involved in the July 24 and September 5 orders) to reject, cancel, and dismiss the favored-nation increases in Docket Nos. G–17923 and G–17526 insofar as such motions relate to the period prior to April 1, 1963. The question arises, however, whether or not the producers' rates should be reduced as of April 1, 1963 to 20.625¢ or less[6] inasmuch as the triggering clauses expressly provide that the triggered rates will remain in effect only as long as the purchaser pays the higher rate to another producer in the area. As indicated in the July 24 order there are certain Hunt sales and renegotiated rates at 23.55¢ per Mcf which also might provide a triggering basis.

Petitioners claim that under certain of the contracts[7] triggering could not occur as a result of the Hunt rates or the renegotiated rates because the favored-nation provisions in such contracts are applicable only if Transco "purchases from producers new gas from new sources of supply in the state of Louisiana". They aver that the triggering price must be in a "new" contract for "new" gas.

Petitioners also argue with respect to the Hunt rates and the renegotiated rates that such rates could not cause triggering in any of the producer contracts because *inter alia*, (1) they were not included as a contractual basis for the producer filings here, and (2) there is no basis for inferring that Transco would deem these sales as affording a contractual basis for such filings. In connection with (2) above, petitioners also claim that a hearing is necessary to determine if the sales under the Hunt and renegotiated rates are comparable to the producers' sales, *i.e.* if the gas involved was of a higher quality, usefulness or if other contractual provisions differentiated the sales.

We believe in the light of petitioners' arguments with respect to the Hunt sales and the renegotiated rates that these maters should be set for hearing, thus giving all parties an opportunity to present evidence relating to the contractual matters involved here. The hearing will involve a determination of the proper contractual rates for the period subsequent to April 1, 1963, of the producers involved in the July 24 and September 5 orders, except as indicated in the footnote below.[8] The proceedings in Docket Nos. G–17526 and G–17923[9] were not included in the July 24 and September 5 orders. These

---

[6] Petitioners argue on a comparable basis the proper contractual rates should be below the Pan American settlement rate because of the fringe benefits related to the settlement rate, such as a five-year moratorium and a four-year take or pay provision.

[7] Austral Oil Co. Inc. (Operator), *et al.*, Docket No. G–17797; Ted Weiner (Operator), *et al.*, Docket No. G–17993; Trice Production Co., Docket No. G–18516; Willard E. Walker, Docket No. G–18099; and Southwest Gas Producing Co., Docket No. G–18100. The rate schedule involved in Maracaibo Oil Exploration Corp., Docket No. RI60–138, and Phillips' Rate Schedule No. 220 involved in Docket No. G–17740 do not contain, as petitioners claim, the type of favored-nation clause discussed in this part. Phillips' Rate Schedule No. 149, also involved in Docket No. G–17740, at one time contained a favored-nation provision, but no longer contains such a provision due to the filing of a superseding contract which was accepted as of April 7, 1960, without prejudice to the suspension proceeding in Docket No. G–17740. UGI in its motions in Docket Nos. G–17923 (Sun's Rate Schedule No. 44 only) and G–17526 (Socony's Rate Schedule No. 16) claims that these rate schedules also involve the "new gas from new sources of supply" favored-nation provisions. With respect to these rate schedules, UGI's claim is incorrect.

[8] The proceedings in Docket Nos. G–17726, G–17727, G–17936, and G–17740 (to the extent it relates to Phillips' Rate Schedule No. 149) will not be set for hearing, because the 23.55¢ rates involved in these proceedings are renegotiated rates not involving the contractual problems discussed here for the period subsequent to April 1, 1963.

[9] Docket No. G–17923 is presently consolidated with Docket No. G–8288, *et al.*

proceedings, however, involve essentially the same contractual issues as those mentioned above. We therefore consider it appropriate to consolidate these proceedings for the limited hearing purpose mentioned above. The justness and reasonableness of all the rates involved here will be determined in AR61–2, or in Docket No. G–8288, *et al.* if or to the extent that such rates are determined to be contractually authorized.

The Hunt 23.55¢ rates mentioned above were triggered by the Pan American rate of 23.55¢, which, as indicated above, is no longer in effect. Due to administrative error in 1959[10] the Hunt rates rather than being suspended within the period allowed under Section 4(e) of the Act were erroneously rejected. We therefore consider it necessary and proper in the public interest to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon hearings as hereinafter provided for the limited purpose of determining the contractual basis, if any, for Hunt's 23.55¢ rates for the period subsequent to April 1, 1963. In the event it is determined that the Hunt rates are no longer contractually authorized, it should also be determined what is the proper contractual rate and as of what date the 23.55¢ rates ceased to be effective.

We shall consolidate for the purpose of hearing all of the proceedings set for hearing herein. It is not clear to what extent there is disagreement as to the material facts here. We shall therefore provide for a prehearing conference at which the substantive matters to be resolved by formal hearing will be set forth, and all matters that can be resolved without formal hearing will be stipulated. Thereafter the Presiding Examiner shall give notice of hearing and shall prescribe such other procedures as he deems appropriate in the disposition of these matters.

The Commission orders:

(A) For the reasons heretofore set forth, the motions filed by UGI *et al.*, in Docket Nos. AR61–2, G–17613, *et al.*, are hereby denied insofar as such motions are applicable to the period prior to April 1, 1963, and to this extent the applications for rehearing filed by Petitioners are also denied.

(B) For the reasons heretofore set forth, the motions filed by UGI on August 30 and September 3, 1963, in Docket Nos. G–17923 and G–17526, respectively, are hereby denied insofar as such motions are applicable to the period prior to April 1, 1963.

(C) Pursuant to the authority of the Natural Gas Act, particularly Sections 4, 5, 14, 15, and 16 thereof, the Commission's Rules of Practice and Procedure and the Regulations under the Natural Gas Act [18 CFR, Chapter I], proceedings in Docket Nos. RI64–296 and RI64–297 are hereby initiated concerning the contractual basis for the 23.55¢ per Mcf rates in effect under Hassie Hunt Trust Estate FPC Gas Rate Schedule No. 3 and Wm. Herbert Hunt Trust Estate FPC Gas Rate Schedule No. 5, respectively, for the period subsequent to April 1, 1963; the remaining above entitled proceedings except as indicated in the footnote below[11] are set for hearing herein and are hereby severed from the area rate proceeding in Docket No. AR61–2 or Docket No. G–8288, *et al.*, as the case may be, only for the limited purpose set forth herein but shall remain in Docket No. AR61–2 and Docket No. G–8288, *et al.*, respectively, for the purpose of determining the justness and reasonableness of the increased rates; the above-entitled proceedings except to the extent otherwise indicated, including the

[10] *Hassie Hunt Trust, et al.*, Docket No. G–17431, *et al.*, 21 FPC 639.

[11] The proceedings in Docket Nos. G–17726, G–17727 and G–17936 are not set for hearing. The proceeding in Docket No. G–17740 is set for hearing only insofar as it relates to Phillips' Rate Schedule No. 220.

proceedings initiated above in Docket Nos. RI64–296 and RI64–297 with respect to the Hunt sales, are hereby consolidated for the limited purpose set forth herein; and public hearings shall be held in these proceedings pursuant to the procedures prescribed herein concerning the contractual basis for the rates involved in these consolidated proceedings for the period subsequent to April 1, 1963.

(D) Any officer or officers of the Commission designated by the Chief Hearing Examiner for that purpose, shall preside at the prehearing conference and the hearing in the above-designated proceedings, pursuant to the Commission's Rules of Practice and Procedure, and as further provided by this order.

(E) Pursuant to the provisions of Section 1.18 of the Commission's Rules of Practice and Procedure, a pre-hearing conference before the Presiding Examiner to be designated shall commence at 10:00 a.m. (EST) on January 28, 1964, in a hearing room of the Federal Power Commission, 441 G Street, N.W., Washington, D.C., for the purpose of effectuating the intent of the Commission, as hereinabove set out in the body of this order.

(F) After the pre-hearing conference, the Presiding Examiner shall give notice of the date of hearing and shall prescribe such other procedures as he deems appropriate in the disposition of these matters.

(G) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the Rules of Practice and Procedure [18 CFR 1.8 and 1.37(f)] on or before December 31, 1963.

Commissioner Ross *dissenting, joined* by Commissioner Black.

Ross, Commissioner, *dissenting:*

In both the initial order of July 24, 1963 and in the instant order, the majority takes the position that an unconditioned temporary certificate constitutes a valid triggering rate (at least until a just and reasonable determination of the rate, which in the case of an initial rate, could be applicable only prospectively). This view is based—I think unnecessarily and incorrectly—upon their policy of not normally ordering refunds during the term of an unconditioned temporary. This thinking, I believe, confuses the determination of an appropriate, public interest price at which to certificate initial sales with the question of refunds. In a Section 7 proceeding, we decide the public interest price for a *new* sale of gas. As such, our price finding relates specifically to the time that gas under the contract was initially dedicated to interstate commerce. For this reason, we determine the price issue (the only real issue in such cases) as of the time the contract was executed, as a number of opinions indicate. In contrast, failure to go back to the time of initial sale would, in effect, excuse producers from the requirements of Section 7 for the period covered by the temporaries. Thus, the Commission stated:

> The first question is as to the date of the "in lineness". This question should be determined as of a past date; otherwise CATCO would be enriched because of precedural delays. [*Continental Oil Company, et al.*, 27, FPC 96, 100.]

The question of refunds is quite a different matter. While the Commission has excused the payment of refunds regarding certain unconditioned temporaries, as in *Skelly*[1] for example, this decision was based exclusively on equitable considerations. The Commission Stated:

---

[1] *Skelly Oil Company, et al.*, 28 FPC 401, and Opinion on Rehearing, 28 FPC 1065, Opinion No. 362–A issued December 18, 1962.

> Since in the present proceeding there is no such [express refund] provision in the temporary certificates, to proceed now and order the producers to make refunds would not be equitable regardless of any ultimate right we may have to order such refunds. [Op. 362–A, page 1069.]

This decision was totally unrelated to the Commission's finding of the legal price ceiling applicable to the time the contracts there at issue were executed. If the Commission's 15¢ in-line finding did not relate back to the time covered by the temporaries in that case, it is difficult to determine just what significance to attach to the finding, since the price of contracts executed after September 28, 1960 was left open, and the price applicable to contracts executed after the decision was 16¢. It seems clear to me that the triggering effect of a temporary certificate with or without refund conditions, issued on an *ad hoc* emergency basis and expressly contingent upon the Commission's subsequent consideration of the contract, must be rescinded once the contract is permanently certificated at a lower level. This seemed to be the majority's position in *Shell Oil:*[1]

> Any producer filing for an increase under a favored-nation clause of necessity has two hurdles to overcome in ultimately justifying the rate increase. First, his increase is dependent upon the validity of the rate which triggered his favored-nation clause. If the triggering rate is later found to be invalid or unreasonable in whole or in part, then any rate filing based on such triggering rate is without contractual justification to the extent the triggering rate is reduced.

It certainly is regrettable that the majority is retreating from this minimum standard, as they have done in this matter.

Commissioner Black has authorized me to state that he joins in this statement.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and Davis S. Black.

TRANSWESTERN PIPELINE COMPANY, DOCKET NO. CP62–290

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 19, 1963)

On June 6, 1962, as supplemented on July 9 and October 29, 1962, Transwestern Pipeline Company (Applicant) filed in Docket No. CP62–290 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing:

1. the construction and operation of a metering station at a point on Applicant's existing 10-inch McLean lateral in Gray County, Texas, at a cost of $7,064;

2. the sale of natural gas by Applicant to Gray County Gas Company for resale in the City of LeFors, Texas, pursuant to a 20-year agreement between the parties dated September 15, 1961,

all as more fully set forth in the application.

---

[1] *Shell Oil Company*, Docket No. RI61–515, Opinion 382 issued March 15, 1963, 29 FPC 498, 504.

The contract provides for sale of a maximum of 1000 Mcf per day, at a rate of 35¢ per Mcf, which sale will be made pursuant to Transwestern's presently effective FPC Gas Tariff, Rate Schedule SG–1.

Gray County Gas Company's estimates of peak day and annual requirements for each of the first 3 years (at 14.73 psia) are:

Peak day	500 Mcf
Annual	50,000 Mcf

Pursuant to due notice, a public hearing was held on November 5, 1963, respecting the matters involved in and the issues presented by the application herein. No protest or petition to intervene has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c) (1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Transwestern Pipeline Company, a Delaware Corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce for resale, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed sale of natural gas by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c) (4) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c) (1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Transwestern Pipeline Company, to construct and operate facilities and to sell natural gas in interstate commerce for resale as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c) (4) and (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G–13221, ET AL.; PAN AMERICAN PETROLEUM CORPORATION, DOCKET NOS. G–16946, G–19223, G–20049, CI60–133, CI60–777, CI61–143, CI61–355, CI61–808, CI61–974, CI62–724, CI62–782, CI62–1341, G–17977, CI61–127 AND G–10022; TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. RP63–3

ORDER SEVERING PROCEEDINGS, CONDITIONALLY APPROVING PROPOSED SETTLEMENT, CONDITIONALLY ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND AMENDING ORDER ISSUING CERTIFICATE

(Issued November 19, 1963)*

On July 30, 1963, Pan American Petroleum Corporation (Pan American) filed a motion for severance of the above-captioned Pan American dockets from the proceedings in Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.* (hereinafter referred to as the Union Texas Proceeding), for approval of its settlement proposal and for the prompt issuance of certificates of public convenience and necessity, and for an order amending an order issuing a certificate of public convenience and necessity.

A joint response in support of Pan American's proposal was filed on August 16, 1963, by the Eastern Seaboard Interveners.[1]

Pan American's settlement proposal is similar to the settlement approved for Humble Oil & Refining Company [2] and provides the following.[3]

(1) In respect to the rate schedules listed in paragraphs (2), (3), (4), (5) and the supplement referred to in (4) below, a moratorium on rate increase filings from July 1, 1963, through June 30, 1968; except that such filings may be made (1) prior to July 1, 1968, to the extent that the maximum statutory suspension period under Section 4(e) of the Natural Gas Act may be extended beyond 5 months or the Commission may hereafter be authorized to lengthen such period, and (2) at any time for reimbursement for one-half the amount of increased State or Federal taxes or payments in lieu of such taxes, provided that such rate increase does not exceed the reimbursement to which Pan American is entitled by contract.

(2) The issuance of certificates of public convenience and necessity at settlement initial rates [4] of 20.625¢ per Mcf [5] authorizing the sales proposed in Docket Nos. G–16946 (R.S. 242), G–19223 (R.S. 257), G–20049 (R.S. 267), CI60–133 (R.S. 284), CI60–777 (R.S. 278), CI61–143 (R.S. 282), CI61–808 (R.S. 293),

---

*Reversed, in part by order issued February 3, 1964, 31 FPC 236.

[1] Long Island Lighting Company, Philadelphia Gas Works Division of The United Gas Improvement Company, The United Gas Improvement Company, the New England Distributors Group (41 distributor companies), The East Ohio Gas Company, Hope Natural Gas Company, Lake Shore Pipe Line Co., New York State Natural Gas Corp., The Peoples Natural Gas Company and The River Gas Company.

[2] See order issued August 7, 1963, in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, 30 FPC 456.

[3] See Appendix for further details.

[4] The rate provisions refer to gas "delivered". As we have stated in other orders conditionally approving settlements in this proceeding, in the context of the settlement proposals, we interpret the term to include gas required to be taken during the moratorium period but paid for and not taken. Our approval of this proposal is conditioned upon such interpretation.

[5] All rates expressed inclusive of applicable tax reimbursement and all volumes expressed at 15.025 psia.

CI62–724 (R.S. 325), CI62–782 (R.S. 326), G–17977 (R.S. 354) and CI61–127 (R.S. 304).

(3) The issuance of a certificate of public convenience and necessity at the contractual initial rate of 20.25¢ per Mcf authorizing the sale proposed in Docket No. CI61–974 (R.S. 297) and amendment of the order issuing the certificate in Docket No. G–10022 to include the additional acreage covered by Supplement No. 12 to R.S. No. 190 at the contractual initial rate of 20.3¢ per Mcf.

(4) The issuance of a certificate of public convenience and necessity at the settlement initial rate of 19.0¢ per Mcf authorizing the sale in Docket No. CI62–1341 (R.S. 333).

(5) The issuance of a certificate of public convenience and necessity authorizing the sale in Docket No. CI61–355 (R.S. 288) at the settlement initial rate of 19.0¢ per Mcf plus 1.625¢ per Mcf to be placed in an escrow account to provide for the contingency of the producing acreage's being finally adjudicated as lying within the taxing jurisdiction of the State of Louisiana. The purchaser also will place in the escrow account an amount equal to 2.05¢ per Mcf times the volumes delivered from April 17, 1961, through June 30, 1963.

(6) Continued collection of the rates now in effect subject to refund in Docket Nos. RI62–220[6] and RI63–44,[7] subject to further orders of the Commission in those dockets.

(7) Extension of the make-up periods of 4 years under all rate schedules and supplements subject to this settlement which provide for a lesser make-up period.

(8) Prospective upward or downward adjustment of rates according to any area rate or rates determined in Area Rate Proceeding, Docket No. AR61–2.

As noted above, the proposal provides that the rate reductions will take effect and that the moratorium will begin as of July 1, 1963. If we were to allow Pan American to use this effective date we would be giving Pan American an advantage over those numerous applicants which have settled their cases in the Union Texas Proceeding with effective dates of April 1, 1963.

On August 20, 1963, Pan American, filed a telegram with the Secretary[8] stating that its effective date should not be moved back to April 1, 1963, because Pan American has already paid April, May and June royalties based on rates higher than the settlement rates and that the public interest will not be affected adversely by the later effective date because Pan American's moratorium period has been correspondently extended by three months.

We do not feel that we should depart from our announced policy merely for the convenience of Pan American in dealing with its royalty owners. Doubtless, Pan American may resort to its legal remedies to make itself whole. Nor do we agree with the contention that by extending the moratorium period through June 30, 1968, Pan American's proposal is put on a par with those having moratoria from April 1, 1963, through May 31, 1968. Since the Area Rate Proceeding, Docket No. AR61–2 will certainly be completed prior to May 31, 1968, the extension of the moratorium period has little or no value. Accordingly, our approval of this proposal will be subject to the conditions that the rate reductions go into effect on April 1, 1963, and the 5 year moratorium begins on that date. Pan American will be required to refund the monies above the settlement rates collected for deliveries made subsequent to March 31,

[6] Related to Supplement No. 1 to Pan America's R.S. No. 297 (CI61–974).

[7] Related to Supplement No. 13 to Pan American's R.S. No. 190 (G–10022).

[8] Pan American's telegram was in reply to a telegram of the Brooklyn Union Gas Company filed with the Secretary August 16, 1963, urging that the effective date of all settlements in the Union Texas Proceeding be April 1, 1963.

1963. Similarly, the 2.05¢ per Mcf escrow referred to in Paragraph (5) above will apply from April 17, 1961, through March 31, 1963.

In keeping with our present policy, we shall require that Pan American pay interest on the amounts to be refunded at a rate of 7 percent per annum, such interest to accrue through the last day of the month in which the motion and offer of settlement was filed.

The settlement provisions for adjustments in rates according to our order or orders in Area Rate Proceeding, Docket No. AR61–2, seek to anticipate in part the nature of our final determinations in that matter. It is clear that we shall make no determinations in this matter which will control our conclusions in Docket No. AR61–2. The settlement proposal also provides that adjustments in price growing out of the Area Rate Proceeding, Docket No. AR61–2, should go into effect upon conclusion of judicial review of our final order. However, we cannot now commit the Commission to conditionally staying the effectiveness of its final order in Docket No. AR61–2. These matters should be decided at the conclusion of that proceeding and our approval of the settlement will be so conditioned.

We find the settlement proposal as modified to be in the public interest. Accordingly, we shall sever the above-captioned Pan American dockets from the consolidated proceedings in Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*, omit the intermediate decisions in regard to these dockets[9] and conditionally issue certificates of public convenience and necessity.

As we have done in other settlements which provided for escrow arrangements,[10] we shall require that Transcontinental Gas Pipe Line Corporation (Transco), the purchaser under Rate Schedule No. 288 (Docket No. CI61–355), file a copy of the escrow agreement and make special reports concerning the escrow account. These filings will be made in Docket No. RP63–3.

With the exceptions noted below, the pipeline purchasers (shown in the Appendix) which will receive refunds and whose overall purchased gas costs will be affected substantially by this settlement will pass on the refunds and adjust their rates in accordance with the Commission's latest rate orders concerning the respective pipelines. United Gas Pipe Line Company, the purchaser under Rate Schedules Nos. 282 (CI61–143) and 297 (CI61–974) has a rate case, in Docket No. RP63–1, presently pending before the Commission. Any adjustments necessary to reflect Pan American's reduced rates will be effected in that proceeding.

The flow through provisions in Transco's settlement in Docket No. RP61–13[11] specifically apply to Docket Nos. G–16946, G–17977, G–19223, CI61–355 and CI61–808. Transco, in the recent Socony Mobil Oil Company and Gulf Oil Corporation settlements[12] contended that the flow through provisions in the settlement agreement in Docket No. RP61–13 do not apply to producer rate schedules not specifically referred to therein. Since Pan American's Rate Schedules Nos. 326 (CI62–782) and 333 (CI62–1341) are not specifically referred to in the settlement agreement in Docket No. RP61–13, and in order to avoid a situation in which a pipeline obtains and keeps the benefits of refunds and reductions in gas purchase costs even though it may be, in the absence of such refunds and reductions, earning a reasonable rate of return on invested capital,

---

[9] The hearings in the Union Texas Petroleum, *et al.*, consolidated proceeding concluded July 25, 1963.

[10] See *Socony Mobil Oil Company, Inc.*, 28 FPC 357, 362.

[11] *Transcontinental Gas Pipe Line Corporation*, 27 FPC 187.

[12] See our order of October 9, 1963, in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, 30 FPC 979.

we shall require Transco to report to the Commission the amount of refund and interest received as a result of the settlement in Docket Nos. CI62–782 and CI62–1341, the estimated annual reduction in purchased gas costs, the proposed disposition of the refunds and the proposed rate adjustments, if any, to reflect the reduction in gas purchase costs. We shall require Transco to hold the refunds and amounts equal to the reductions in purchased gas costs which will accrue as a result of the settlement in these two dockets in a special account subject to further orders of the Commission.

One further matter requires discussion. We note that certain of the intervenors who urge approval of this settlement proposal are presently contesting the validity of certain increased rate filings of other producers which rely on the 23.55¢ per Mcf rate under Pan American's Rate Schedule No. 242 (G–16946).[13] While the question of the validity of such filings is not before us in the instant settlement proposal, we deem it proper to observe that consummation of this proposal would confirm the legality of Pan American's collecting the 23.55¢ rate during the period from the date of initial delivery through March 31, 1963.[14] This is so because under the settlement proposal no refunds will be paid for amounts collected during this period above the settlement rate of 20.625¢ per Mcf. Thus, even if we are incorrect in the decision we are releasing today on rehearing of UGI's motion to cancel certain rate filings in Docket Nos. AR61–2, G–17613, *et al.* (in which we hold that the fact that Pan American's temporary certificate carries no express refund obligation means that it was a triggering sale during the period the temporary was in effect,) adoption of the settlement might validate the triggering. As we have indicated in the order on rehearing, supra, it may well be that even if the Pan American temporary is ignored there were other triggering sales during all or most of this period and it may be that the intervenors here will still wish to proceed with the proposed settlement. But, in view of the foregoing, we think it only fair to give any party involved here an opportunity to object to the terms of this order.

The Commission finds:

(1) Pan American is a "natural-gas company" within the meaning of the Natural Gas Act, and is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(2) The proposed sales of natural gas are subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Pan American is able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission, and necessary therefor, are required by the public convenience and necessity and are in the public interest upon the conditions set forth below, and the certificates should be issued and the amendment should be granted as ordered below.

---

[13] See Order Denying Motions to Reject, Cancel, and Dismiss Rate Filings, issued July 24, 1963, and order granting rehearing of said order issued September 5, 1963, in Docket Nos. AR61–2, G–17613, *et al.*

[14] We recognize, of course, that the intervenors' position in the triggering cases that favored-nation clauses cannot be activated by sales made under temporary authorization is not affected by the legality of Pan American's rate.

(5) It is in the public interest and it is appropriate in carrying out the provisions of the Natural Gas Act that Transco be required to submit the reports and retain the refunds, interest and purchased gas cost reductions as ordered below.

(6) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

(7) No party has opposed the waiver of the intermediate decisions in these proceedings.

The Commission orders:

(A) The motion for waiver of the intermediate decisions is granted.

(B) The matters in the above-captioned Pan American dockets are severed from the consolidated proceeding, Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*

(C) Certificates of public convenience and necessity are hereby issued upon the conditions set forth herein to Pan American for the sales of natural gas in interstate commerce for resale as proposed in each Pan American docket except Docket No. G–10022 and as modified by the settlement proposals and this order, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in the applications and settlement proposal herein.

(D) The order granting the certificate of public convenience and necessity of Pan American in Docket No. G–10022, issued on October 16, 1956 (16 FPC 1470) is hereby amended to authorize the sale proposed in Docket No. G–10022 herein, as modified by the settlement proposal and this order, and the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in the application to amend and the settlement proposal herein.

(E) The certificates issued by paragraph (C) above, and the amendment granted by paragraph (D) above are granted upon the express condition that Pan American comply fully with the terms of the settlement proposal which settlement is expressly approved, as modified by this order.

(F) Pan American shall make the refunds required by this order within 60 days from the date of issuance thereof. Within 30 days after making the refunds required by the terms and conditions of this order and the settlement proposals, Pan American shall report to the Commission, in triplicate, the amount of the refunds made to each pipeline purchaser, showing separately the amount of principal and interest so paid and the bases used for such determinations, together with releases from the purchasers showing receipt of the refunds in conformity with the settlement and the conditions of this order.

(G) The certificates issued by paragraph (C) above and the amendment granted by paragraph (D) above are granted upon express condition that the effective date for rate reductions proposed herein be April 1, 1963, and that Pan American refund to the respective pipeline purchasers all amounts above the settlement rates collected for gas delivered since April 1, 1963; and upon the further condition that interest at 7% be paid on all monies to be refunded, such interest to accrue through the last day of the month in which the settlement offer was filed, July 31, 1963.

(H) Upon full compliance of Pan American with all the terms of this order and of the settlement proposal as modified, Pan American shall be relieved of any further refund obligations in these certificate proceedings and such proceedings shall terminate.

(I) The certificates herein issued are not transferable and shall be effective only so long as Pan American continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(J) The grant of the certificates and amendment herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or Part 154 of the Regulations thereunder; *Provided, however,* that the 30-day notice provision of Part 154.94(b) and the detailed submittal requirements of Part 154.94(f) are hereby waived insofar as they apply to the filing of reductions in rates as required by this order and the settlement proposals.

(K) The grant of certificates and the amendment herein and approval of the settlement proposal is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Pan American particularly any proceeding under Sec. 5 of the Natural Gas Act or Section 5(c) of the Outer Continental Shelf Lands Act, and is without prejudice to claims or contentions which may be made by the Commission, applicant, the Commission staff, or any affected party herein in any other proceeding.

(L) Within 15 days from the date of receipt of refunds and interest required by this order in Docket Nos. CI62–782 and CI62–1341, Transco shall submit a report to the Commission and serve a copy on its jurisdictional customers, and the various state commissions wherein it does business, setting forth the amount of refund and interest received, the estimated annual reduction in purchased gas costs due to these particular rate reductions, its proposed disposition of such refunds and interest and its proposed rate adjustments to reflect the reductions in gas purchase costs. Pending Commission action and further orders respecting such proposed dispositions and adjustments, Transco shall hold such refunds, interest and amounts equal to the reduction in purchased gas costs which accrue as a result of the settlement of these dockets in a special account (without interest obligation).

(M) Within 30 days after it has executed an agreement with an escrow agent, pursuant to this order, Transco shall file with the Commission a conformed copy of such agreement and a special report of the amounts paid into escrow. Each year thereafter and until the escrow agreement terminates, Transco shall file contemporaneously with its Form 2 Annual Report a report of the amounts in the escrow account as of the last day of the reporting year. In addition, whenever the escrow agent pays out monies from the escrow account, Transco shall file a special report of the principal and interest so paid out, the reason for such payments, and the manner of distribution and basis therefor. Whenever the escrow agent pays out monies to Transco's customers, Transco shall serve a copy of its special report on each interested State Commission. All filings and reports required by this paragraph shall be made by a responsible corporate official, in Docket No. RP63–3.

(N) Any party to these proceedings having objections to the terms of this order shall within 30 days from the date of issuance of this order set forth such objections in writing to the Commission (original and one copy), and serve copies on the other parties. If such objections be filed as set forth above, the effectiveness of this order shall be automatically stayed, pending further order or orders of the Commission.

Commissioner Ross *dissenting, joined* by Commissioner Black.

APPENDIX

Rate schedule No.	Docket No.	Buyer	Present rate (¢/Mcf)	Settlement rate
242	G–16946	Transco	23.55	20.625
257	G–19223	Transco	23.55	20.625
267	G–20049	Southern Natural Gas Co	23.55	20.625
284	CI60–138	Tenn. Gas Trans. Co	23.6	20.625
278	CI60–777	Trunkline Gas Co	24.05	20.625
282	CI61–143	United Gas Pipe Line Co	23.55	20.625
288	CI61–355	Transco	21.4	[1] 20.625
293	CI61–808	Transco	23.25	20.625
297	CI61–974	United Gas Pipe Line Co	23.30	[2] 20.25
325	CI62–724	Tenn. Gas Trans. Co	21.25	20.625
326	CI62–782	Transco	21.25	20.625
333	CI62–1341	Transco	19.5	[3] 19.0
354	G–17977	Transco	23.55	20.625
304	CI61–127	Texas Gas Trans. Corp	22.75	20.625
190	G–10022	United Fuel Gas Co	20.7	[2] 20.3

[1] 19.0¢ plus 1.625¢ in escrow.
[2] Rate increase will remain in effect subject to refund in suspension dockets.
[3] Offshore.

Ross, Commissioner, *dissenting in part:*

I dissent to the acceptance of the settlement of Pan American's Rate Schedule No. 242 which is the rate responsible for the triggering of a substantial number of other producer contracts.

On December 4, 1958 Pan American was granted a temporary certificate in Docket No. G–16946, without hearing on the grounds of an alleged emergency, authorizing the sale of gas at the rate of 23.55¢ per Mcf. This certificate was granted without the imposition of refund conditions, consistent with the Commission's practice at that time. Pan American accepted the certificate and commenced deliveries at this rate continuing up to the present time. Acceptance of the instant settlement would confirm the validity of that rate, at least for the period from 1958 through March 31, 1963, in view of the majority. The validation of that rate means that it constitutes a rate which triggers the rates of several other producers in the area, at least through March 31, 1963.[1]

The majority view the settlement of this rate as appropriate because they feel a temporary rate can trigger.[2] In my opinion, this view is incorrect for the reasons stated in my dissent to the Order on Rehearing (AR61–2) issued concurrently herewith. Nevertheless, since this is the approach adopted, I would adjust (rather than settle) the price of Pan American's temporary certificate by granting a new temporary at the in-line level of 20¢ per Mcf, and require full refunds down to that level. This would be an action consistent not only with the Supreme Court's decision in *CATCO*[3] but also with our own decision in *Continental Oil Company:*

> With respect to the unconditioned temporary certificate issued to Atlantic in Docket No. G–15374, the refund provision is likewise applicable. The temporary certificate gave no unalterable right to the proposed price. Under Section 7(c) the Commission may issue a temporary certificate in case of emergency pending the determination of an application for a certificate. *This appears to contemplate a continuous course of adjustment until the time that a final order determines the conditions under which a permanent certificate shall be issued.* [Emphasis added; 27 FPC 96, 110.]

[1] See the Commission's order in Docket Nos. AR61–2, G–17613, *et al.*, *issued* July 24, 1963, 30 FPC 402.
[2] *Ibid.*
[3] *Atlantic Refining Co.* v. *P.S.C. of New York*, 360 U.S. 378.

Even in the absence of such adjustment of Pan American's temporary certificate, I still dissent to the acceptance of the settlement of this certificate and related rate schedule. The legality of refusing to provide for refunds down to the in-line level for the period covered by unconditioned temporaries is a principal issue in the *Skelly* case on appeal which was argued October 25, 1963.[4] If petitioners are successful, any lower rate determined in a litigated proceeding regarding Pan American's sale would be applicable from the date of initial delivery. Thus, Pan American's rate could not be considered a triggering rate, and the now triggered rates similarly would be reduced in accordance with the *Shell* opinion. We have previously determined in no fewer than three opinions that the in-line price for South Louisiana applicable to contracts executed in 1958 is 20.0¢ per Mcf, including tax.[5] It is unfortunate that the anticipated benefits of the *Skelly* appeal with respect to this situation are being foreclosed when there is a good possibility of success in that case.

Commissioner Black has authorized me to state that he joins in this statement.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

ALFRED C. GLASSELL, JR., ET AL., DOCKET NOS. G–9278 AND RI60–130

ORDER ACCEPTING OFFER OF SETTLEMENT AND TERMINATING PROCEEDINGS

(Issued November 20, 1963)

On March 7, 1963, Alfred C. Glassell, Jr., *et al.*, submitted an amended offer of settlement in the above proceedings relating to sales under Glassell's FPC Gas Rate Schedule Nos. 1 and 2.

Docket No. G–9278 involves an investigation instituted January 27, 1956, under Section 5(a) of the Natural Gas Act of the rates and charges made by Glassell under its FPC Gas Rate Schedule Nos. 1 and 2. Docket No. RI60–130 (Rate Schedule No. 1) involves an increased rate of 14.4248¢ per Mcf in effect subject to refund for a sale to Tennessee Gas Transmission Company from Texas Railroad Commission District No. 6. Glassell's FPC Gas Rate Schedule No. 2 covers a sale to Texas Gas Transmission Corporation from Southern Louisiana at a firm rate of 21.75¢ per Mcf.

After a hearing in Docket No. G–9278 and an examiner's decision, the Commission terminated the Section 5(a) investigation as to Glassell's Rate Schedule No. 1, but determined the lawful rate under Rate Schedule No. 2 to be 15.21¢ per Mcf. Glassell filed a petition for review in the United States Court of Appeals for the Fifth Circuit as to the latter determination and obtained a court stay of the effectiveness of the Commission order with respect thereto. Subsequently, the Commission sought and obtained a remand of the proceeding for the purpose of setting aside its findings and order and for further proceedings before it.

After several settlement conferences, Glassell submitted the Amended Offer of Settlement presently before us. It proposes continuance of the 14.4248¢ per Mcf rate, deletion of the indefinite pricing clauses in its Rate Schedule No 1, and the insertion of a new schedule of one cent periodic price increases, to be

---

[4] *P.S.C. of New York* v. *F.P.C.*, et al., CADC No. 17582. [Remanded January 23, 1964, 329 F. 2d 242.]

[5] *Continental Oil Company, supra; Placid Oil Company, et al.*, Docket No. G–13183, *et al.*, Opinion No. 398 issued July 17, 1963, 30 FPC 283; *United Gas Pipe Line Company*, Docket No. CP60–36, Opinion No. 399 issued July 17, 1963, 30 FPC 329.

effective on November 1, 1964, and every five years thereafter. Since this portion of the Offer is consistent with the Second Amendment to our Statement of General Policy, it should be accepted and Glassell's refund obligation under Docket No. RI60–130 should be discharged.

With respect to its FPC Gas Rate Schedule No. 2, Glassell proposes a prospective settlement rate of 20.625¢ per Mcf, inclusive of tax reimbursement, waiver of the right to file for increased rates under favored-nation or price redetermination clauses in the contract, extension of make-up period under take-or-pay clauses to four years, and a moratorium on all increased rate filings until July 1, 1967, except for tax increases reimburseable by contract.

The Public Service Commission of the State of New York in commenting on Glassell's proposal points out that the proposed settlement rate under Rate Schedule No. 2 is substantially in excess of the rate previously determined by the Commission and that it was not aware of a reasonable basis upon which the settlement price could be found to be in the public interest.

We agree with the New York Commission that, in view of the earlier 15.21¢ finding, a settlement of this nature would not normally be in the public interest. If the record were otherwise satisfactory, we would re-examine the cost-of-service calculations and would consider adjustments thereto which might result in a different unit cost. Aside from this problem, any rates established in the proceeding would have only prospective effect and a 1957 test year was utilized in arriving at the 15.21¢ figure. We do not believe that mere lapse of time operates to make improper the use of test year data. The operations and costs of a large company or group of companies may not change substantially over time and a test year of this vintage would not, in itself, be improper without a showing of substantial change. However, Glassell has asserted that its production has declined substantially since 1957 and our records reflect average sales by Glassell since 1957 approximately 11% lower than during the test year. In these circumstances, we would be obliged to remand the proceedings for current cost and production data. Since these data would concern only single field operations they would magnify the difficulties of single company cost-of-service computations.[1] Glassell's future rate for this sale will be determined in the Southern Louisiana Area proceeding, Docket No. AR61–2, where hearings will begin shortly and it is unlikely that a remanded proceeding which would involve expenses to all parties of much more than any savings which might result, could be completed substantially before the area proceedings. In the meantime, approval of this settlement will permit an immediate reduction in rate and will give immediate effect to the moratorium provisions and deletion of indefinite pricing clauses.

Pursuant to the rate reduction under Rate Schedule No. 2 Texas Gas will adjust its rates in accordance with the provisions of the rate settlement approved by our order issued December 26, 1961, 26 FPC 924.

In the circumstances, we believe settlement of this long pending case is in the public interest and approve the same.

The Commission finds:

The proposed settlement of the subject proceedings on the basis described herein, as more fully set forth in Glassell's Amended Offer of Settlement filed on March 7, 1963, is in the public interest and is appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective.

---

[1] Socony Mobil Oil Company, Docket No. G–13780, 27 FPC 347, 348.

The Commission orders:

(A) The Amended Offer of Settlement filed by Glassell on March 7, 1963, is approved and made effective subject to the terms and conditions of this order.

(B) The settlement rate of 20.625¢ per Mcf under Glassell's FPC Gas Rate Schedule No. 2 shall be effective as of the date of issuance of this order.

(C) Within 60 days from the date of this order, Glassell shall make such filings under its rate schedules as are required to make effective the terms of its Amended Offer of Settlement, as herein approved.

(D) Upon full compliance by Glassell with the terms and conditions of this order, the proceedings in Docket Nos. G–9278 and RI60–130, and Glassell's refund obligations under Docket No. RI60–130 shall terminate.

(E) Any party of these proceedings or the settlement conferences concerned therewith having objections to the terms of this order shall, within 30 days from the date of issuance of this order, set forth such objections in writing to the Commission (original and one copy), and serve copies on the other parties. If objections are filed, the effectiveness of this order shall be automatically stayed, pending further order or orders of the Commission.

(F) This order is without prejudice to any findings or orders which have been, or may be, made hereafter by the Commission, and is without prejudice to claims or contentions which may be made by Glassell, the Commission staff, or any affected party hereto, in any proceedings now pending or hereafter instituted by or against Glassell or any other companies, persons or parties affected by this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

ANNUAL CHARGES PRESCRIBED FOR LICENSEES UNDER THE FEDERAL POWER ACT, DOCKET NO. R–228

ORDER NO. 272

AMENDING SECTIONS 11.20 AND 11.31 OF REGULATIONS UNDER THE FEDERAL POWER ACT

(Issued November 20, 1963)*

We are concerned here with amendments to § 11.20 and § 11.31 of Subchapter B, Part 11 of the Commission's Regulations under the Federal Power Act (18 CFR 11.20) which were proposed in the amended notice issued herein on August 27, 1963.

Section 11.20 would be amended so as to base the assessment of annual charges for licenses heretofore or hereafter issued for projects of more than 2,000 horsepower installed capacity (other than those issued to State or municipal licensees) upon the actual costs of administering Part I of the Act, except those costs associated with administration of the Act in regard to licenses issued to State and municipal licensees, licenses for projects of not more than 2,000 horsepower installed capacity and those minor part licenses for which the charges have been waived in whole or in part under section 10(i) of the Act. The assessment of annual charges shall be in the proportion that the annual charge factor for each such license bears to the total of the annual charge factors under all

*Published in the Federal Register on December 3, 1963 (28 F.R. 12795).

outstanding licenses. The annual charge factor shall include components based upon both project capacity and energy generated.

Section 11.31 would be amended so as to extend the period for payment of all annual charges by licensees (except charges for headwater benefits) from 30 days to within 45 days of rendition of a bill therefor by the Commission.

General public notice of this proposed rulemaking was given in the Federal Register on August 31, 1963 (28 F.R. 9648).

In commenting on the proposed amended regulation, most of the licensees reporting took the position that licenses may be altered only by mutual agreement of the licensee and the Commission, unless otherwise provided in the license, and this was especially so in connection with licenses issued prior to the 1935 amendment of the Federal Water Power Act. Some stated that the proposed amended regulation provides no ceiling as to the assessment which may be imposed; that it does not describe how costs are to be determined initially; and that it does not specify the basis for the allocation of such costs as between public and private projects. It appeared to one licensee that the proposed regulation will reasonably apportion, between capacity and energy, the annual charges involved.

No comments respecting the proposed amendment to § 11.31 were made.

We have considered the comments submitted. Section 10(e) of the Act, both prior and subsequent to the 1935 clarifying amendments, provides that "the licensee shall pay to the United States resonable annual charges in an amount to be fixed by the Commission for the purpose of reimbursing the United States for the costs of administration" of Part I of the Act. The above quoted terms and conditions are expressly made part of licenses issued both prior and subsequent to 1935. The annual assessment to a given non-public licensee under the proposed amended regulation will include charges in relation to the administrative costs incurred by the Commission under Part I of the Act with respect to non-public projects, except those incurred in connection with minor projects, those which have been waived for minor part licenses under section 10(i) and those fixed by the Commission in determining headwater benefit payments under section 10(f) of the Act.

Upon consideration of the entire record in this proceeding, *the Commission finds:*

(1) The adjustment of annual administrative charges, as hereinafter provided, is necessary and appropriate in carrying out the provisions of the Federal Power Act.

(2) The extension of the period for payment of annual charges by licensees (except charges for headwater benefits), as hereinafter provided, is in the public interest.

Acting pursuant to the authority granted by the Federal Power Act, particularly sections 10(e) and 309 thereof (16 U.S.C. 803(e), 825h), *the Commission orders:*

(A) Sections 11.20 and 11.31 of the Commission's Regulations under the Federal Power Act, Subchapter B, Chapter I of Title 18 of the Code of Federal Regulations are amended as follows:

1. Delete the introductory paragraph and paragraph (a) and the three subparagraphs thereunder of § 11.20 and in lieu thereof insert the following:

§ 11.20 Costs of Administration.

Reasonable annual charges will be assessed by the Commission against each licensee to reimburse the United States for the costs of administration of Part I of the Federal Power Act as follows:

(a) For licensees, other than State or municipal, of projects of more than 2,000 horsepower of installed capacity:

(1) A determination shall be made for each fiscal year of the costs of administration of Part I of the Federal Power Act chargeable to such licensees, from which shall be deducted such administrative costs allocated by the Commission to minor part licenses for which administrative charges are waived under section 10(i) of the Act and those fixed by the Commission in determining headwater benefit payments.

(2) For each calendar year the costs of administration determined under subparagraph (1) shall be assessed against each such licensee in the proportion that the annual charge factor for each such project bears to the total of the annual charge factors under all such outstanding licenses.

(3) The annual charge factor for each such project shall be its authorized installed capacity (horsepower); plus 150 times its annual energy output in kilowatt hours divided by one million.

(4) To enable the Commission to determine such charges annually, each such licensee shall file with the Commission, on or before February 1 of each year, a statement under oath showing the gross amount of power generated (or produced by non-electrical equipment) by the project during the preceding calendar year, expressed in kilowatt hours.

2. Paragraph (c) of § 11.20 is amended to read as follows:

"(c) For licensees of projects of 2,000 horsepower or less of installed capacity the charge for costs of administration shall be 5 cents per horsepower, with a minimum charge of $5 per annum for each such license except for those licenses for which administrative charges are waived under section 10(i) of the Act."

3. Paragraph (a) of § 11.31 is hereby amended to read as follows:

"(a) *Payment of annual charges.* Annual charges shall be paid within 45 days of rendition of a bill therefor by the Commission, except that annual charges for headwater benefits shall be paid within 60 days of rendition of a bill therefor."

[Secs. 10(e) and 309 (16 U.S.C. 803(e), 825h)]

(B) The amendments prescribed herein will become effective on January 1, 1964.

(C) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP64–43; TRANSCONTINENTAL GAS PIPE LINE CORPORATION, UNITED NATURAL GAS COMPANY, NORTH PENN GAS COMPANY, DOCKET NO. CP64–44

FINDINGS AND ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 20, 1963)

On August 16, 1963, Trancontinental Gas Pipe Line Corporation (Transco) filed in Docket No. CP64–43 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the rendition of additional general storage service to existing resale customers under its rate schedule GSS. Concurrently Transco, United Natural Gas Company (United), and North Penn Gas Company (North Penn) filed a joint

application in Docket No. CP64–44 pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing additional development and operation of the Wharton Storage Field in Potter and Cameron Counties, Pennsylvania. The authorizations requested are more fully described in the applications in this proceeding.

The application in Docket No. CP64–43 is a suppliment to Transco's general storage service program for the 1963–64 winter season. The supplemental service will be rendered from the Wharton Storage Field under an Intermediate Development Program, the application for which is the companion docket in this proceeding. Transco sells natural gas to its resale customers and in turn provides storage for the gas under its presently authorized general storage service. The additional storage service is proposed to the following existing customers:

The joint application states that the proposed Intermediate Development Program means the additional supply of 560,000 Mcf of cushion gas to the Wharton Field to be supplied by Transco at a cost of $181,496 thereby increasing the effective capacity of the storage field to 12,060,000 Mcf of active gas and the ability to deliver active gas from the Wharton compressor station of Transco at a rate of not less than 130,425 Mcf per day until 85% of the gas has been withdrawn.

Upon completion of the Intermediate Program, Transco will have an assigned storage capacity of 9,045,000 Mcf which is a quantity equal to 75% of the rated storage capacity, and United will have an assigned storage capacity of 3,015,000 Mcf which is a quantity equal to 25% of the rated storage capacity. United will have an assigned delivery capacity of 25,125 Mcf per day which is equal to 1/120th of its assigned storage capacity, and Transco will have an assigned delivery capacity of not less than 105,300 Mcf per day, this being the balance of the rated delivery capacity. North Penn, which is the owner of certain properties and rights in the field, will be entitled to not more than 502,500 Mcf of top storage capacity and 5,025 Mcf per day of deliverability under the Program.

Transco states that it will utilize its share of the additional top storage capacity under the proposed new Program to assist in meeting the peak-day requirements of its many wholesale customers. In this connection, it filed concurrently its application in Docket No. CP64–43 consolidated in this proceeding with the instant Docket No. CP64–44. The rendition of service requested in Docket No. CP64–43 is dependent upon the approval of the Intermediate Development Program inasmuch as all of the peak day storage deliverability to be generated by the Initial Development Program has already been contracted for by Transco's customers, with full service to be reached in the 1965 storage season. United and North Penn will use their respective shares of the additional top storage capacity to assist in meeting the winter-day requirements of their wholesale and retail customers.

No additional physical facilities are required under the proposed Intermediate Development Program. This program would be carried out immediately upon completion of the previously authorized Initial Development Program.

Temporary certificate authorization for the proposed Intermediate Development Program and the sale and delivery of natural gas as requested in the respective dockets was issued to Applicants on October 30, 1963.

Pursuant to due notice, a public hearing was held in Washington, D.C., on November 7, 1963, respecting the matters involved in and the issues presented by the applications consolidated herein. A petition for leave to intervene was timely filed on October 28, 1963, by the Elizabethtown Consolidated Gas Company indicating its support for the applications and manifesting no desire for a formal hearing. No petitions of intervention in opposition or protests to the

granting of the applications were received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c) (1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicants, Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas; United Natural Gas Company, a Pennsylvania corporation having its principal place of business in Oil City, Pennsylvania; and North Penn Gas Company, a Pennsylvania corporation having its principal place of business in the Borough of Port Allegany, McKean County, Pennsylvania, are "natural-gas companies" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The Intermediate Development Program for the Wharton Storage Field, and the additional sale and delivery of natural gas as hereinbefore described, as more fully described in the respective applications in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The additional sale and delivery of natural gas by Applicant, Transcontinental Gas Pipe Line Corporation, as proposed in Docket No. CP64–43, are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) The Intermediate Development Program for the Wharton Storage Field by Applicants, Transcontinental Gas Pipe Line Corporation, United Natural Gas Company, and North Penn Gas Company, as proposed in Docket No. CP64–44, is required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

(7) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c) (1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Certificates of public convenience and necessity be and the same are hereby issued authorizing Applicant, Transcontinental Gas Pipe Line Corporation to sell and deliver natural gas as hereinbefore described, and in addition authorizing Applicants, Transcontinental Gas Pipe Line Corporation, United Natural Gas Company, and North Penn Gas Company to develop and operate the proposed Intermediate Development Program, all as more fully described in the respective applications in Docket Nos. CP64–43 and CP64–44, upon the terms and conditions of this order.

(B) The certificates issued by paragraph (A) above and the rights granted thereunder are conditioned upon the Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

OPINION NO. 411

SOUTH CAROLINA ELECTRIC & GAS COMPANY, PROJECT NO. 2315

OPINION SUPPLEMENTING ORDER ISSUING LICENSE

(Issued November 21, 1963)

Syllabus

1. Conditions historically included in licenses *discussed*. PP. 1338–1340.
2. Commission *imposes* improved license conditions for constructed hydroelectric project (revised Form L–3) and spells out future policy in this regard. P. 1338.
3. Study of economic feasibility is not believed necessary requisite to issuance of license for constructed project. P. 1340.
4. Commission must examine economics of unconstructed project based upon all its beneficial public uses in determining whether license should be granted. P. 1340.
5. Commission is not passing on economic feasibility in licensing constructed projects—nor does such action inhibit future action for rate-making or other regulatory purposes. PP. 1340–1341.
6. Immediate licensing offers most useful vehicle by which Commission can contribute to problem of improving operations of unlicensed constructed projects and development of streams in which they exist. PP. 1340–1341.
7. Commission *issues* license for constructed project in proceeding arising under Section 4(e) of the Federal Power Act. P. 1348.

Commissioner Ross *concurring* in part; *dissenting* in part.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

We are issuing today an order *infra* page 1346 granting a license to South Carolina Electric & Gas Company for the Neal Shoals development, Project No. 2315. In view of Commissioner Ross' statement concurring in part and dissenting in part to that order and commenting on the general subject of license conditions, we deem it appropriate to state our views in an opinion supplementing our order.

The Commission in recent months has undertaken a review of hydroelectric licenses in the interest of making the most effective use of its authority to impose conditions upon licensee in the public interest. This review has focussed on the need for conditions in licenses for existing projects, such as the Neal Shoals project to insure that the future operation of the projects will make the greatest possible contribution to the conservation and use of water resources for all legitimate purposes. This review has increased our awareness of the potential contribution of the license conditions to comprehensive resource development. We have strengthened the conditions in some areas, notably as to recreational uses and fish and wildlife facilities, and, as will be noted, the review process is a continuing one with further revisions being contemplated in other areas.

To insure that the Neal Shoals project and other constructed projects will be best adapted to a comprehensive plan under foreseeable contingencies, the license contains many conditions reserving specific authority to the United States or the Commission to require the licensee to make changes in the project and its operations during the period of the license, subject of course to the statutory safeguards of the Federal Power Act and the usual due process requirements. A number of these conditions have been included in our licenses for years substantially unchanged, but we think it will be useful briefly to summarize them in the following paragraphs for ready reference.

Navigation and regulation of storage and use to protect life, health and property.

Article 6 reserves the right to the United States to use project waters for purposes of navigation; makes the operations of the licensee affecting the use, storage, and discharge from storage of water affected by the licensee subject to such rules and regulations as the Commission may prescribe for the protection of life, health and property, and in the interest of the fullest practicable conservation and utilization of such waters for power and other beneficial public purposes, including recreational purposes.

Under Article 6 the United States retains the right to require, in the future, releases of water from the project reservoir in such volumes as the Secretary of the Army may prescribe in the interest of navigation or as the Commission may prescribe for other beneficial public purposes. In the event minimum releases become desirable in the future for pollution abatement, recreation, fish and wildlife or other public purposes they may be prescribed.

Article 7 requires the licensee to convey to the United States, free of cost, such of its lands and its rights-of-way and such right of passage through its dams or other structures, and to permit such control of the reservoirs, as may be required in the event the United States desires to construct navigation facilities in connection with the project.

Article 8 requires the licensee to furnish electric power free of cost for the operation of any navigation facilities whether constructed by the licensee or by the United States in the future.

Article 9 makes operation of any navigation facilities constructed in the future as part of the project subject to such reasonable rules and regulations as may be made from time to time by the Secretary of the Army.

Additional generating capacity.

Article 13[1] provides that the licensee shall install additional generating capacity or make other changes in the project as directed by the Commission, to the extent it is economically sound and in the public interest to do so.

Coordination with other power systems.

Article 14 requires electrical and hydraulic coordination of the operations of the project with other power systems. This article contemplates that coordination will result in net benefits to be shared by all parties involved, including the licensee.

Fish facilities.

Articles 15 and 16 provide the procedures and reserve the right to the United States to require the licensee during the license period to construct, operate and maintain fish facilities at its own expense and to modify project structures and operations in the interest of fish and wildlife resources. Should the United States desire to construct in the future fish facilities in connection with the project, the licensee may be required to permit the United States to use, free of cost, such of licensee's lands and project works as may be reasonably required to construct those facilities.

Recreational plan.

Article 17 requires the licensee upon subsequent order of the Commission to construct, operate and maintain recreational facilities, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities

---

[1] Article 13 was revised by changing the word "and" to "or" thus making it clear that the "other changes in the project" that may be directed by the Commission may be changes other than those relating to the installation of additional generating capacity.

and utilities.[2] Special Article 29 requires the licensee to file for Commission approval a recreational plan developed after consultation with appropriate Federal, State and local agencies.

Public access.

Article 18 requires the licensee to allow the public free access to project waters and project lands for navigation, recreation, fishing and hunting; and requires the licensee to permit construction by others of access roads, wharves, landings and other facilities for those purposes.

Soil erosion.

Article 19[3] places the responsibility upon the licensee to minimize soil erosion and siltation resulting from operation and maintenance of the project. The Commission may require specific measures and facilities to accomplish this purpose and to revegetate exposed soil.

Control of project property.

Article 21 requires the licensee to retain possession of project property needed for project purposes and Article 20[4] requires, with minor exceptions, Commission approval prior to the leasing of any project property.

Further conditions under consideration.

In addition to these conditions that are usually included in licenses the Commission is now preparing two additional conditions which it will propose and issue for comments soon under its rulemaking procedure. One would provide procedures under which project facilities, particularly reservoirs, may be used by others jointly with the licensee on a reimbursable basis for water supply for pumped storage hydroelectric, steam-electric, irrigational, municipal, industrial or similar purposes. The other proposed rule would require the licensee to publicize the license conditions of general public interest in order to inform the public generally of the privileges and responsibilities conferred upon the licensee.

Commissioner Ross, whose suggestions have been considered fully in the improvements we have made in our license conditions, also urges the inclusion in every license of a finding that the project is economic, for both constructed and unconstructed projects. With respect to unconstructed projects, all would agree that the Commission must examine the economics of a proposed project based upon all of its beneficial public uses in determining whether a license should be granted.

We do not believe, however, that in general a study of economic feasibility is a useful or necessary prerequisite to issuing a license for a constructed project. Most of the projects we are now bringing under license are relatively small and many of them, if built at all, would undoubtedly be built much differently if they were being constructed today. It seems to us an empty gesture to delay the licensing process while we apply pre-construction standards to projects built many decades ago. In licensing these projects we are not passing on whether they are economical and neither can our action in any way inhibit us in any future action for rate-making or other regulatory purposes.

---

[2] Article 17 spells out specifically the Commission's authority to require construction, maintenance and operation of recreation facilities subsequent to issuance of a license.

[3] An article similar to Article 19 has been prescribed in a few licenses in the past but it will be a standard condition in future licenses.

[4] Article 20 supersedes Article 15 of the License Form L–3 of December 15, 1953 (17 FPC 385–389). Article 20 reserves to the Commission greater control over leases of project property by requiring approval of leases involving lands, buildings or other property used or useful for *any project purpose.*

The abdication of our licensing responsibilities will not have the effect of transforming these unlicensed projects into economically feasible facilities. On the other hand, the exercise of our jurisdiction once the projects are under license may well result in improving their operation to the extent that they may become economically feasible. We are at long last subjecting these projects to regulatory scrutiny, including periodic safety inspection, as required by the Federal Power Act. To sanction the continued failure to comply with the Act, or to reject applicants who are cooperating in our program to bring all jurisdictional projects under license, is not in our view an action which is in the public interest.

In our judgment the better approach is to bring these projects under license where they can be inspected for safety of the structure and made subject to strengthened license conditions which give the Commission a wide assortment of controls over the licensee including provisions authorizing the Commission to direct economically sound changes in the licensed projects and to require minimum water releases. Licensing these projects will also subject them to the possibility of recapture, to the requirement to establish amortization reserves from surplus earnings, to the payment of license fees and to all the other incidents of licensing. It will then be possible for the Commission's staff to work with the licensees to bring about modernizations and other improvements in the public interest. The Commission will continue to take the lead in urging all power systems to substitute new efficient capacity for all types of inefficient plants. In some cases marginal hydroelectric projects will undoubtedly be abandoned as more economical power sources become available. But that is no reason for further delay in bringing existing plants under license at once. On the contrary, we believe that immediate licensing as required by the Federal Power Act offers the most useful vehicle by which the Commission can make a contribution to the problem of improving the operations of unlicensed constructed projects and the development in the public interest of the streams in which they exist.

Commissioner Ross *concurring in part* and *dissenting in part.*

Ross, Commissioner, *concurring in part* and *dissenting in part:*

In view of the fact that the Commission refrained from issuing any licenses for some months in order to allow an opportunity for a more adequate review of our license conditions and findings, I believe it is appropriate that I should comment on the general subject of license conditions, both as to unconstructed projects and as to constructed projects.

I am pleased to say that in the license recently issued for Project No. 2328 on October 22, 1963 an economic finding for an unconstructed project was included though a similar finding as to Project No. 2305 (Sabine) issued on October 14, 1963 was not included. However, it is my understanding that the Commission henceforth will give specific consideration to the economic aspects of all applications for licenses for unconstructed projects, a practice not uniformly followed in the past.

This brings us to the question whether the Commission should inquire into economic feasibility of a constructed project, considering all multipurpose uses, or whether it is more advantageous to quickly place all these constructed projects under license, economic or not, in order to impose upon the applicant the conditions set forth hereinafter. As a corollary to this problem, if the Commission should determine that a project is not economic, what are the courses of action left to it?

With this in mind, let us address ourselves to the project at hand. As is noted in the opinion, this project was constructed in 1905 on a navigable stream. Since that time, it has operated as an unlicensed facility.[1] In 1957, Unit No. 3 turbine was damaged beyond repair and is completely inoperable. The reservoir space of the project has silted to the rest of the spillway and pondage is obtained by the use of three foot high flashboards! This situation has persisted for over 20 years. The 1942 report of the Division Engineer[2] states that the reservoir of this and other projects in the area ". . . have so silted up that they now afford no pondage, and the plants are therefore run-of-stream plants." The same report, in which the Federal Power Commission concurred, found this plant to be obsolescent. Remember, the report was issued over 20 years ago. With a project of this nature, one naturally wonders if such a project is economic. Do the ratepayers benefit from the power generated by the project, considering its cost? Do our citizens as a whole benefit from this structure in terms of recreation, water quality control, fish and wildlife and other public purposes? It is safe to characterize this as a project best adapted to a comprehensive plan for improving a waterway when the project might well be an economic burden to all affected parties? In the absence of findings as to the economic nature of constructed projects, we can assume that such projects are, in fact, uneconomic under any reasonable standards.

This poses the important question as to whether the Commission should as a matter of policy seek to encourage the disposition of projects of this nature so as to more properly contribute to the welfare of the public?[3] Such disposition could be the complete removal of the project, or it could mean, among other things, converting the project to recreation by sale to an interested agency as the Wisconsin Public Service Company has recently done. At the very least, this Commission should examine the alternatives to the continued existence of this project which the majority state is for the primary purpose of producing power. If the project is only marginal or uneconomic, this fact will be a deterrent to any modification under our conditions. Any attempt to modify the operation or require recreational or stream pollution correction measures will, beyond any question, be met with the charge "We cannot afford it", "it is not reasonably consistent with the primary purpose of the project"[4] or is "not economically sound".[5] What's more, they will probably be correct, and our otherwise effective license conditions will be for naught. We should not lose sight of our obligation to properly utilize and conserve our natural resources. The same is applicable to other interested agencies. Neither Interior, the Corps of Engineers or Health, Education, and Welfare in commenting on this project have directed their attention to the issue whether the basin would be improved without the project. For an agency, merely to say we have no objection, particularly as to a project in existence since 1905, is not the searching type of review I consider necessary or appropriate. Would recreation be increased, would stream flow regulation be improved, would stream pollution be lessened, would fish runds be restored, would fish and wildlife be benefited by either the removal of the project or conversion

---

[1] Were it not for the recent acquisition of the project by South Carolina, it is doubtful that any license application for this project would be before us.

[2] Senate Document 189, 78th Cong., 2d Sess., p. 50.

[3] Only recently, by letter of October 21, 1963, the Department of Interior suggested that the Commission defer the grant of a license for Project 2317 in view of the probable imminence of the construction of a Federal project which would inundate the existing project.

[4] The standard imposed in license conditions 15, 16, and 17.

[5] The standard imposed in license condition 13.

to non-power uses? These questions and similar ones should be asked each time an applicant for a constructed project appears before us.

As silt has farreaching consequences on the economics of hydro projects over the course of years, so too will our action in licensing an uneconomic project have farreaching consequences. Our very act of granting a license is a blessing bestowed upon the applicant which will come back and haunt not only ourselves but also the South Carolina State Commission. By this action, we are approving the inclusion of the facility into the company's rate base, which incidentally raises the question of the propriety of including in the original cost, the amounts paid for land by the predecessor, an industrial concern. It certainly is not beyond the realm of possibility that without the powers of condemnation such former owners had to pay through the nose. Even had the project been owned by South Carolina Electric & Gas Company, we certainly have an obligation both to ourselves and to the South Carolina Public Service Commission to indicate this was not useful property. Their interest and ours in proper rates to the consumer should dictate a power expert's evaluation of the usefulness of this property. So too, we must be concerned about the possibilty that the company, in a short period of time, will seek to have the project declared obsolete and charge it off to the consumers. Surely, the same reasoning that led the Chairman to chastise New England Power Company about its tea kettle steam plants would apply here.

In my opinion, the approach suggested above is not only prudent but one required by the provisions of the Federal Power Act. There is absolutely no distinction in the requirements of Section 4(e) and 10(a), for example, with respect to constructed projects as compared to unconstructed projects. This should mean that *any* license we issue is best adapted to a comprehensive plan for improving a waterway for the use or *benefit* of interstate commerce, for the *improvement* and utilization of water power development, and for other beneficial public uses, including recreational purposes. Unfortunately, many of our licenses for constructed projects will never meet this requirement.

Certainly the Act does not require the casual type of approach to constructed projects which is employed by the majority. In fact, the Act requires much more. Surely it is primarily our obligation, the Federal Power Commission, not the state commissions, to hasten a proper disposition of this type of project which presently clutter up many of our streams. If one of our main purposes under the Act is to assure an abundant supply of electric energy with the greatest possible economy and with regard to the proper utilization and conservation of our natural resources,[6] then let us hasten on with our job.

In Articles 15, 16, and 17 which deal with the problem of fish and wildlife, and recreation, and which are becoming standard articles, it is said that modifications can only be required if they are "reasonably consistent with the primary purpose of the project". By emphasizing, particularly without a proper finding, the primary purpose of the project, the implication is left that *power*, will for the duration of the license be basically protected as against any valid claims for modifications for fish and wildlife and recreation. It is true that we are operating under an Act entiled the "Federal Power Act." However, Congress in 1920 and again in 1935 recognized and spelled out in several sections our responsibility to develop our rivers and streams from a multi-purpose point of view. Section 10(a) not only charges us with the duty to improve and develop our water power but also to develop our water-

[6] Federal Power Act, Section 202(a).

ways "for other beneficial uses, including recreation". We must consider and weigh and balance carefully the following uses: (1) flood control (2) domestic and municipal water supplies (3) the improvement and safeguarding of navigation (4) the reclamation and irrigation of land, including drainage (5) possibilities of hydro-electric power (6) soil conservation and utilization (7) forest conservation and utilization (8) preservation, protection and enhancement of fish and wildlife resources (9) the development of recreation (10) salinity and sediment control (11) pollution abatement and protection of public health, life and property, and (12) other beneficial uses. Thus, the weighing and balancing of these various interests must be done specifically in order to issue the license. Otherwise, Findings (4) and (6) [1] are a cover up for a single purpose power development. An applicant may merely be seeking a license to generate power. If this be the case and these other uses are incompatible either these uses should be prohibited or they should be meshed into the power use in a public interest fashion. So too, once a license is issued, all interests for the duration, are subject to the overriding public interest and should be and are generally contemplated to be subject to reasonable modification consistent with the provisions of the Act. If this not be the case, then it becomes ever more important that, at the time of the issuance, we should clearly spell out the exact limitations and rights as to each use for fifty year or shorter period, as the case may be.

Since this license is to be issued with this modifying phrase, I inquire as to the actual legal meaning and necessity of the phrase "reasonably consistent with the primary purpose of the project". In fact, I have an unfortunate apprehension that it means there will be no changes that would affect, in the slightest, power production for the duration of the license. I hope I prove to be a poor interpreter of the law. I hope that the confidence of the majority that the public interest in the conservation and best use of our natural resources is insured under these license conditions is not misplaced.

In Appendix I of the U.S. Study Commission for the Southeast River Basin, page 4-14, which report incidentally is a milestone in resource planning, it is noted that 'The forecasting of stream flow is essential in the proper management of water resources". This important fact is recognized in Article 6 of this license:

Article 6. The United States specifically retains and safeguards the right to use water in such amount, to be determined by the Secretary of the Army, as may be necessary for the purposes of navigation on the navigable waterway affected; and the operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Secretary of the Army may prescribe in the interest of navigation, and as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes; and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such

[1] (4) The issuance of a license for the project subject to the terms and conditions herein after imposed will not effect the development of any water resources for public purposes which should be undertaken by the United States.

(6) The project will be best adapted to a comprehensive plan for improving and developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes, upon compliance with the terms and conditions hereinafter imposed.

volume in acre-feet per specified period of time, as the Secretary of the Army may prescribe in the interest of navigation, or as the Commission may prescribe for the other purposes hereinbefore mentioned.

The issue is not simply whether it is recognized and will be adequately provided for by the issuance of future rules and regulations but whether something should be done now to meet the problem described in Appendix 9, 5–5 of said report, as follows:

Looking to the future, the heavy demands upon the surface water resource by growth of many urban areas and industries along reaches of rivers, and the requirement that these rivers must carry off residual wastes and still maintain some semblance of the quality necessary for use as a source of domestic water, and for recreation, and for preservation of fish and wildlife, it becomes obvious that regulation and improvement of low flow becomes a major necessity of the future. In fact, the problems of low-flow regulation may inevitably increase in importance until it overshadows the need for high flow regulations, or flood control.

It is my belief that before issuance of a license, a forecast should be made of the need for low-flow regulation under existing conditions. This not only will put the licensee on actual notice of such a requirement, thus inhibiting future cries of pain and anguish, but it will also effectively dispose of the problem. I am exceedingly concerned that in attempting to deal with complaints as they arise, due to the inherent delays of the administrative process, we will be locking the door after the horse is stolen. Furthermore, shouldn't we have an "on the record" acceptance by the licensee of this obligation? Low-flow regulation, like recreation and stream pollution will be to future generations what flood control and power developments were to our generation. The Southeast study would certainly seem to confirm this. To grant a license with the vesting of many rights in the licenses for many years without directing our specific attention to this increasingly important problem is an abdication of our responsibility as an organization presently charged with water resource development. If our staff has neither the time nor the experience to do so, we should seek assistance from other appropriate governmental organizations, state and federal, as we already do now in the case of fish and wildlife and as we plan to do in the field of recreation and these organizations should not treat this as a perfunctory request.

Related to stream flow control is the question of water supply storage. The appropriateness of this topic is evidenced by the State Water Plan Act passed by the Kansas legislature in 1963. Under the Act, the Water Resources Board is authorized to recommend the inclusion of water supply storage in any proposed or authorized federal project. Where authorized by the state water plan, the Board may enter into agreements with the federal government for the repayment of the costs of storage. Here again, consideration of appropriate storage requirements should be recognized and prescribed before a license is issued. Otherwise, the need may not be satisfied.

Any person, State, municipality, or State Commission complaining of anything done or omitted to be done by any licensee or public utility in contravention of the provisions of this Act may apply to the Commission by petition which shall briefly state the facts, whereupon a statement of the complaint thus made shall be forwarded by the Commission to such licensee or public utility, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time to be specified by the Commission. If such licensee or public utility shall not satisfy the complaint within the time specified or there shall appear to be any reasonable ground for investi-

gating such complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall find proper. [49 Stat. 856; 16 U.S.C. 825e.]

While it is true all persons, even laymen, are presumed to know the law, including all provisions of the Federal Power Act, it has been my experience that few people, not excluding state officials, are usually ignorant of many of their rights. Since the licenses to be issued affect more and more the lives of all of us, particularly insofar as recreation and fish and wildlife are concerned, and since it is hoped a procedure can be developed by which these licenses will be a matter of public record in those areas where the projects are located, I think it would be highly desirable that every license include in full the above cited section. Many of our regulatory laws which are designed to protect the public are based upon the philosophy that effective regulation of necessity will result in part from legitimate complaints of the public. In fact, the public, in many cases, are the very ones who spur a regulatory body into action. Therefore, at the admitted risk of possibly encouraging groundless complaints, I would make it clear to the public in the license itself that there is a means of redress available to them. This may put us on the spot more frequently than we might desire but isn't that to be expected in assuming the role of the defender of the public interest?

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

SOUTH CAROLINA ELECTRIC & GAS COMPANY, PROJECT NO. 2315

ORDER ISSUING LICENSE (MAJOR)

(Issued November 21, 1963)

Application was filed on June 13, 1962 by South Carolina Electric & Gas Company (Applicant) of Columbia, South Carolina, for license under Section 4(e) of the Federal Power Act (Act) for constructed major project No. 2315, known as the Neal Shoals Project, located on the Broad River about 60 miles upstream from Columbia, in Chester and Union Counties, South Carolina, in the region of Leeds, Santuck, Carlisle and Union, South Carolina.

The Neal Shoals Project was constructed and placed in operation in 1905 by Union Manufacturing and Power Company. The installation in the powerhouse remains essentially as originally constructed. The development was acquired by United Merchants and Manufacturers, Inc. (United Merchants) in 1946. By our order issued September 4, 1962[1] we authorized and approved the acquisition and merger or consolidation of certain facilities of United Merchants, comprising the Neal Shoals Project, with those of Applicant. Our order provided that the authorization would expire unless the transaction therein approved were consummated within 60 days from the date of issuance of the order.[2]

The Secretary of the Army and the Chief of Engineers, in reporting on the application, have advised that the plans of the project structures were satisfactory insofar as the interests of navigation are concerned and the plans were approved pursuant to Section 4(e) of the Act.

The Department of the Interior, in reporting on the application, stated, among other things, that no Commission action should be taken that would make more

---

[1] Docket No. E-7039.

[2] Pursuant to requests therefor, several extensions of time to consummate the acquisition and merger transaction were granted Applicant pending the promulgation of a Commission order issuing a license to Applicant for the Neal Shoals Project. (Docket No. E-7039.)

difficult a plan of comprehensive development[8] of the Santee-Congaree-Broad River system to include development of the Blairs multiple-purpose project which would inundate the Neal Shoals Project. While recent consultation between Commission staff and the U.S. Corps of Engineers disclosed that present studies by the Corps of the Santee River Basin do not include the Broad River, provision is hereafter made in the interest of a more comprehensive plan of development of the Santee-Congaree-Broad River system.

The South Carolina Wildlife Resources Department offered no objection to issuance of a license for the project.

The Santee and Congaree Rivers have been improved for navigation to Columbia, South Carolina, and on the Broad River above Columbia improvements made prior to 1880 permitted commercial navigation for about 200 miles on this stream and its tributaries. The Broad River unites with the Saluda River at Columbia, South Carolina, to form the Congaree River, a tributary of the Santee River, and the Santee, Congaree and Broad Rivers have such width, depth, channel, banks, and flow that they have been and are now suitable for the transportation of persons or property in interstate commerce.

For the reasons set forth in Opinion No. 357 pertaining to the Public Service Company of New Hampshire's Project No. 2288 (27 FPC 830, 834), the license herein granted shall have an effective date of April 1, 1962 and a termination date of December 31, 1993.

The Commission finds:

(1) The Broad River is a navigable waterway of the United States from its mouth at Columbia, South Carolina, at least to a point in the State of North Carolina about 28 miles northerly from the North Carolina-South Carolina boundary, and about 141 miles upstream from Columbia. The Neal Shoals Project is located upon a navigable waterway of the United States.

(2) Applicant is a corporation organized under the laws of the State of South Carolina and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effect the purposes of a license for the project.

(3) Public notice of the filing of the application has been given. No protests have been received. No conflicting application is before the Commission.

(4) The issuance of a license for the project subject to the terms and conditions hereinafter imposed will not adversely affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) The hereinafter-described double circuit 13.2 kv transmission line extending from Neal Shoals to Union Mill at Union, South Carolina, with one circuit extending to the Midway Substation and then to Buffalo Mill at Buffalo South Carolina, are parts of the project within the meaning of Section 3 (11) of the Act and should be included in the license for the project.

(6) The project will be best adapted to a comprehensive plan for improving and developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of waterpower development, and for other beneficial public uses, including recreational purposes, upon compliance with the terms and conditions hereinafter imposed.

(7) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charges is 5,200 horsepower. The energy generated by the project will be integrated into Applicant's transmission system and distributed and sold for public utility purposes.

[8] Senate Document No. 189, 78th Congress, 2d Session.

(8) The amount of annual charges to be paid under the license for the project for the purpose of reimbursing the United States for the costs of administration of Part I of the Act is reasonable as hereafter fixed and specified.

(9) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of the license for the project.

The Commission orders:

(A) This license is hereby issued to South Carolina Electric & Gas Company (hereinafter referred to as the Licensee) under Section 4(e) of the Act for a period effective as of April 1, 1962, and terminating December 31, 1963, for the continued operation and maintenance of the Neal Shoals Project No. 2315, located on the Broad River, a navigable water of the United States, in Chester and Union Counties, South Carolina, subject to the terms and conditions of the Act, which is incorporated by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) The project consists of:

(i) All lands constituting the project area and inclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the licensee or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit J: (FPC No. 2315–1) Map of Project Area; and

Exhibit K: (FPC No. 2315–3) Map of the Project Area

(ii) Project works consisting of: a gravity type dam 1,087 feet long, constructed of granite blocks and concrete with three-foot wooden flashboards across a 481-foot section; a reservoir extending about 10 miles upstream with an area of about 600 acres; an open flume to the powerhouse; a powerhouse containing four generating units each having a capacity of 1,300 kilowatts (one of which is inoperable); a double circuit 13.2 kv transmission line about 14 miles long extending to Union Mill at Union, South Carolina with one circuit extending about three miles to Midway Substation and then two miles to Buffalo Mill at Buffalo, South Carolina; and appurtenant facilities; the location, nature, and character of which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also formed part of the application for license and which are designated and described as follows:

Exhibit L: (FPC No. 2315–4) Plan of Dam, Powerhouse and Vicinity—Typical Sections through Dam;

(FPC No. 2315–5) Plan and Elevation of Power Plant Structure—Typical Section Through Unit; and

Exhibit M: Two typewritten pages, entitled "Neal Shoals Hydro-General Description of Mechanical and Electrical Equipment" filed in the Commission on June 13, 1962.

(iii) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as a part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L–3, November 1, 1963, *infra* page 1658, entitled "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States", which terms and conditions, designated as Articles 1 through 27, are attached hereto and made a part hereof; and subject to the following special conditions set forth herein as additional articles:

Article 28. The Licensee shall pay to the United States the following annual charge:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act one (1) cent per horsepower on the authorized installed capacity (5,200 horsepower) plus two and one-half (2½) cents per 1,000 kilowatt-hours of gross energy generated during the calendar year for which the charge is made; or such other amounts as may hereafter be determined as necessary to reimburse the United States for the costs of administration.

Article 29. The Licensee shall within one year from the date of issuance of the license, file with the Commission for approval its proposed recreational use plan for the project. The plan shall be prepared after consultation with appropriate Federal, State and local agencies, and shall include recreational improvements which may be provided by others in addition to the improvements the Licensee plans to provide.

Article 30. The right, power, and authority is reserved to the United States to construct or to the Commission to issue a license authorizing the construction, operation and maintenance of a hydroelectric project which will more completely utilize the water resources of the reach of Broad River in which the project is located.

Article 31. The acceptance of this license by the Licensee shall constitute its stipulation, consent and agreement made upon its own behalf and upon the behalf of its successors and assigns for the benefit of the United States, or the person or persons hereinafter constructing, operating and maintaining such more complete hydroelectric project or his or their successors and assigns, that said Licensee, its successors or assigns, shall surrender its license at such time as the project becomes inoperative by reason of inundation by such more complete hydro-electric project; Provided, that Licensee shall be paid the net investment in Project No. 2315 upon surrender of its license; and Provided further that Licensee shall not be entitled to any compensation for severance damages sustained by reason of inundation or destruction of the project or project works of Project No. 2315, other than for such damage to telemetering and remote control equipment.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of this license.

(E) This order shall be effective upon the date South Carolina Electric & Gas Company consummates the transaction authorized by the Commission in Docket No. E–7039 by its order issued September 4, 1962, as amended, authorizing the acquisition and merger or consolidation of facilities. The Company shall notify the Commission of the date of consummation within ten days thereafter.

(F) This order shall become final 30 days from the date upon which it becomes effective as provided in paragraph (F) above unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the Licensee and returned to the Commission within 60 days from the effective date of this order.

737–370—66——88

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

AREA RATE PROCEEDING, ET AL., DOCKET NO. AR61-2, ET AL.

ORDER DENYING MOTION TO DIRECT CERTAIN RESPONDENTS TO SUBMIT AND STAFF TO COMPILE COST DATA

(Issued November 22, 1963)

On October 25, 1963, Hunt Oil Company, Hassie Hunt Trust, H. L. Hunt, W. H. Hunt, Lamar Hunt, Caroline Hunt Sands, William Herbert Hunt Trust Estate, Claude M. Langton, Trustee, Secure Trusts, Lyda Hunt-Caroline Trusts, Lyda Hunt-Bunker Trusts, Lyda Hunt-Lamar Trusts, Lyda Hunt-Herbert Trusts, Lyda Hunt-Margaret Trusts and Placid Oil Company (Hunt, *et al.*) filed a motion with respect to the Appendix A and C data filings called for by the Commission's order of December 12, 1962, in which they request the Commission to issue an order directing 36 named respondents (including one of the movants) to clarify the Appendix A data filings they have made so as to make the data suitable for compositing by the Commission's staff; and 125 named respondents (including six of the movants) who have not previously submitted Appendix A and C data to submit such data for compositing by the staff unless such submissions were not required by the Commission order.

Pursuant to the Commission's December 12, 1962, order, certain data were required to be filed on Appendix A and C questionnaire forms attached to the order. The order made filings by certain non-operator respondents optional under conditions stated therein. The staff was required to composite the data filed and distribute the composites to the parties in the proceeding. In June, 1963, the staff distributed the composites in the form of the basic data exhibits it intends to introduce into the record in the proceedings. Simultaneously, the original data filings of respondents were made available for examination in the Office of Public Information of the Commission.

The motion filed by Hunt, *et al.*, is based on the fact that the composited material distributed by the staff does not reflect data of all of the respondents in the proceeding. As to some of the material not included in the composites, the staff in distributing its composite exhibits stated that the filed data were not composited because "the data so reported did not lend itself to summarization and was therefore not included." As to others it of course may reflect failure of the respondent to avail itself of the option to make any filing. In seeking the relief requested it is apparent that the thrust of the motion of Hunt, *et al.*, is directed to the issue of the representativeness of the data included in the basic data exhibits. Presumably Hunt *et al.*, are taking the position that only if data are obtained from a greater number of respondents the composites would be representative.

These proceedings are presently pending before a hearing examiner designated by the Commission. A series of prehearing conferences have already been held. On December 3, 1963, in accordance with the Commission's order of May 16, 1963, the staff and all other parties are required to introduce their direct presentations into the record. Subsequently on dates which have been set, rebuttal presentations will be introduced and cross-examination will take place. When the hearings are concluded, among other issues, the issue of the representativeness of data included in the basic data exhibits as well as the weight to be attached to any studies based thereon will be determined initially by the presiding examiner and ultimately by the Commission. In arriving at such a determination

the presentations of the staff and all other parties and interveners will be considered and the data will be accorded the weight to which they are entitled. A Commission determination of the issue which underlies the motion of Hunt, *et al.*, in advance of the completion of the record and final submission for decision obviously would be premature. Specifically it would be inappropriate for us to attempt to make any determination at this time as to whether the data in the staff's composites are or are not representative or whether it would be necessary to obtain additional data to make the composites representative. Accordingly, Hunt, *et al.*'s motion must be denied. This action does not preclude Hunt, *et al.*, or any other parties to the proceedings from raising the issue of representativeness of the data before the presiding examiner or before the Commission at such time as the examiner's initial decision comes up for review. Nor does it foreclose Hunt, *et al.*, from seeking to secure such additional information from the nonresponding or nonresponsive producers as they desire.

The Commission orders:

The motion filed by Hunt, *et al.*, on October 25, 1963, directing certain respondents to submit data and the staff to composite such data is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

HOLYOKE WATER POWER COMPANY, DOCKET NO. E-7132

ORDER AUTHORIZING THE ISSUANCE OF COMMON STOCK

(Issued November 22, 1963)

Holyoke Water Power Company (Applicant), incorporated by special charter under the laws of the Commonwealth of Massachusetts and doing business in that State with its principal place of business in Holyoke, Massachusetts, filed an application on October 21, 1963, seeking authorization pursuant to Section 204 of the Federal Power Act, for the issuance of 240,000 additional shares of Common Stock, par value $5 per share, to effect a 2-for-1 split of the outstanding Common Stock of the Applicant.

Applicant has outstanding 240,000 shares of Common Stock, par value $10 per share. Applicant proposes to issue to its existing Common Shareholders as of the close of business on December 20, 1963, one additional share of common stock par value $5 per share for each share held and to change the par value of the outstanding stock to $5 per share.

The proposed issuance of 240,000 additional shares to its existing stockholders is, under these circumstances, a stock split which will not result in a change in the equity of the existing stockholders or in the total capitalization of the Applicant.

According to the Application, the purpose of the proposed issuance of Common Stock is to increase the availability of the stock to potential investors, and thus achieve wider distribution of Applicant's capital stock. Applicant believes that this would be beneficial particularly in connection with any future financing through the issuance of securities. Applicant states that there is presently a rather thin market for Applicant's stock which is traded over the counter.

Written notice of the application has been given to the Massachusetts Department of Public Utilities and to the Governor of that State. Notice of the

application was also published in the Federal Register on October 31, 1963 (28 F.R. 11653), stating that any person desiring to be heard or to make any protest with reference to said application should on or before November 15, 1963, file with the Federal Power Commission, Washington, D.C., petitions or protests. No petitions or protest or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued May 12, 1959 (Docket No. E-6875), *In the Matter of Holyoke Water Power Company*, 21 FPC 676.

(2) The proposed issuance of Common Stock, as described above will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issue here involved is regulated by a State Commission within the meaning of Section 204(f) of the Act, and the proposed issuance of Common Stock, as described above, is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(4) The proposed issuance of Common Stock, as described above, is exempt from the competitive bidding requirements of Section 34.1a of the Commission's Regulations under the Federal Power Act by reason of Paragraph 34.1a(a)(1) thereof.

(5) The proposed issuance of Common Stock, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

The Commission orders:

(A) The proposed issuance of Common Stock, as described above, upon the terms and conditions and for the purposes specified in the application, is hereby authorized, subject to the provisions of this order.

(B) This authorization shall expire unless the transaction hereby authorized is consummated within 60 days from the date of issuance of this order.

(C) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuations, estimates or determinations of costs, or any other matter whatsoever which is now pending or which hereafter may come before this Commission or any other regulatory body.

(D) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect of any securities to which this order relates.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NOS. CP60-122, CP61-203

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 22, 1963)

On August 29, 1963, Texas Eastern Transmission Corporation (Movant) filed in Docket Nos. CP60-122 and CP61-203 a motion to amend the Commission's order issued December 17, 1962, in said dockets, to effect a reduction in the volumes of natural gas authorized to be sold and delivered to two customers, the Penn Fuel Group Companies and the Shippensburg Gas Company, and in addition, to reflect the change of names of three of the companies composing the Penn Fuel Group Companies, all as more fully set forth in the subject motion.

The subject order authorized Movant, among other things, to sell and deliver a maximum daily quantity of 3,999 Mcf[1] of natural gas to the Penn Fuel Group companies[2] consisting of Ashland Gas Light Company, Hamburg Gas and Fuel Company, Huntingdon Gas Company, Lewistown Gas Company, Mt. Carmel Citizens Gas Company, and Pottsville Gas Company, and 398 Mcf of natural gas to Shippensburg Gas Company (Shippensburg). Since issuance of the subject order, the Penn Fuel Group has experienced cutbacks by certain of their industrial customers. This, combined with an increase in the requirements of one member of the Penn Fuel Group, results in a net reduction of 2,275 Mcf of natural gas per day for the Group as a whole which makes their required volumes only 1,724 Mcf in lieu of the authorized 3,999 Mcf granted in the subject order. In addition, two communities served by Shippensburg have demonstrated a need for additional volumes of 289 Mcf per day over and above those presently authorized. The involved customers have therefore requested Movant to make the necessary adjustments. They are as follows:

Customers	Originally authorized volumes	Desired volumes Mcf/day at 14.73 psia
Penn Fuel Group companies	3,999	1,724
Shippensburg Gas Co.	398	687

In addition, Movant states that subsequent to issuance of the subject order three companies of the Penn Fuel Group have undergone name changes which are follows:

Old Name	*New Name*
Ashland Gas Light Company	Ashland Gas Company
Hamburg Gas and Fuel Company	Hamburg Gas Company
Mt. Carmel Citizens Gas Company	Mt. Carmel Gas Company

[1] All volumes are at a pressure base of 14.73 psia.

[2] Of the volumes authorized to be delivered to the Penn Fuel Group Companies, 1,785 Mcf was authorized in Docket No. CP60-122 and 2,214 Mcf was authorized in Docket No. CP61-203.

It appears that the net reduction from the volumes as originally authorized are not necessary for any of the Penn Fuel Group Companies or Shippensburg to render adequate natural gas service in the areas served by them. Amending the order of December 17, 1962, in accordance with Movant's motion will make the released volumes of gas available to others along Movant's pipeline system for distribution to the general public.

Due notice of the filing of the motion to amend and opportunity for hearing thereon has been given by publication in the Federal Register on October 9, 1963 (28 F.R. 11242). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order, issued December 17, 1962, in Docket Nos. CP60–122 and CP61–203 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order, issued on December 17, 1962, in Docket Nos. CP60–122 and CP61–203 be and the same is hereby amended by authorizing Texas Eastern Transmission Corporation to transport and deliver 1,724 Mcf of natural gas per day to the Penn Fuel Group Companies in lieu of the 3,999 Mcf of natural gas per day heretofore authorized by said order, and to transport and deliver 687 Mcf of natural gas per day to the Shippensburg Gas Company in lieu of the 398 Mcf of natural gas per day heretofore authorized by the same order, all as hereinbefore described and as set forth in the subject motion.

(B) The Commission's above-mentioned order is further amended by changing the names of three of the Penn Fuel Group Companies as follows:

Ashland Gas Light Company to Ashland Gas Company
Hamburg Gas and Fuel Company to Hamburg Gas Company
Mt. Carmel Citizens Gas Company to Mt. Carmel Gas Company

(C) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

AREA RATE PROCEEDING (HUGOTON-ANADARKO AREA), DOCKET NO. AR64–1, AND AREA RATE PROCEEDING (TEXAS GULF COAST AREA), DOCKET NO. AR64–2

ORDER INSTITUTING AREA RATE PROCEEDINGS

(Issued November 27, 1963)

On September 28, 1960, the Federal Power Commission issued its decision in the *Phillips Petroleum Company* rate case, 24 FPC 537, in which it concluded that individual company cost of service concepts did not constitute a meaningful method for fixing the rates of independent producers of natural gas, and that it intended to fix such rates in the future on an area basis.[1] These determinations were recently affirmed by the Supreme Court in *Wisconsin, et al.* v. *Federal Power Commission*, 373 U.S. 294.

[1] See Statement of General Policy 61–1, 24 FPC 818, 902, and 1107, 25 FPC 595, 26 FPC 661, 28 FPC 441 and 29 FPC 590 [and orders issued this day, *infra*, pp. 1370, 1374 and 1435].

The Commission has already instituted two area rate proceedings. The first of these, Docket No. AR61–1 (Permian Basin Area), will fix just and reasonable rates for the Permian Basin Area which encompasses the Permian Basin geographical area of New Mexico and Texas Railroad Commission Districts Nos. 7(c) and 8, Texas. Hearings on the rates for jurisdictional sales involved in this proceeding have recently concluded and the decisional stage has begun. Hearing procedures for the other pending proceeding, Docket No. AR61–2, involving the Southern Louisiana area were established by order of May 16, 1963. Pursuant to this order a number of hearing conferences have been held, and a schedule fixed for the introduction of evidence commencing on December 3, 1963.

As a next step in fixing just and reasonable area rates, we believe that additional area rate proceedings should now be instituted. To this end, we have promulgated a cost and operating data questionnaire to more than one-hundred principal natural gas producing companies making sales of natural gas for resale. Data received from the respondents to this questionnaire will be a prime source of information to be utilized by the parties to the proceedings, including the Commission's staff.

Our experience in the pending area rate proceedings indicates that, it is nevertheless propitious to program additional area rate proceedings in advance of the hearing date and we are therefore instituting two additional area proceedings at this time. This action is desirable so that companies with jurisdictional gas sales in given areas and pipelines, distribution companies and other interested parties dependent upon or affected by such sales will be able to plan in advance for their participation in such proceedings. Also, the advance planning that can take place in hearing conferences can be of immeasurable value in disposing of attendant procedural questions arising in connection with proceedings of this scope involving the participation of many diverse interests.

Accordingly, two additional proceedings are instituted herewith to fix just and reasonable rates in the following geographical areas:

(1) Area Rate Proceedings (Hugoton-Anadarko Area), Docket No. AR64–1—

(a) Oklahoma Panhandle Area—consisting of Cimmarron, Texas Beaver, Harper, Woodward and Ellis Counties.

(b) Oklahoma Anadarko Area—consisting of Woods, Alfalfa, Grant, Major, Garfield, Dewey, Blaine, Kingfisher, Roger Mills, Custer, Canadian, Beckham, Washita, Caddo, Grady Counties and that part of Stephens County lying within township 2 North, Range 4 and 5 West.

(c) Texas Railroad Commission District No. 10—consisting of the following counties: Armstrong, Briscoe, Carson, Castro, Childress, Callingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, Wheeler

(d) Kansas Area—consisting of the entire State of Kansas.

(2) *Area Rate Proceeding* (Texas Gulf Coast Area), Docket No. AR64–2.

(a) Texas Railroad Commission District No. 2—consisting of the following counties: Live Oak, Kanes, DeWitt, Lavaca, Bee, Goliad, Victoria, Jackson, Refugio, Calhoun.

(b) Texas Railroad Commission District No. 3—consisting of the following counties: Lee, Burleson, Brazos, Madison, Fayette, Washington, Grimes, Walker, Trinity, Colorado, Austin, Waller, Montgomery, San Jacinto, Polk, Wharton, Ft. Bend, Harris, Liberty, Hardin, Tyler, Matagorda, Brazoria, Galveston, Chambers, Jefferson, Orange, Jasper, Newton.

(c) Texas Railroad Commission District No. 4—consisting of the following counties: Webb, Duval, Jim Hogg, Brooks, Kenedy, Starr, Hildago, Willacy, Cameron, Aransas.

The completion of these additional area rate proceedings, coupled with those in the Permian Basin and Southern Louisiana, will result in the establishment of fully effective rate regulation for approximately 75 percent of the sales of natural gas made in interstate commerce.[2] Equally important, all major consumption areas of the United States will benefit directly from the early completion of these proceedings. Permian Basin production is the prime source of gas for California on the West Coast. Most of the natural gas produced and sold from Southern Louisiana and Texas Gulf coastal regions is destined for consumers in Northeastern and Southeastern United States, while that from the Hugoton-Anadarko area is consumed largely by natural gas users in the Midwest.

In light of the dissent, we emphasize that our action herein has no bearing on any of the substantive questions involved in the pending Permian and Southern Louisiana area rate proceedings or in the two new area rate proceedings which we are initiating.

The problems discussed in the dissent are among the central issues in the pending area proceedings. We believe the Commission will be able to reach a result in these proceedings which will provide just and reasonable rates for the industry and protection to the consumers. However, we do no suggest that the problem of developing workable standards for determining just and reasonable rates for producers on an area basis is susceptible to easy solution. As the Supreme Court observed in its recent decision, authorizing us to proceed along this path, there are "unusual difficulties inherent in regulating the price of * * * natural gas." *Wisconsin* v. *F.P.C.*, 373 U.S. at 310.

The fact that our task is difficult is no reason to shy away from getting on with the job which the Supreme Court initially placed upon us in its 1954 decision in the *Phillips* case.[3] We do not believe that consistent with our statutory duties we can await determination of one area proceeding before we initiate others and we see no reason to believe that a national synthesis can be easily developed by blanketing into one mass hearing all of the different problems inherent in producer regulation in the various gas producing areas of the whole country.

If we shared Commissioner Ross' doubts as to the difficulty of developing adequate records in a series of broad area proceedings,[4] and his belief that a single nationwide proceeding is administratively feasible and substantively superior to area proceedings, we should suffer the necessary delays required in order to enable us to go forward in this manner. We do not share his appraisal of either aspect of the problem and go forward with the area approach to the solution of the producer rate problem with the conviction that it is the best available method to bring this already too-long-delayed matter to a proper conclusion with risking delays which would subvert the purpose of the proceedings.

We do not, of course, suggest that the records to be made in the cases we are initiating today should necessarily follow the pattern of the record in the *Permian* case. On the contrary, in view of the necessary time to secure the

---

[2] See Federal Power Commission Publication *Sales By Producers of Natural Gas to Natural Gas Pipeline Companies*, 1961, Table 5, page 9.

[3] *Phillips Petroleum Company* v. *Wisconsin*, 347 U.S. 672.

[4] Docket No. AR61-1—Permian includes three pricing areas. Docket No. AR61-2—Southern Louisiana includes one pricing area. Docket No. AR64-1—Hugoton-Anadarko includes four pricing areas and a portion of a fifth area. Docket No. AR64-2—Texas Gulf Coast includes three pricing areas.

1962 data for use in the cases instituted here, the record and decision in Permian will be available as a guideline for improving the record made in these proceedings. Balancing the evils of delay against the possibility of perfection is always difficult. Our judgment is that further delay in an attempt to develop *a priori* an overall system of producer pricing for the entire nation in advance of examination of the records being established in the two pending proceedings, as well as those hearings here inaugurated, would not be the path toward perfection but, on the contrary, would be a great disservice both to the consuming public, which is entitled to the protection of the Natural Gas Act, and to the producers who are entitled to know what they are being paid for the natural gas they sell in interstate commerce.

These two new proceedings, like those already pending, will result in the establishment of just and reasonable rates under Section 5(a) of the Natural Gas Act. The investigation will encompass not only issues related to the establishment of particular area rates for the future, but will also consider whether such area rates should be uniform throughout separate production areas which are being consolidated for joint hearing, or should vary from different production areas or for any other geographical area encompassed within the proceeding. The Commission will accept and consider petitions by any party to either proceeding filed within three months of this order (and served upon all other parties thereto) seeking to enlarge the areas to be considered in either proceeding.

All persons making sales of gas in interstate commerce from the production areas delimited herein are being made respondents to these proceedings. Specifically, a list of respondents to the Hugoton-Anadarko proceeding is attached hereto as Appendix A and respondents to the Texas Gulf Coast proceedings are listed in Appendix B.

The other important statutory phase of the proceedings pertains to the fixing of just and reasonable producers' rates pursuant to Section 4(e) of the Act. All proceedings involving increased rate filings suspended by the Commission, applicable to sales of natural gas from points within the geographical boundaries defined above, will be consolidated and disposed of by these two proceedings. A list of persons having such rate increases on file with the Commission for gas sales originating from the Hugoton-Anadarko area is set forth in Appendix C hereto and those from the Texas Gulf Coast Area are found in Appendix D attached hereto.

Further orders specifying future procedures in these proceedings will be issued as appropriate.

The Commission orders:

(A) Proceedings are hereby instituted, pursuant to Section 4, 5, 10, 14, 15, and 16 of the Natural Gas Act, to determine the just and reasonable rate or rates for the sales of natural gas subject to the jurisdiction of the Commission, produced in the geographical areas designated above, and public hearings shall be held in *Area Rate Proceeding* (Hugoton-Anadarko Area), Docket No. AR64–1 and in *Area Rate Proceeding* (Texas Gulf Coast Area), Docket No. AR64–2 at a time and place hereafter to be ordered by the Commission. All persons named in Appendix "A"* and Appendix "B"* hereto and all parties on whose behalf such persons have filed FPC gas rate schedules for sales in either of such areas are hereby made respondents in Docket No. AR64–1 and Docket No. AR64–2, respectively.

(B) The proceedings hereinbefore instituted shall also encompass the investigation of facts, conditions, practices, or matters relating to the sale of natural

*Omitted in printing.

gas produced in said geographical areas to aid in the enforcement of the provisions of the Act or in prescribing rules and regulations thereunder, and shall also encompass issues as to whether any rate or charge demanded, observed, charged or collected by any natural gas company in connection with such sales is unjust, unreasonable, unduly discriminatory or preferential.

(C) The procedure to be followed in these proceedings shall be prescribed by subsequent order or orders of the Commission.

(D) The Section 4 proceedings listed in Appendix B* are hereby consolidated for purposes of hearing with *Area Rate Proceeding* (Hugoton-Anadarko Area), AR64–1, and those Section 4 proceedings listed in Appendix D* are hereby consolidated for purposes of hearing with *Area Rate Proceeding* (Texas Gulf Coast Area), AR64–2.

(E) Any person, other than the respondents specifically named in Appendices "A", "B", "C",* and "D", who desires to participate as an intervener in either of the area rate hearings designated hereinabove ordered to be held shall, on or before January 2, 1964, file a notice of intervention or petition to intervene with the Secretary of the Commission setting forth therein the basis claimed for the right to intervene in such proceeding. On or before *January 31*, 1964, the Secretary of the Commission shall advise all participants in the two rate proceedings of the names of all persons who have filed notices of intervention or petitions for leave to intervene.

(F) A copy of this order shall be published in the Federal Register and served upon each of the respondents set out in Appendices "A", "B", "C", and "D"; and upon all purchasers of natural gas sold subject to the Commission's jurisdiction in the Hugoton-Anadarko and Texas Gulf Coast Areas as delimited hereinabove, and upon interested States Commissions as is provided for in Section 1.19 of the Commission's Rules of Practice and Procedure.

Commissioner Ross *dissenting.*

Ross, Commissioner *dissenting:*

Natural gas is one of the nation's most important sources of energy. It is presently being found in areas ranging from New York and Louisiana to Wyoming and California. It constitutes the source of roughly one-third of the energy consumed by this nation.

Like it or not, this Commission has been given the task of determining a fair price for this resource. To date, the Commission has gone down different roads in an attempt to find the right course. Our predecessors started out with a typical utility-type cost of service approach. As conducted, this proved unworkable. In lieu thereof, they instituted an area rate proceeding which, essentially, was an effort to avoid some of the administrative and conceptual difficulties experienced in *Phillips* while giving approximate recognition to the generally accepted identification of the various producing areas based on the similarity of geological formation and of price. At one time, the relative separateness of the producing areas might have justified such an approach. About fifteen years ago, there was a general identification between certain producing areas on the one hand, and certain pipelines on the other. In turn, the pipelines could directly be related to separate and distinct marketing areas. There were in fact, several neat little packages, much like the thirteen original colonies before the formation of the Union.

During the 1950's demand exploded, new markets craved for gas, pipelines strained to cover them, and new discoveries were engendered. There was no time to sit back and determine the most economical way to provide this commodity—pipelines bought gas where they could get it. In this they were limited

*Omitted in printing.

by the long term tie-up of existing discoveries resulting from the Commission's insistence on 20 year reserves and 12 year deliverability. By 1960, with the extension of pipelines into new producing area, and with the exchanges and sales of gas between pipelines, the industry was reaching maturity on a national scale. No longer could definable producing areas be exclusively identified with distinct market areas. Nevertheless, it was at this time that an approach was adopted which looked towards analysing the industry in an area fashion.

We now have our first area case almost completed. It has been one of the most exhaustive and thoroughly litigated cases in our history. The Examiner and most of the parties have already made extensive studies of the problem and have discovered that most of the basic, critical issues are national or industry-wide in scope and are faced with the choice of making a decision on these issues in the framework of a proceeding arbitrarily and artificially cut-off from the other producing areas, which necessarily will be affected by the result.

The question we should ask ourselves in instituting additional area proceedings is whether the area approach will permit a satisfactory conclusion. The experience in *Permian* strongly suggests that the area approach, as presently constituted, and as presently contemplated, is a far cry from being the golden key which will unlock the heretofore undiscovered secrets for successful producer regulation. Initially, the proceeding was commenced with no guidance by the Commission, and the parties floundered around considerably. Partly as a result of the insistence of the Examiner and partly as a result of the experience of the parties, their counsel and expert witnesses in dealing with this experimental approach, finally a measure of order has been achieved out of the mutual chaos. Despite the laudable efforts of the Examiner and all the parties, many serious issues have arisen under this new method. This was not unexpected in and of itself. What has turned out to be unpredictable, however, has been the change in the very nature of the beast. From a narrowly circumscribed beginning, this case has become enmeshed into most of the nationwide issues affecting the pricing of gas.

The following is a summary of a number of the problems which, at this stage of the proceeding before briefs and examiner's decision, might well suggest an entirely different approach, either a nationwide approach or a greatly modified area approach. I, frankly, would much prefer to see how the Examiner handles this unforseen development and study the comments and exceptions of the parties before freezing what was admittedly an experimental idea. In listing at this time some of the trouble areas in *Permian*, I recognize that adequate and satisfactory solutions may be discovered and in no sense am I now suggesting, from the wealth, in fact surfeit of data, that it will not be possible to arrive at a price for *Permian* gas that we can live with. As one can see, I do want to profit from the experience of this unique *Permian* proceeding before continuing my journey to the moon.

Permian started out principally as a regionalized *Phillips*-type rate base case. The problems inherent in the *Phillips* methodology are multiplied in *Permian* in that a hybrid presentation of allocated area and nationwide costs are used. All the exploration and development costs in *Permian* are on a nationwide basis. In contrast, a good part of production costs was computed on an area basis. Recognizing these problems and the fact that cost of service data is a part of, but not necessarily the whole, of the evidence needed in establishing a price, I feel that nationwide cost data, even now being sought on a national basis, will be much more useful, reliable and appropriate if used in a nationwide proceeding.

Second, *Permian* and *Southern Louisiana* both use 1960 costs. The instant areas will use 1962 costs (in two months, it will be 1964—not a good start). Subsequent area cases will presumably use later test years, or run the risk

of being obsolete before they begin. The danger here is that the costs allocated to each area would collectively total more than the industry actually incurred. There will be no way to check if *Permian* really accounts for 10% of nationwide costs, for example, without knowing what constitutes the remaining 90%. It would be nice if the nationwide questionnaire recently approved by the Bureau of the Budget would forceclose such a happenstance, but this is unlikely. The nationwide questionnaire will use a 1962 test year. *Permian* and *Southern Louisiana* use 1960. Thus no adequate basis of comparison is afforded.

Third, directionality has played a most important role in *Permian*. This issue is integrally related to the part which price plays in bringing forth needed supplies. The issue is clearly national in context and it is most doubtful that a decision can be made on this issue within the confines of an area proceeding. In fact, the Examiner in *Permian* tentatively stated:

> The Commission should institute an immediate investigation of the problem of directionality. This is a matter of which there have been differences of view, but certainly it seems to be an overwhelming issue in this case, and it is a problem which I feel represents a breakthrough in the possibility of gas regulation. This should not be handled in this case. This case should be decided on this record, but for the future in other cases I think it appropriate that the Commission investigate the subject. [Tr. 30,364.]

Fourth, historic industry practices are being recognized as having a substantial impact on price (and cost). How much does it cost pipelines to buy gas under 20 year contracts and to maintain 12 years, or slightly less, deliverability? It comes to no little sum. Yet, if a price were selected which would assure the continual flow of needed supplies of gas, the need for these requirements appears most questionable. Here again, *Permian* promises no comprehensive decision. The Examiner has tentatively recommended that the Commission institute a proceeding—obviously nationwide—to deal with this issue.

Fifth, the idea of an area proceeding presupposes the validity of boundaries. But we should not merely assume the propriety of boundaries, already rejuggled to some extent in the nationwide questionnaire on an *ad hoc* basis, and force affected parties into a preconceived or at least predetermined mold. The only appropriate—legal—manner of determining this question is by reference to all the producing areas in a proceeding where the issue of boundaries can be litigated. If there is to be a division of areas, there must be standards or criteria by means of which the division is made. What are the standards applicable to *Permian*? To the other areas? This question is of no small moment. To a producer operating in a borderline zone, the economic consequences of fixing boundary lines are tremendous. Depending on the decision, he might get rich or go broke. Producers are supposed to be gamblers at heart, but there must be limits.

Related to this question is the matter of location value. Several parties contend that gas should be priced to induce exploration closer to market and to dissuade or at least delay the search in more distant areas. How can we make a sensible decision on this issue in an area by area approach? The only way is to consider all the areas together. As it is, the prospects are that a minus value will probably be ascribed to *Permian* with no corresponding plus to the other producing areas serving markets which *Permian* also serves.

Sixth, the tedious and time-consuming approach used in *Permian* is prohibitive of effective regulation. By the time *Permian* is decided, it could be stale. The same is true, only to a greater degree, with respect to *Southern Louisiana*. At the present rate, the Commission will perpetually be involved in a continuing series of area proceedings.

Seventh, the vast bulk of evidence in *Permian* is national in scope. This is quite natural because virtually all the issues affecting the pricing of gas are national. Significantly, the Examiner in *Permian* arrived at his tentative price for new gas on the basis of national costs. A succession of area proceedings involves needless and wasteful duplication of time, effort, and expense on these issues and an unjustified delay in finding just and reasonable prices for all the areas. The prospects of stipulating such data in later area cases are not at all bright because the parties are different and some of the basic data gets stale.

The related problem is presented of necessarily making a decision on national issues in *Permian* (*e.g.* directionally, price elasticity). Despite any pretensions to the contrary, the likelihood is that determinations of these issues will be adpoted in future area proceedings.[1] Thus numerous affected sellers and buyers of gas, not parties to *Permian*, will effectively (if not legally) be precluded from a fair hearing on these fundamental issues of major concern.

In establishing a price for gas, the Commission must be sensitive to and carefully consider the interdependence of prices, as well as costs, in the various producing areas. The markets served by any one producing area are not captive markets, at least over the long run. Permian, for example, is not the sole source of supply for California. In addition, California consumes gas produced in Canada, the Panhandle field, Anadarko Basin, West Texas, the San Juan Basin, as well as from local production. To avoid disrupting industry, while at the same time satisfying the requirements of sound price regulation, the Commission must determine a price for one area which will not unduly penalize—or favor—producers in other areas. This requires a nationwide assessment.

While the majority seems to recognize the necessity for a nationwide approach as evidenced by its promulgation of the nationwide questionnaire, here again it is a question of too little too late. First, no tax or reserve data have been requested at this time. While there may be problems in obtaining such information, which is of critical necessity, putting off the problems does not serve to resolve them.

Adequate reserve data are prerequisite in determining price. Where costs are used, it is obviously necessary to know that to which the costs relate. ("Without an adequate picture of costs, it is impossible to say anything very useful about the petroleum supply." "Petroleum Statistics Study Group Report," as reported in *The Oil and Gas Journal*, October 14, 1963.) How is it possible to come up with a per Mcf price if the volume of Mcf's are not known? How it is possible to know if price is properly performing its function, namely, assuring an adequate supply of gas, if the volume of gas found in response to known prices remains a mystery? Thus, the evidence should show the inventory of the area under consideration in terms of proven reserves, shut-in reserves, and the various categories of probable, possible and ultimate reserves. The reserve data should be classified as to the year in which discovered so that current customers will not bear costs properly attributable to increasing the industry's assets. The necessity for adequate data has apparently been recognized by the Petroleum Statistics Study Group of which we are a member. We should not settle for less when it comes to the question of gas pricing with which we are more intimately concerned. Yet the nationwide questionnaire, which presumably will be used in connection with these proceedings, does not request *any* reserve information, at least at this time.

---

[1] Note, for example, the development of the *Atlantic-Seaboard* allocation methodology, which was initially adopted on a limited basis, into a regularly selected device for making similar allocations in all subsequently decided pipeline rate cases.

Consideration must also be given to the place of competitive sources of energy. In determining profit margin, i.e., the encouragement to be given to producers to search for additional supplies of gas in an area, we should be aware of the availability and cost of competing fuels, such as coal, particularly if low cost coal would be supplied from an area stricken by unemployment. Along the same lines, the Commission should be alert to probable technological advances which could materially alter the future structiure of the industry.

The foregoing suggests, at least to me, that the area proceeding, as presently consituted and as currently anticipated, represents somewhat less than the ideal in producer regulation. It is not perfect—by a long shot. If it is to be made effective, improvements must be made. One thing is certain, namely, that the various producing areas must be evaluated in a nationwide context. In view of all the shortcomings of the present area approach, the wiser course of action would be first to decide *Permian*, which promises to be accorded all reasonable expedition. With the experience gained in its consideration of that case, the Commission could then intelligently direct the course of future proceedings and obtain meaningful results much more expeditiously. As it is, the majority seems content to shoot in the dark, forcing Staff and all the industry and consumer parties to plod along in still further repetitions of the burdensome and defective area approach. I am not so inclined, and I therefore dissent to the institution of these area proceedings at this time.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. Charles R. Ross, Harold C. Woodward, and David S. Black.

CALIFORNIA ELECTRIC POWER COMPANY, DOCKET NO. E–7133

ORDER AUTHORIZING ISSUANCE OF PROMISSORY NOTES

(Issued November 27, 1963)

California Electric Power Company (Applicant), a corporation organized under the laws of the State of Delaware and doing business in the States of California and Nevada, with its principal business office at San Bernardino, California, filed an application on October 25, 1963 for authority, pursuant to Section 204 of the Federal Power Act, to issue unsecured Promissory Notes in the aggregate amount of $20,000,000 outstanding at any one time. The Notes will be executed and delivered under and pursuant to a Loan Agreement of September 17, 1963 between Applicant and the Bank of America National Trust and Savings Association (Bank). Under the Loan Agreement, Applicant has the right to borrow from, repay to and reborrow from the said Bank, and the Bank is obligated to lend to Applicant from time to time after October 31, 1963 and prior to October 31, 1964, sums not exceeding $20,000,000 in aggregate principal amount at any one time outstanding.

The Loan Agreement provides that each Note to be issued thereunder shall be payable not more than 12 months after the date of its issuance and in any event the final maturity date of any Note shall be prior to January 30, 1965. The Notes are subject to prepayment prior to maturity without penalty. It further provides that the Notes shall bear interest at a fluctuating rate equal to the Bank's prime rate for 90-day to 180-day prime commercial loans.

Applicant is engaged in the generation, purchase, transmission, distribution and sale of electric energy in parts of southeastern California and southwestern Nevada. By order of October 1, 1963 (Docket No. E–7106), the merger of the

Applicant into Southern California Edison was approved. In a related order (Docket No. E–7107) issued August 9, 1963, the Commission authorized Applicant to borrow $17,000,000 aggregate principal amount to provide funds for the redemption of Applicant's three callable series of Cumulative Preferred Stock prior to merger.

According to the application, the proceeds of the borrowings, pursuant to this application are to be used to refund approximately $10,250,000[1] in obligations and to provide funds for construction, completion, extension or improvement of facilities prior to the proposed merger (which Applicant expects to become effective on or about December 31, 1963). The Applicant states that if the merger with Southern California Edison Company becomes effective at any time during the life of the Loan Agreement under which the line of credit will be established, Applicant's corporate existence will thereupon terminate and the surviving corporation will assume all obligations of Applicant, including the proposed Notes.

Applicant further states in the event the proposed merger does not take place on such date, Applicant, at an early date in 1964, will undertake permanent financings, the proceeds of which will be used in part to discharge portions of the short-term notes. Later permanent financings and borrowing arrangements, as required, would provide funds for Applicant's construction and other expenditures in the event the proposed merger does not become effective.

Construction expenditures for the last four months of 1963 are estimated at approximately $6,300,000. In the absence of the proposed merger, construction expenditures for 1964 are estimated at approximately $13,800,000.

Major expenditures for 1963 and 1964 include $5,357,000 for Cool Water Steam Plant Unit #2; $831,000 for construction of 44.2 miles of 115 kv two-pole wood frame line from Cool Water Steam Plant switchyard to Kramer Substation; $245,000 for the rebuilding of 29 miles of 34.5 kv line from Inyokern Substation to Searles Switching Station; $476,000 for 115–34.5 kv Alessandro Substation near Sunnymead, California; $240,000 for purchase of 220 kv switchyard and bulk power station; and $275,000 for construction of a 115–34.5 kv regulated 10/12.5 mva substation in the Lucerne Valley area.

Written notice of the application has been given to the Public Utilities Commission of California, the Public Service Commission of Nevada and to the Governors of each of those States. Notice has also been given by publication in the Federal Register on November 7, 1963 (28 F.R. 11918), stating that any person desiring to be heard or to make any protest with reference to the application should file a petition or protest on or before November 18, 1963, with the Federal Power Commission, Washington, D.C., 20426. No protest, petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act subject to the jurisdiction of the Commission as heretofore determined and set forth in the Commission's order issued August 30, 1957, California Electric Power Company, Docket No. E–6770 (18 FPC 239).

(2) The proposed issuance of Promissory Notes in the aggregate principal amount of $20,000,000, all as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

---

[1] The Commission, by order issued November 21, 1962 (Docket No. E–7063), authorized the Applicant to issue short-term notes in the aggregate principal amount of $20,000,000 during a period commencing October 31, 1962 and ending October 31, 1963 with maturities not to extend beyond January 31, 1964.

(3) The proposed issuance of Promissory Notes in the aggregate principal amount of $20,000,000, all as described above, will be in excess of 5% of the par value of the other securities of Applicant, and, therefore, will not be exempt by virtue of Section 204(e) from the requirements of Section 204(a) of the Act.

(4) Applicant is not organized and operating in a State, under the laws of which the security issue here involved is regulated by a State Commission within the meaning of Section 204(f) of the Act, and the proposed issuance is, therefore, not exempt by virtue of the Section from the requirements of Section 204 of the Act.

(5) The proposed issuance of Promissory Notes is exempt from the competitive bidding requirements of Section 34.1a of the Commission's Regulations under the Federal Power Act by reason of Paragraph 34.1a(a)(2) thereof.

(6) The proposed issuance of Promissory Notes, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility, and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

(7) The period of public notice provided herein is reasonable.

The Commission orders:

(A) The proposed issuance of Applicant of Promissory Notes in the aggregate principal amount of $20,000,000, outstanding at any one time, upon the terms and conditions and for the purposes set forth in the application as amended, all as described above, is hereby authorized, subject to the provisions of this order.

(B) This authorization is expressly conditioned upon the final maturity of all Notes to be issued pursuant hereto, being not later than January 30, 1965.

(C) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost or any other matter whatsoever now pending or which may come before this Commission.

(D) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect to any securities to which this order relates.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

NORTHERN NATURAL GAS COMPANY, DOCKET NOS. G–12153 AND G–15335; PERMIAN BASIN PIPELINE COMPANY, DOCKET NO. G–15336

ORDER APPROVING RATE SETTLEMENT, PRESCRIBING REFUNDS AND TERMINATING PROCEEDINGS

(Issued November 27, 1963)

The above docket Nos. G–12153 and G–15335 relate to rate proceedings arising from proposed increases in rates and charges tendered for filing by Northern Natural Gas Company (Northern) pursuant to Section 4 of the Natural Gas Act, Docket No. G–15336 relating to Permian Basin Pipeline Company was a filing for a rate increase for sales of natural gas to Northern. On December 30, 1960 Permian and Northern were merged, with Northern being the surviving corporation. The period during which the proposed increases in the dockets have been collected, subject to refund of excess charges, if any, is as follows:

Docket	Filing	Effective date of suspended rates	Periods covered
G–12153	Feb. 5, 1957	Aug. 27, 1957	Aug. 27, 1957–Nov. 27, 1958
G–15335	May 26, 1958	Nov. 27, 1958	Nov. 27, 1958–Dec. 27, 1959
G–15336	May 26, 1958	Dec. 1, 1958	Dec. 1, 1958–Jan. 1, 1960

The proceedings in the above-captioned dockets were consolidated for purposes of hearing and decision by notices issued September 2, 1960, and the hearing on these proceedings commenced on October 25, 1960, and was concluded on March 3, 1961. Briefs and reply brief were filed by Northern, the Commission staff and other interested parties; and the Examiner entered his decision on February 14, 1962. Exceptions to the Examiner's decision were filed by Northern, the Commission Staff and several of the intervenors. Oral argument was held before the Commission on April 26, 1962.

On July 2, 1962, the Commission issued its order remanding these proceedings for further evidence and directed Northern to submit evidence of the costs of Northern Natural Gas Producing Company, a wholly-owned subsidiary of Northern.

After prehearing conference, hearing on the remand proceeding commenced on May 7, 1963 and was concluded on May 21, 1963. Simultaneous briefs in this matter were filed by Northern, the Commission Staff and by intervenor Minneapolis Gas Company, and a reply brief was filed by Northern.

Upon request of Northern and some of the parties to these proceedings and pursuant to Section 1.18 of the Commission Rules of Practice and Procedure on September 24, 1963 and October 24 and 25, 1963, settlement conferences were held. As a result of the conferences all parties have agreed, subject to the Commission's approval, to a settlement and compromise of the above-dockets and all issues involved therein.

On November 4, 1963, Northern filed a document entitled "Proposed Settlement" and served copies thereof upon all interested parties. By notice issued November 6, 1963, all parties were notified by the Commission to submit any comments to the settlement proposal on or before November 18, 1963. No party has objected to the settlement proposal.

Briefly stated, the proposed settlement which is attached hereto as an exhibit provides as follows:

(1) Northern's jurisdictional cost of services for the period in Docket No. G–12153 is $122,623,571 and for the period in Docket Nos. G–15335 and G–15336 is $124,440,172.

(2) Northern's effective jurisdictional rates for the 15 month period from August 27, 1957 to November 27, 1958 will be reduced by 18.73¢ per Mcf on the demand charges, resulting in a reduction in jurisdictional revenues of $3,033,895 for the 15 month period. The refund amount of $3,033,895 for this period together with interest at 6 percent per annum shall be paid within 20 days from November 30, 1963, or within 20 days after the issuance of this order, whichever is later.

(3) Northern's effective jurisdictional rates for the 13 month period from November 27, 1958 to December 27, 1959 will be reduced by 35.3¢ per Mcf on the demand charges resulting in a reduction in jurisdictional revenues of $5,054,826 for the 13 month period. The $5,054,826 refund for the 13 month period together with interest at the rate of 6 percent per annum shall be made within 20 days from November 30, 1963, or within 20 days from the date of this order, whichever is later.

(4) Northern will pass on to its jurisdictional customers 82.15 percent of any refunds and interest received from its natural gas suppliers as a result of Commission decisions in any Section 4 proceedings applicable to the 28 month period ending December 31, 1959.

(5) The settlement will discharge and dispose of any remaining refund obligation in Docket Nos. G–13358, G–16447, and G–19065 involving ERS service.

(6) The agreement set forth in the Proposed Settlement is conditioned on acceptance by the Commission of all the terms of the proposed settlement.

The stipulation and agreement also contains reservations that no party to the proceeding is to be considered as agreeing with the cost of service determinations or allocations or with any principles underlying or supposed to underlie cost of service determination, rate making, allocation or refunds contained therein, and that no party to the proceeding shall be bound or prejudiced in any future proceeding by any part of the proposed settlement.

On October 4, 1957, September 26, 1958 and July 29, 1959, Northern filed application to render economy replacement service for the heating season following each filing. These matters were assigned Docket Nos. G–13358, G–16447 and G–19095, respectively. By letter orders of the Commission dated December 13, 1957, November 13, 1958 and October 16, 1959 the Commission granted Northern temporary authorization to render the service subject to the final determination of the contract demand rate in Docket Nos. G–12153 and G–15335. The Settlement refunds in the above captioned proceedings also settle and discharge all refund obligations in Docket Nos. G–13358, G–16447 and G–19095.

The Commission finds:

(1) The settlement of these proceedings upon the basis of the Proposed Settlement is reasonable, proper and in the public interest in carrying out the provision of the Natural Gas Act, and should be approved and made effective as hereinafter provided and ordered.

(2) The increased rates and charges contained in Northern's filings in these dockets and which were the subject of these proceedings have not been shown to be just and reasonable, or otherwise lawful under the Natural Gas Act, and should be disallowed and denied as hereinafter ordered.

The Commission orders:

(a) The settlement of these proceedings as set forth in the Proposed Settlement, is hereby approved and made effective as proposed therein and subject to terms and conditions hereinafter ordered.

(b) The increased rates and charges contained in Northern's tariff sheets referred to in paragraph (2) above are disallowed and denied.

(c) Within twenty (20) days after November 30, 1963 or within twenty (20) days after the date of this order, whichever date is later, Northern shall refund to its jurisdictional customers the principal amount of $8,008,720.09 with $2,329,487.75 in interest as provided in the Proposed Settlement.

(d) Northern shall comply with the provision of the Proposed Settlement relating to future refunds.

(e) Within twenty (20) days of making refunds in accordance with paragraphs (c) and (d) above, Northern shall report to the Commission in writing and under oath, the amount of the refund made to each customer, showing separately the amount of principal and interest so paid together with a computation showing the manner in which such refund was determined, and shall serve a copy of this report upon each customer receiving a refund.

(f) Upon compliance with the terms and conditions of this order, the proceeding in Docket Nos. G–12153, G–15335 and G–15336 are hereby terminated subject to the terms of paragraph (d).

(g) This order is without prejudice to any findings or orders which have been or may hereafter be made by the Commission, and is without prejudice to any claims or contentions which may be made by the Commission, Northern Natural Gas Company, or any affected party herein, in any proceeding now pending or hereafter initiated by or against Northern or any other company or person.

APPENDIX A

NORTHERN NATURAL GAS COMPANY

DEVELOPMENT OF REFUNDS TO JURISDICTIONAL CUSTOMERS AND ADJUSTMENT OF FILED RATES TO REFLECT SETTLEMENT AGREEMENT DOCKET NOS. G–12153, G–15335 AND G–15336

Line No.	Particulars	G–12153, 15 months ended 11–30–58	G–15335, G–15336, 13 months ended 12–31–59	Total
	(a)	(b)	(c)	(d)
1	*Derivation of Reduction in Jurisdictional Demand Charge*			
2	Jurisdictional cost of service	$122,623,571	$124,440,172	
3	Jurisdictional revenues collected	125,657,097	129,490,859	
4	Jurisdictional revenues in excess of jurisdictional costs (L.3−L.2)	3,033,526	5,050,687	$8,084,213
5	Jurisdictional billing demand units—MCF at 14.73#	16,198,049	14,319,619	
6	Reduction in demand charge (L.4÷L.5)	18.73¢	35.3¢	
7	Refunds to jurisdictional customers (L.5×L.6)	3,033,895	5,054,826	8,088,721
		Rates as filed	Adjustment	Settlement agreement rates
8	*Rates Filed and as Revised to Reflect Settlement Agreement*			
9	*G–12153—15 months ended 11–30–58*			
10	Demand rate:			
11	CD–1	$2.245	0.1873	$2.0577
12	CD–2	2.555	.1873	2.3677
13	CD–3	2.875	.1873	2.6877
14	Commodity rate:			
15	CD–1	.219		.219
16	CD–2	.224		.224
17	CD–3	.229		.229
18	*G–15335 and G–15336—months ended 12–31–59*			
19	Demand rate:			
20	CD–1	2.87	.353	2.517
21	CD–2	3.18	.353	2.827
22	CD–3	3.50	.353	3.147
23	PL–3	3.50	.353	3.147
24	Commodity rate:			
25	CD–1	.219		.219
26	CD–2	.224		.224
27	CD–3	.229		.229
28	PL–3	.229		.229

APPENDIX B

Northern Natural Gas Company, Docket No. G-12153

STATEMENT OF REFUNDS AND INTEREST AT 6% PER ANNUM TO JURISDICTIONAL CUSTOMERS

Fifteen Months Ended Nov. 30, 1958

Line No.	Customer	Billing demand units	Refunds		
			Principal amount	Interest	Total
	(a)	(b)	(c)	(d)	(e)
1	Austin Utilities [1]	198,900	$37,253.97	$12,358.52	$49,612.49
2	Cedar Falls, Iowa, City of	58,700	10,994.51	3,647.28	14,641.79
3	Central Natural Gas Co	176,685	33,093.10	10,978.20	44,071.30
4	Coon Rapids, Iowa, Town of	10,575	1,980.70	657.07	2,637.77
5	Council Bluffs Gas Division	328,800	61,584.24	20,429.77	82,014.01
6	Elkhorn Valley Gas Co	16,075	3,010.85	998.81	4,009.66
7	Greeley Gas Co.[2]	107,400	20,116.02	6,673.23	26,789.25
8	Guthrie Center, Iowa, City of	16,300	3,052.99	1,012.79	4,065.78
9	Harlan, Iowa, City of	27,150	5,085.20	1,686.95	6,772.15
10	Hawarden, Iowa, City of	22,500	4,214.25	1,398.02	5,612.27
11	Interstate Power Co	435,900	81,644.07	27,084.36	108,728.43
12	Iowa Electric Light & Power Co	984,575	184,410.90	61,175.92	245,586.82
13	Iowa Illinois Gas & Electric Co	346,600	64,918.18	21,535.76	86,453.94
14	Iowa Power & Light Co	1,495,760	280,155.85	92,938.06	373,093.91
15	Iowa Public Service Co	1,440,248	269,758.45	89,488.86	359,247.31
16	Iowa Southern Utilities Co	36,190	6,778.39	2,248.64	9,027.03
17	The Kansas Power & Light Co	88,200	16,519.86	5,480.25	22,000.11
18	Minneapolis Gas Co	3,919,000	734,028.70	243,504.47	977,533.17
19	Minnesota Valley Natural Gas Co	613,078	114,829.51	38,093.20	152,922.71
20	The Nebraksa Natural Gas Co	148,850	27,879.60	9,248.69	37,128.29
21	New Ulm, Minn., Public Utilities Commission of	75,000	14,047.50	4,660.08	18,707.58
22	North Central Public Service Co	90,096	16,874.98	5,598.05	22,473.03
23	Northern States Power Co.—Minnesota	1,904,200	356,656.66	118,316.21	474,972.87
24	Northern States Power Co. of Wisconsin	41,800	7,829.14	2,597.22	10,426.36
25	Northwestern Public Service Co	176,850	33,124.01	10,988.46	44,112.47
26	Omaha-Metropolitan Utilities District	1,587,000	297,245.10	98,607.19	395,852.29
27	Owatonna, Minn., Municipal Public Utilities of	115,500	21,633.15	7,176.52	28,809.67
28	Pender, Nebr., Village of	12,750	2,388.07	792.21	3,180.28
29	Ponca, Nebr., City of	7,875	1,474.99	489.31	1,964.30
30	Remsen, Iowa, Town of	8,625	1,615.46	535.91	2,151.37
31	Sanborn, Iowa, Town of	9,450	1,769.98	587.17	2,357.15
32	Sioux Center, Iowa, Town of	9,000	1,685.70	559.21	2,244.91
33	Watertown, S. Dak. Municipal Utilities of	33,015	6,183.71	2,051.36	8,235.07
34	Western Power & Gas Co.[3]	1,655,402	310,056.79	102,857.31	412,914.10
35	Totals	16,198,049	3,033,894.58	1,006,455.06	4,040,349.64

[1] Formerly Austin, Minn., Board of Water, Electric, Gas & Power Commissioners.
[2] Successor to Minnesota Natural Gas Co.
[3] Successor to Central Electric & Gas Co.

Thirteen Months Ended Dec. 31, 1959

Line No.	Customers	Billing demand units	Refunds		
			Principal amount	Interest	Total
	(a)	(b)	(c)	(d)	(e)
1	Austin Utilities [1]	173,700	$61,316.10	$16,048.67	$77,364.77
2	Cedar Falls, Iowa, City of	55,500	19,591.50	5,127.81	24,719.31
3	Central Natural Gas Co	153,849	54,308.70	14,214.57	68,523.27
4	Coon Rapids, Iowa, Town of	9,315	3,288.20	860.64	4,148.84
5	Council Bluffs Gas Division	288,000	101,664.00	26,609.19	128,273.19
6	Elkhorn Valley Gas Co	13,975	4,993.18	1,291.19	6,224.37
7	Greeley Gas Co.[2]	94,700	33,429.10	8,749.62	42,178.72
8	Guthrie Center, Iowa, City of	14,400	5,063.20	1,330.46	6,413.66
9	Harlan, Iowa, City of	23,530	8,306.09	2,174.01	10,480.10
10	Hawarden, Iowa, City of	19,500	6,883.50	1,801.66	8,685.16
11	Interstate Power Co	378,800	133,716.40	34,998.47	168,714.87
12	Iowa Electric Light & Power Co	861,475	304,100.68	79,594.27	383,694.95
13	Iowa Illinois Gas & Electric Co	310,600	106,464.80	27,865.73	134,330.53
14	Iowa Power & Light Co	1,333,000	470,549.00	123,159.88	593,708.88
15	Iowa Public Service Co	1,272,308	449,124.72	117,552.36	566,677.08
16	Iowa Southern Utilities Co	32,330	11,412.49	2,987.07	14,399.56
17	The Kansas Power & Light Co	74,660	26,354.98	6,989.06	33,253.04
18	Minneapolis Gas Co	3,447,000	1,216,791.00	318,478.70	1,535,269.70
19	Minnesota Valley Natural Gas Co	534,000	188,502.00	49,337.87	237,839.87
20	The Nebraska Natural Gas Co	130,350	46,013.55	12,043.43	58,056.98
21	New Ulm, Minn., Public Utilities, Commission of	66,000	23,298.00	6,097.94	29,395.94
22	North Central Public Service Co	68,896	24,320.29	6,365.51	30,685.80
23	Northern Illinois Gas Co	100,000	35,300.00	9,239.30	44,539.30
24	Northern States Power Co.—Minnesota	1,671,800	590,145.40	154,462.63	744,608.03
25	Northern States Power Co. of Wisconsin	37,000	13,061.00	3,418.54	16,479.54
26	Northwestern Public Service Co	157,210	55,495.13	14,525.10	70,020.23
27	Omaha-Metropolitan Utilities District	1,401,000	494,553.00	129,442.61	623,995.61
28	Owatonna, Minn., Municipal Public Utilities of	100,700	35,547.10	9,303.98	44,851.08
29	Pender, Nebr., Village of	11,050	3,900.65	1,020.94	4,921.59
30	Ponca, Nebr., City of	6,825	2,409.22	630.58	3,039.80
31	Remsen, Iowa, Town of	7,475	2,638.68	690.74	3,329.32
32	Sanborn, Iowa, Town of	8,240	2,908.72	761.32	3,670.04
33	Sioux Center, Iowa, Town of	7,800	2,753.40	720.67	3,474.07
34	Watertown, S. Dak., Municipal Utilities of	28,613	10,100.38	2,643.64	12,744.02
35	Western Power & Gas Co.[3]	1,435,018	506,561.35	132,585.63	639,146.98
36	Totals	14,319,619	5,054,825.51	1,323,032.69	6,377,858.20

[1] Formerly Austin Minnesota, Board of Water, Electric, Gas & Power Commissioners.
[2] Successor to Minnesota Natural Gas Company.
[3] Successor to Central Electric and Gas Company.

NORTHERN NATURAL GAS COMPANY, DOCKET NOS. G-12153, G-15335, AND G-15336

PROCEEDINGS INVOLVING PAYMENTS TO PRODUCERS FOR GAS PURCHASED BY NORTHERN AT RATES BEING COLLECTED SUBJECT TO REFUND

Twenty-Eight Months Ended Dec. 31, 1959

Line No.	F.P.C. docket No. (a)	Producers (b)
1	G-11, 641	Phillips Petroleum Co. (Dumas).
2	G-11, 849	Phillips Petroleum Co.
3	G-13, 735	Texaco, Inc.
4	G-14, 009	Phillips Petroleum Co.
5	G-14, 077	Shamrock Oil & Gas Co.
6	G-14, 859	Edwin L. Cox & Skelly Oil Co.
7	G-14, 931	Sunray Mid-Continent Oil Co.
8	G-15, 088	Phillips Petroleum Co.
9	G-15, 451	Republic Natural Gas Co.
10	G-15, 538	Texaco, Inc.
11	G-16, 178	Phillips Petroleum Co. (Grayco).
12	G-16, 520	George S. Hammonds.
13	G-16, 521	Scott Hammonds, et al.
14	G-16, 715	Amerada Petroleum Corp.
15	G-16, 803	Atlantic Refining Co.
16	G-16, 896	Republic Natural Gas Co.
17	G-16, 956	Sinclair Oil & Gas Co.
18	G-16, 959	Gulf Oil Corp.
19	G-16, 959	Skelly Oil Corp.
20	G-16, 960	Gulf Oil Corp.
21	G-17, 059	Honolulu Oil Corp., et al.
22	G-17, 071	Phillips Petroleum Co.
23	G-17, 295	Phillips Petroleum Co. (Dumas).
24	G-18, 671	Dorchester Corp.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

AREA PRICE LEVELS FOR SALES OF NATURAL GAS BY PRODUCERS, DOCKET NO. R-251

ORDER NO. 273

SEVENTH AMENDMENT TO STATEMENT OF GENERAL POLICY NO. 61-1

(Issued November 27, 1963)*

We have under consideration here amendment of the Statement of General Policy No. 61-1 issued September 28, 1960, 24 FPC 818 (18 CFR 2.56) to extend the applicable provisions of the Second Amendment to the policy statement, as amended, Order No. 264 issued March 27, 1963, in Docket No. R-234, 29 FPC 589, to other areas covered by the policy statement.

Under the Second Amendment the price level for increased rates in Texas District Nos. 2, 3, 4, and 6 is 14.6¢ per Mcf (at 14.65 psia), including present tax reimbursement, an increase of .6¢ per Mcf above the increased rate ceiling, where favored-nation and price redetermination provisions in existing filed rate schedules are eliminated, but specified periodic escalation provisions and provisions for future tax reimbursement are retained. If all price escalation clauses are eliminated except for provisions for future changes in tax reimbursement

*Published in the Federal Register on December 4, 1963 (28 F.R. 12865).

the area price level is 15.0¢ per Mcf (at 14.65 psia), an increase of 1.0¢ above the increased rate ceiling. We now believe that a similar adjustment should be made with respect to rate schedules involving sales in other areas covered by the policy statement, except the Permian Basin and Southern Louisiana areas with respect to which area rate proceedings are now in progress and excepting further Texas Districts Nos. 5 and 9 and the San Juan Basin where the area increased rate and initial rate ceilings are identical. (Dockets No. AR61–1 and AR61–2). Accordingly, the Statement of General Policy is amended as set out below.

The Commission finds:

(1) No notice or hearing is necessary under Section 4(a) of the Administrative Procedure Act.

(2) In view of the purpose, intent and effect of the amendment herein ordered, good cause exists for making it effective forthwith.

The Commission, acting pursuant to authority granted by the Natural Gas Act, as amended, particularly sections 4, 5, and 16 thereof (52 Stat. 822, 823, 830, 15 USC 717c, 717d, 717o), *orders:*

(A) Effective upon the issuance of this order, § 2.56, Part 2, Statements of General Policy and Interpretations, Chapter I of Title 18 of the Code of Federal Regulations, is amended as follows:

1. Designate as "(b)" the paragraph immediately preceding the existing paragraph (b) and renumber the existing paragraphs "(b)' 'and "(c)" as "(1)" and "(2)" respectively.

2. Add at the end of existing paragraph (c), renumbered (2), the following:

[Seventh Amendment]

(c) As a result of our continuing experience with the effects of favored-nation and price redetermination provisions upon independent producer prices, we conclude that extension of the applicable provisions of the Second Amendment to this Statement, set out in paragraph (b) hereof, to the areas set out below and to the extent there provided is desirable in the public interest, appropriate to carry out the provisions of the Natural Gas Act, and beneficial to ultimate consumers, pipeline purchasers and independent producers. To that end—

(1) For rate schedules from which all price escalations clauses are being eliminated except for provisions for future changes in tax reimbursement, the area price level for increased rates for natural gas sales by independent producers from the various areas covered herein is set forth in column B of the table below.

(2) For rate schedules from which all price escalations are being eliminated except for periodic escalation provisions as hereinafter specified and provisions for future changes in tax reimbursement, the area price level for increased rates for natural gas sales by independent producers from the various areas covered herein is set forth in column A of the table below: *Provided, however,* that such revised rate schedules may contain escalation clauses providing future separate increases in rate not in excess of one cent per Mcf (at 14.65 psia), the first such escalation not to be effective under the contract prior to November 1, 1968, and subsequent escalations to be effective under the contract at not less than five-year intervals thereafter.

3. Insert, immediately before the Note and Table which follows the existing paragraph (c), the following:

[Appendix referred to in Paragraph (a)]

4. Insert, to follow the existing table of area price levels, the following:

[Table referred to in Paragraph (c)]

Area	A (¢/Mcf) [1]	B (¢/Mcf) [1]
Oklahoma (Panhandle)	11.6	12.0
Oklahoma (other)	11.6	12.0
Kansas	11.6	12.0
Wyoming	*13.6154	*14.0256
Colorado	*13.6154	*14.0256
Northern Louisiana	*[2]16.3654	*[2] 16.7756
Texas District No. 1	14.6	15.0
Texas District No. 7-B	12.1	12.5
Texas District No. 10	11.6	12.0
West Virginia	**25.6276	**26.0461
Mississippi	*14.6154	*15.0256

*15.025 psia.
**15.325 psia.
[1] Rate includes present tax reimbursement, and unless otherwise indicated is at 14.65 psia.
[2] Although the announced increased rate ceiling of 14.0¢ does not include tax reimbursement, the rates listed here do include tax reimbursement.

[Secs. 4, 5, 16, 52 Stat. 822, 823, 830; 15 U.S.C. 717c, 717d, 717o]

(B) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

NATURAL GAS COMPANIES—EMERGENCY PLANNING—INTERCONNECTIONS AND DEFENSE-RELATED EXPENDITURES, DOCKET NO. R-247

ORDER NO. 274

AMENDING THE COMMISSION'S GENERAL RULES AND REGULATIONS

(Issued November 27, 1963)*

The Commission has before it proposals to amend its regulations to provide for procedures with respect to the planning by natural gas pipeline and distribution companies related to defense emergency situations—particularly interconnections between systems and the accounting for defense-related expenditures.

On February 26, 1963, the President issued Executive Order 11095 (28 F.R. 1859, February 29, 1963) wherein he directed this Commission to cooperate with other interested governmental bodies in the preparation and implementation of national emergency plans and preparedness programs with respect to the natural gas and electric power industries.

The amendments to our rules incorporated in the notice of proposed rulemaking issued herein on September 5, 1963, and published in the Federal Register on September 11, 1963 (28 F.R. 9881) are aimed at carrying out this responsibility. They stem from discussions held as part of the continuing program of the Emergency Advisory Committee for Natural Gas established by the Department of the Interior with which the Commission has cooperated. In response to the invitation contained in the notice, comments and suggestions were received from a State public utility commission and a law firm which frequently appears in Commission proceedings. After careful consideration of the suggestions made

*Published in the Federal Register on December 4, 1963 (28 F.R. 12866).

we conclude, as more fully set out below, that the amendments should be adopted in the form proposed in the notice.

The State commission, commenting on the proposed § 2.60(b), which states that the Commission will consider "reasonable" investment in defense-related facilities to be "prudent investment" for ratemaking purposes, suggested its preference for a dollar limit on the amount a company could expend for such facilities without certificate authority. We believe any such restriction unnecessary. While we do not intend by the proposed regulation to give a blank check for inclusion in a company's rate base of unnecessary or extravagant facilities, the two questions involved in determining the appropriateness of including any particular installation—whether the facilities are defense-related and whether the expenditures therefor are reasonable—can, we believe, best be resolved in the light of the facts of a particular situation.

The other comment suggested that since we are indicating in the new § 2.60(c) that we will give consideration to requests to waive compliance with our accounting and reporting regulations by persons not otherwise subject to our jurisdiction who seek certificates to receive or deliver gas to a jurisdictional company during a *national* emergency, § 157.22 should be amended to provide specifically that no person shall be required to comply with the Commission's accounting and reporting requirements by reason of the emergency activities authorized by that section. Adoption of this suggestion would represent a complete reversal of Commission policy which has never by general rule exempted persons engaging in transportation operations subject to the Commission jurisdiction from compliance with the Commission's accounting and reporting regulations. We do not deem it in the public interest to do so now. However, there is nothing in our regulations to prevent a person who is engaging in operations pursuant to § 157.22, other than those operations during a national emergency already covered by the proposed § 2.60(c), from requesting the Commission to grant a waiver of the accounting and reporting requirements.

We are, therefore, adopting the amendments in the form proposed in the notice.

Upon consideration of the foregoing, the Commission *finds:*

The amendments herein adopted are necessary and appropriate to carry out the provisions of the Natural Gas Act and Executive Order 11095.

Acting in furtherance of the purposes of Executive Order 11095 and pursuant to the authority granted by the Natural Gas Act, as amended, particularly sections 4, 5, 7, and 16 thereof (52 Stat. 822, 823, 830; 56 Stat. 84; 76 Stat. 72; 15 U.S.C. 717c, 717d, 717f, 717o), the *Commission orders:*

(A) Part 2, General Policy and Interpretations, Chapter I of Title 18 of the Code of Federal Regulations, is amended by adding a new section to read as follows:

§ 2.60 Facilities and activities during an emergency—accounting treatment of defense-related expenditures.

The Commission, cognizant of the need of the natural gas industry for advice with respect to the applicability of the Natural Gas Act and the Commission's regulations thereunder regarding activities and operations of natural gas companies taking security measures in preparation for a possible national emergency, sets forth the following interpretation and statement of policy:

(a) *Facilities.* The definition of "auxiliary installations" in § 2.55(a) for which no certificate authority is necessary includes such defense-related facilities as (1) fallout shelters at compressor stations and other operating and maintenance camps; (2) emergency company headquarters or other similar installations; and (3) emergency communication equipment.

(b) The Commission will consider reasonable investment in defense-related facilities, such as those described in paragraph (a), to be "prudent investment" for ratemaking purposes.

(c) When a person, not otherwise subject to the jurisdiction of the Commission, files an application for a certificate of public convenience and necessity authorizing the construction of facilities to be used solely for operation in a national emergency for the delivery of gas to, or receipt of gas from, a person subject to the Commission's jurisdiction, the Commission will consider a request by such applicant for waiver of the requirement to keep and maintain its accounts in accordance with the Uniform System of Accounts for Natural Gas Companies (Parts 201, 204, and 205 of this chapter) or to file the annual reports to the Commission required by § 260.1 and 260.2 of this chapter.

(B) Paragraphs (a) and (d) of § 157.22 of the Commission's Regulations Under the Natural Gas Act, Subchapter E, Chapter I of Title 18 of the Code of Federal Regulations, are amended to read as follows:

§ 157.22 Exemptions of temporary acts and operations.

(a) Public interest does not require the issuance of a certificate for the construction and operation of facilities necessary to assure maintenance of adequate natural gas service where interruption or serious curtailment of service exists or it threatened because of failure of facilities or failure or curtailment of supply or unusual and unexpected demand on such facilities or supply, and where such acts and operations are limited to a single period of not more than sixty days or in the event a national emergency has been declared by the President, for six months or such further period as the Commission may, by order, allow.

* * * * * * *

(d) Emergency operations undertaken without certificate authorizations pursuant to paragraph (a) of this section shall be discontinued upon the expiration of the sixty-day period or in the national emergency, upon the expiration of the six months' period or any extension thereof ordered by the Commission, whichever is applicable, and all facilities installed for such temporary acts or operations shall be promptly removed and the Commission advised in writing and under oath within ten days following such discontinuance.

[Secs. 4, 5, 7, 16, 52 Stat. 822, 823, 830, as amended, 56 Stat. 84, 76 Stat. 72; 15 U.S.C. 717c, 717d, 717f, 717o]

(C) These amendments shall be effective upon the issuance of this order.

(D) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

INDEPENDENT PRODUCER PRICING AREAS—STATEMENT OF GENERAL POLICY NO. 61-1—REVISION, DOCKET NO. R-218

ORDER DEFERRING FURTHER CONSIDERATION OF PROPOSED CHANGES IN PRICING AREA BOUNDARIES FIXED UNDER STATEMENT OF GENERAL POLICY 61-1

(Issued November 27, 1963)*

On June 11, 1962, the Commission initiated a rulemaking proceeding, through the issuance of a "Notice of Proposed Revision of Boundaries", whereby it was proposed that a limited number of pricing area boundaries be changed from those now in effect under our Statement of General Policy No. 61-1.

*Published in the Federal Register on December 5, 1963 (28 F.R. 12945).

Mostly, the changes set out in the Notice were enlargements of present pricing areas to incorporate recently developed, though relatively minor, natural gas production being sold in interstate commerce. This involved production in parts of the Rocky Mountain, Appalachian, Arkansas and Alabama regions. An enlargement was proposed in the Oklahoma-Panhandle area to include specified counties. Additionally, the Texas Gulf Coast areas were to be consolidated, as were the Texas-New Mexico Permian Basin areas. The only changes which might have a significant immediate impact on current natural gas prices were those affecting the Oklahoma counties and the Texas Gulf Coast consolidation. New gas prices would have to be determined for these two consolidated production areas (as well as for the new areas) if they were established in the manner proposed by this proceeding.

Many comments have been filed with the Commission by interested parties. Our analyses of the problem, in the light of these comments has led us to the conclusion that the geographical and geological considerations on which these comments were largely based, can not and should not form the basis of any general revision of the area boundaries in the absence of additional information as to area costs and historical pricing patterns of the type we do not presently have, but are developing in pending area just and reasonable and in-line price determinations. We do not believe that pending the receipt of such information, this rulemaking proceeding should be terminated. Instead it should be held in abeyance until additional data become available with respect to individual pricing area production and exploration costs, including gasoline plant costs, which can be associated with the data already before us in this proceeding.

A substantial quantity of this type of data will be presented to the Commission (and be made available to the public) during the next twelve months, during which time more than 100 major producers of natural gas will complete and file cost and operations data requested by the Commission in the form of a general Questionnaire. These data will be particularly helpful inasmuch as they are with only a few minor exceptions being collected on the basis of the new areas as they are described in Docket No. R–218.

Accordingly, further consideration of changes will be deferred at this time. When production cost information becomes available, thereby adding a vital dimension requisite to any further refinement of area boundaries, we will reactivate this rulemaking proceeding. However, we would note the additional area proceedings being instituted concurrently, will allow for consideration and disposition of area boundary issues arising within the pricing areas consolidated for hearing in *Area Rate Proceeding* (Hugoton-Anadarko Area), Docket No. AR64–1 and *Area Rate Proceeding* (Texas Gulf Coast Area), Docket No. AR64–2.

The Commission orders:

Further consideration of Docket No. R–218 will be deferred and these proceedings will be held in abeyance pending the receipt and analysis of data filed by major producer respondents to the General Proceeding Questionnaire issued on November 1, 1963.

Commissioner O'Connor *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G–13221, ET. AL.; THE ATLANTIC REFINING COMPANY, DOCKET NOS. G–11904, G–17411, G–18399, G–18804, CI61–450, CI61–652, CI62–8, CI62–416, CI62–435 AND CI62–1276

ORDER SEVERING PROCEEDINGS, CONDITIONALLY APPROVING SETTLEMENT PROPOSAL AND CONDITIONALLY ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 27, 1963)*

On August 9, 1963, The Atlantic Refining Company (Atlantic) filed a motion for severance of the above-captioned Atlantic proceedings from the consolidated proceeding, Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.* (hereinafter referred to as the Union Texas Proceeding), for approval of the attached settlement proposal and for the prompt issuance of certificates of public convenience and necessity in accordance with the applications and the settlement proposal.

The terms of the settlement proposal are similar to the terms of other settlements in the Union Texas Proceeding which have been approved by the Commission[1] and provide for maximum initial rates of 20.625¢ per Mcf[2] for sales from south Louisiana, effective August 1, 1963; a five-year moratorium on rate increase filings (subject to the usual exceptions); and extension of the make-up periods for take-or-pay gas to four years in all rate schedules which provide lesser make-up periods.[3]

In Docket Nos. G–18399 (R.S. 197) and CI61–652 (R.S. 222) the temporary authorizations heretofore issued to Atlantic contain conditions requiring that Atlantic refund amounts in excess of the prices of which the sales are certificated by the Commission. Atlantic proposes to make such refunds within ninety days after the date of issuance of the certificates herein requested. Atlantic proposes that the interest be computed at a rate of 6 percent per annum in Docket No. G–18399 and at 7 percent in Docket No. CI61–652, such interest to accrue through August 31, 1963.

Atlantic proposes that a certificate be issued in Docket No. G–11904, in accordance with the application and that the increased rate now in effect subject to refund and Commission determination in Docket Nos. G–12159, G–13440, G–16518, G–19536, RI61–131, RI62–77 and RI63–93 continue to be collected subject to the Commission's suspension orders in those proceedings and further proceedings and orders of the Commission. All of the foregoing rate proceedings relate to Rate Schedule No. 166 which underlies the application in Docket No. G–11904. Atlantic stated in its proposal, that the initial price in that docket is 17.8¢ per Mcf.

At the time Atlantic filed its certificate application in Docket No. G–11904, February 6, 1957, the sale in question was covered by the Operator's (Cities Service Production Company (Cities)) certificate issued in Docket No. G–2721

*Modification denied, 31 FPC 234.

[1] See orders issued August 7, 1963 (Humble Oil & Refining Company) and October 9, 1963 (Gulf Oil Corporation and Socony Mobil Oil Company, Inc.), in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, 30 FPC 456 and 979, respectively.

[2] All rates expressed inclusive of applicable tax reimbursement and all volumes expressed at 15.025 psia.

[3] See Appendix for further details.

on November 12, 1954, and Rate Schedule No. 1. The initial rate under that certificate was 17¢ per Mcf, even though the rate under Cities' Rate Schedule No. 1, in effect subject to refund in Docket Nos. G–9510 and G–11325, was 17.8¢ per Mcf. When Atlantic chose to file its separate application for a certificate of public convenience and necessity, its first rate filing, related to its application in Docket No. G–11904, was therefore treated as an increased rate, suspended and allowed to go into effect subject to refund in Docket No. 12159. There is no reason to now place Atlantic in a preferred position. Accordingly, the certificate issued in Docket No. G–11904 will be issued at an initial rate of 17¢ per Mcf and, as Atlantic proposes, the rates in effect subject to refund in the various rate proceedings enumerated above will continue to be collected subject to further orders in those dockets.

On September 10, 1963, the Philadelphia Gas Works Division of the United Gas Improvement Company (PGW) filed a letter with the Secretary of the Commission commenting on certain aspects of Atlantic's proposal. PGW noted (1) that the 17.8¢ per Mcf rate discussed above is a suspended rate in effect subject to refund; (2) that the interest rates which Atlantic proposes to pay on refunds does not conform with the Commission's policy and (3) that the proposal indicates a settlement price of 20.625¢ per Mcf for sales under Rate Schedule No. 261 despite the fact that the initial contract price is 20.3¢ per Mcf.

Atlantic filed a letter with the Secretary on September 18, 1963, in reply to the comments of PGW. As to points (1) and (3) above, there appears to be no disagreement between the parties. The comments filed by each are in accord with the treatment we shall give the settlement. Atlantic stated (as to point (1)):

> *First.* The Settlement Proposal includes no "settlement price" with respect to Rate Schedule No. 166. See Appendix A to the Settlement Proposal filed August 9, 1963. The initial delivery by Atlantic was at a price of 17.8 cents per Mcf, as reflected by the billing statement filed with the Rate Schedule No. 166. This price was suspended by the Commission in Docket No. G–12159.

and as to point (3):

> *Third.* With respect to Rate Schedule No. 261, the proposed settlement price should have been stated as 20.3 cents per Mcf, and Atlantic hereby indicates its willingness to accept 20.3 cents per Mcf.

As to point (2), Atlantic stated that its proposal is quite fair in this respect because the temporary authorization in Docket No. G–18339 permitting the sale covered by Rate Schedule No. 197 was issued on May 20, 1959, that no interest rate was specified in the refund condition, that the interest rate in effect under Section 154.102(c) of our Regulations concerning refunds under Section 4 of the Act at that time specified a rate of 6 percent per annum and that this interest rate was not changed until March 1, 1960. (23 FPC 474). Atlantic stated that the interest rate of 7 percent per annum applies only to orders issued after March 1, 1960, and that Atlantic should only be required to pay interest at the rate in effect concerning Section 4 refunds at the time it received its temporary authorization (6 percent).

The Commission's authority to require interest on amounts refunded under Section 7 of the Act is not dependent upon its authority under Section 4. The authority to require interest is inherent in our authority to issue certificates with refund conditions. The purpose of the interest requirement is to avoid unjust enrichment. *Texaco Inc.* v. *F.P.C.* 290 F. 2d 149, 157 (CA5 1961). It is fair and proper to measure this enrichment by the conditions existing at the time the deliveries were made. Although the interest rate provision under

Section 154.102(c) of the regulations concerns refunds under Section 4 of the Act, it also constitutes our best judgment of the interest to be assessed in the Union Texas Proceeding settlements as reflecting conditions existing at the time deliveries were made.

We are not persuaded that Atlantic should have a less onerous interest rate than the other producers who have submitted settlement proposals in the Union Texas Proceeding. Our orders approving these proposals have required that interest on amounts refunded attributable to deliveries made on and after March 1, 1960, be computed at a rate of 7 percent per annum and 6 percent per annum for the time prior thereto. Our approval of Atlantic's proposal will be conditioned upon Atlantic's paying interest computed in the same manner.

As noted above, Atlantic proposes that August 1, 1963, be the effective date of the rate reductions proposed herein and the date of the commencement of the five-year moratorium period. As we noted in our recent order conditionally approving other settlement proposals in this proceeding,[4] those applicants with later effective dates would stand to gain an advantage over those producers who have, in good faith filed earlier, because the Area Rate Proceeding, Docket No. AR61–2 will certainly be completed before the five-year moratorium here proposed expires. Accordingly, we shall approve this settlement upon the condition that the effective date for the rate reductions be April 1, 1963, and that the moratorium begin on that date.

In general, the proposal is in the public interest and we shall approve it subject to the following further reservations and conditions.

Since deliveries subsequent to March 31, 1963, have been made at rates above the settlement rates we shall require that the dollar amount representing such excessess be refunded with interest at the rate of 7 percent per annum. All interest required to be paid by this order shall accrue through August 31, 1963, the last day of the month in which the proposal was filed.

In the context of the proposal, we interpret the term "delivered" as used in paragraph 1. of the proposal to include gas required to be taken during the moratorium period but paid for and not taken and our approval is conditioned upon such interpretation.

The settlement provisions for adjustments in rates according to our order or orders in Area Rate Proceeding, Docket No. AR61–2, seek to anticipate in part the nature of our final determinations in that matter. It is clear that we shall make no determinations in this matter which will control our conclusions in Docket No. AR61–2. The settiment proposal also provides that adjustments in price growing out of the Area Rate Proceeding, Docket No. AR61–2, should go into effect upon conclusion of judicial review of our final order.

However, we cannot now commit the Commission to conditionally staying the effectiveness of its final order in Docket No. AR61–2. These matters should be decided at the conclusion of that proceeding and our approval of the settlement will be so conditioned.

With the exceptions noted below, the pipeline purchasers (listed in the Appendix) which will receive refunds and whose gas purchase costs will be reduced as a result of this settlement will flow the refunds through and make appropriate rate adjustments to reflect this settlement. United Gas Pipe Line Company's (United) rate case in Docket No. RP63–1 is presently pending before the Commission. Any adjustments in United's rates necessary to reflect this settlement can be made in that proceeding.

In order to avoid a situation in which a pipeline obtains and keeps the benefits of refunds and a reduction in gas purchase costs even though it may be, in the

[4] See orders issued August 23, 1963, and October 9, 1963, in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, 30 FPC 550 and 979, respectively.

absence of such refunds and reductions in gas purchase costs, earning a reasonable rate of return on invested capital, we shall require Trunkline Gas Company (Trunkline) to report to the Commission the amount of refund and interest that it receives as a result of this settlement, the estimated annual reductions in purchased gas costs, the proposed disposition of the refunds and the proposed rate adjustments, if any, to reflect the reduction in gas purchase costs. We shall require Trunkline to hold the refunds and amounts equal to the reductions in purchased gas costs which will accrue as a result of this settlement in a special account subject to further orders of the Commission.

In accordance with the above we shall sever these Atlantic dockets from the consolidated proceeding, Union Texas Petroleum, *et al.*, docket No. G–13221, *et al.*, omit the intermediate decision in regard to these dockets[5] and issue certificates of public convenience and necessity in accordance with the applications, settlement proposal and conditions of this order.

The Commission finds:

(1) The Atlantic Refining Company is a natural-gas company within the meaning of the Natural Gas Act, and is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(2) The proposed sales of natural gas are subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Atlantic is able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, are required by the public convenience and necessity and are in the public interest upon the conditions set forth below, and certificates should be issued as ordered below.

(5) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

(6) It is in the public interest and it is appropriate in carrying out the provisions of the Natural Gas Act that Trunkline be required to submit the reports and account for the refunds, interest and purchased gas cost reductions as ordered below.

(7) No party has opposed the waiver of the intermediate decisions in these proceedings.

The Commission orders:

(A) The motion for waiver of the intermediate decisions is granted.

(B) The matters in the Atlantic dockets listed in the caption to this order are hereby severed from the consolidated proceeding, Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*

(C) Certificates of public convenience and necessity are hereby issued to the Atlantic Refining Company upon the conditions set forth herein authorizing the sales of natural gas in interstate commerce for resale as proposed and as modified by the settlement proposal and this order, and for the construction and operation of any facilities subject to the jurisdiction of the Commission neces-

[5] The hearings in the *Union Texas Petroleum, et al.*, consolidated proceeding concluded July 25, 1963.

sary therefor, as more fully described in Atlantic's applications and settlement proposal herein.

(D) The certificates issued by paragraph (C) above, are granted upon the express condition that Atlantic comply fully with the terms of this order and the settlement proposal, as modified, which settlement is expressly approved, under the conditions of this order.

(E) The certificates issued by paragraph (C) above are granted upon the express conditions that (1) the effective date of the proposed rate reductions and moratorium period commencement be April 1, 1963, (2) Atlantic, within 90 days from the date of issuance of this order, refund all amounts collected for gas delivered subsequent to March 31, 1963, in excess of that which would have been collected at the settlement rates, (3) Atlantic pay interest on all amounts refunded at a rate of 6 percent per annum on amounts attributable to deliveries made prior to March 1, 1960, and at a rate of 7 percent per annum on amounts attributable to deliveries made thereafter; such interest shall accrue through August 31, 1963 and (4) the initial rate in Docket No. G–11904 is 17¢ per Mcf.

(F) Within 30 days after making the refunds required by the terms and conditions of this order and the settlement proposal as modified, Atlantic shall report to the Commission, in triplicate, the amount of the refunds made to its pipeline purchasers, showing separately the amount of principal and interest so paid and the bases used for such determination, together with releases from the purchasers showing receipt of the refunds in conformity with the settlement as approved.

(G) Upon full compliance of Atlantic with all the terms of this order and of the settlement proposal, Atlantic shall be relieved of any further refund obligations in these certificate proceedings and said proceedings shall terminate.

(H) The certificates herein issued are not transferable and shall be effective only so long as Atlantic continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(I) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or Part 154 of the Regulations thereunder; *Provided, however*, that the 30-day notice provision of Part 154.94(b) and the detailed submittal requirements of Part 154.94(f) are hereby waived insofar as they apply to the filing of reductions in rate as required by this order and the settlement proposal.

(J) The grant of certificates herein and approval of the settlement proposal is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Atlantic, particularly any proceedings under Sections 4 or 5 of the Natural Gas Act and is without prejudice to claims or contentions which may be made by the Commission, Applicant, the Commission staff, or any affected party herein in any other proceeding.

(K) Within 15 days from the date of receipt of refunds and interest required by this order, Trunkline shall submit a report to the Commission and serve a copy on its jurisdictional customers and the various state utility commissions wherein it does business, setting forth the amount of refund and interest received, the estimated annual reduction in purchased gas costs due to Atlantic's rate reduction, its proposed disposition of such refunds and its proposed rate adjustments to reflect the reduction in gas purchase costs. Pending Commission action and further orders respecting such proposed disposition and adjustments, Trunk-

line shall hold such refunds, interest and amounts equal to the reductions in purchased gas costs which accrue as a result of this settlement in a special account (without interest obligation).

APPENDIX

Rate schedule No.	Docket No.		Present rate (¢/Mcf) [1]	Proposed initial service (¢/Mcf) [1]
197	G-18399	United Gas Pipe Line Co	22.8	20.625
204	G-18804	United Gas Pipe Line Co	22.3	20.625
258	G-17411	United Gas Pipe Line Co	22.05	20.625
166	G-11904	United Fuel Gas Co	20.7	[2] 17.8
261	CI62-1276	United Fuel Gas Co	20.3	20.3
220	CI61-450	Transcontinental Gas Pipe Line Co	22.8	20.625
222	CI61-652	Texas Gas Transmission Corp	23.25	20.625
233	CI62-8	Hope Natural Gas Co	23.05	20.625
238	CI62-416	Trunkline Gas Co	21.25	20.625
239	CI62-435	Trunkline Gas Co	21.25	20.625

[1] Inclusive of tax reimbursement.
[2] The rate in effect at the time of filing this rate schedule was 17.8¢ per Mcf. This rate was suspended in Docket No. G-12159 and became effective subject to refund. The certificate herein issued provides for an initial rate of 17¢ per Mcf. All amounts above that rate are being collected and will continue to be collected subject to refund in the various rate proceedings listed in the body of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G-13221, ET AL.; KERR-McGEE OIL INDUSTRIES, INC., DOCKET NOS. G-16718, G-16719, G-19307 AND CI62-398; PHILLIPS PETROLEUM COMPANY, DOCKET NOS. G-16611, G-16612, G-18375, AND G-19714

ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR RECONSIDERATION OF ORDER DENYING MOTION FOR SEVERANCE, FOR SHORTENED PROCEDURES, FOR APPROVAL OF SETTLEMENT PROPOSAL AND FOR ISSUANCE OF PERMANENT CERTIFICATES

(Issued November 29, 1963)

On July 5, 1963, Kerr-McGee Oil Industries, Inc. (Kerr-McGee) and Phillips Petroleum Company (Phillips) filed a motion for severance of the above-captioned Kerr-McGee and Phillips Dockets from the consolidated proceeding, Union Texas Petroleum, *et al.*, Docket No. G-13221, *et al.* (hereinafter referred to as the Union Texas Proceeding), for shortened procedures, for approval of a settlement proposal and for issuance of permanent certificates of public convenience and necessity.

Objections to the motion insofar as it applied to Docket Nos. G-16611, G-16612, G-16718 and G-16719 were filed by the Jupiter Corporation (Jupiter) on July 12, 1963 and by Long Island Lighting Company (Long Island) on August 5, 1963. The Public Service Commission of New York (PSC) concurred in the objections of Long Island on August 5, 1963.

In view of the objections to the proposal and without determining the merits, we denied the motion for severance by order issued in these proceedings on August 23, 1963.

On September 16, 1963, Kerr-McGee and Phillips filed a motion for reconsideration of the Commission's order of August 23, requesting that we approve the settlement proposal over the objections of Jupiter, Long Island and PSC. Sub-

sequently, on October 3, Kerr-McGee and Phillips filed an amended and supplemental motion for reconsideration reiterating their request that we approve the settlement proposal over objections and in addition requesting that the settlement proposal be accepted and the motion for severance be granted insofar as they apply to Docket Nos. G–18375, G–19714, G–19307 and CI62–398, regardless of the action taken by the Commission in the dockets in which objections have been filed.

Upon consideration of this matter, we shall conditionally approve the settlement as it applies to the non-contested dockets and deny the motion for reconsideration insofar as it requests approval of the settlement proposal over the objections of parties. It would serve no purpose to sever contested proceedings from the Union Texas Proceeding only to have them contested in another proceeding.

With regard to the non-contested dockets, the terms of the settlement proposal are similar to the terms of other settlements in the Union Texas Proceeding which have been approved by the Commission [1] and to provide for maximum initial rates of 20.625¢ per Mcf [2] for sales from south Louisiana, effective April 1, 1963; a five-year moratorium on rate increase filings (subject to the usual exceptions); and extension of the make-up periods for take-or-pay gas to four years in all rate schedules which provide lesser make-up periods.[3]

As to Kerr-McGee's Rate Schedule No. 74 (CI62–398), Kerr-McGee has filed a rate increase from 20.75¢ per Mcf to 21.75¢ per Mcf. This increase was made effective June 1, 1962, subject to refund and Commission determination in Docket No. RI62–237. Kerr-McGee proposes to withdraw this rate increase filing and refund to the purchaser the difference between the amount actually collected by Kerr-McGee under Rate Schedule No. 74 and the amount that would have been collected at a rate of 20.75¢ per Mcf. Effective April 1, 1963, the rate under this schedule will be 20.625¢ per Mcf. Kerr-McGee proposes to pay interest on the amounts to be refunded under this provision at a rate of 7 percent per annum, such interest to accrue through March 31, 1963.

The temporary authorizations under which the Kerr-McGee and Phillips sales are presently being made do not contain express refund conditions and, except as noted above, Kerr-McGee and Phillips do not propose to make refunds of any amounts collected prior to April 1, 1963, the effective date of the proposed rate reductions.

In general, the proposal, insofar as it concerns the non-contested dockets, is in the public interest and we shall approve this aspect subject to the following further reservations and conditions.

Since deliveries subsequent to March 31, 1963, have been made at rates above the settlement rates we shall require that the dollar amount representing such excesses be refunded with interest at the rate of 7 percent per annum. In keeping with our present policy, we shall require that all interest required to be paid by this order and the settlement proposal shall accrue through July 31, 1963, the last day of the month in which the proposal was filed.

In the context of the proposal, we interpret the term "delivered" as used in paragraph 1 of the proposal to include gas required to be taken during the moratorium period but paid for and not taken and our approval is conditioned upon such interpretation.

---

[1] See orders issued August 7, 1963 (Humble Oil & Refining Company) and October 9, 1963 (Gulf Oil Corporation and Socony Mobil Oil Company, Inc.), in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, 30 FPC 456 and 979, respectively.

[2] All rates expressed inclusive of applicable tax reimbursement and all volumes expressed at 15.025 psia.

[3] See Appendix for further details.

The settlement provisions for adjustments in rates according to our order or orders in Area Rate Proceeding, Docket No. AR61–2, seek to anticipate in part the nature of our final determinations in that matter. It is clear that we shall make no determinations in this matter which will control our conclusions in Docket No. AR61–2. The settlement proposal also provides that adjustments in price growing out of the Area Rate Proceeding, Docket No. AR61–2, should go into effect upon conclusion of judicial review of our final order.

However, we cannot now commit the Commission to conditionally staying the effectiveness of its final order in Docket No. AR61–2. These matters should be decided at the conclusion of that proceeding and our approval of the settlement will be so conditioned.

The Commission finds:

(1) Each of the Applicants is a natural-gas company within the meaning of the Natural Gas Act, and is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(2) The proposed sales of natural gas are subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicants are able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed sales in Docket Nos. G–18375, G–19714, G–19307 and CI62–398, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefore, are required by the public convenience and necessity and are in the public interest upon the conditions set forth below, and certificates should be issued as ordered below.

(5) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

(6) No party has opposed the waiver of the intermediate decisions in Docket Nos. G–18375, G–19714, G–19307 and CI62–398.

The Commission orders:

(A) The motion for waiver of the intermediate decisions in Docket Nos. G–18375, G–19714, G–19307 and CI62–398 is granted.

(B) The matters in docket Nos. G–18375, G–19714, G–19307 and CI62–398 are hereby severed from the consolidated proceeding, Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*

(C) Certificates of public convenience and necessity are hereby issued to Applicants upon the conditions set forth herein authorizing the sales of natural gas in interstate commerce for resale as proposed in Docket Nos. G–18375, G–19714, G–19307 and CI62–398 and as modified by the settlement proposal and this order, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in Applicant's applications and settlement proposal herein.

(D) The certificates issued by paragraph (C) above, are granted upon the express condition that Applicants comply fully with the terms of this order and the settlement proposal, as modified, which settlement is expressly approved, insofar as it relates to the dockets set out in paragraph (C) above, under the conditions of this order.

(E) The certificates issued by paragraph (C) above are granted upon the express condition that Applicants, within 90 days from the date of issuance

of this order, refund all amounts collected for gas delivered subsequent to March 31, 1963, in excess of that which would have been collected at the settlement rates, and upon the further condition that Applicants pay interest on all amounts refunded at a rate of 7 percent per annum; such interest shall accrue through July 31, 1963.

(F) Within 30 days after making the refunds required by the terms and conditions of this order and the settlement proposal as modified, Applicants shall report to the Commission, in triplicate, the amount of the refunds made to the pipeline purchasers, showing separately the amounts of principal and interest so paid and the basis used for such determinations, together with releases from the purchasers showing receipt of the refunds in conformity with the settlement as approved.

(G) Upon full compliance of Applicants with all the terms of this order and of the settlement proposal, Applicants shall be relieved of any further refund obligations in these certificate proceedings and said proceedings shall terminate.

(H) The certificates herein issued are not transferable and shall be effective only so long as Applicants continue the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(I) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or Part 154 of the Regulations thereunder; *Provided, however*, that the 30-day notice provision of Part 154.94(b) and the detailed submittal requirements of Part 154.94(f) are hereby waived insofar as they apply to the filing of reductions in rate as required by this order and the settlement proposal.

(J) The grant of certificates herein and approval of the settlement proposal is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Applicants, particularly any proceedings under Section 5 of the Natural Gas Act and is without prejudice to claims or contentions which may be made by the Commission, Applicants, the Commission staff, or any affected party herein in any other proceeding.

(K) Upon full compliance of Kerr-McGee with the terms of this order, the proceedings in Docket No. RI62–237 shall be terminated.

(L) The motion for reconsideration filed by Kerr-McGee and Phillips on September 16, 1963, and amended and supplemented on October 3, 1963, is hereby denied except as hereinabove granted.

APPENDIX

Producer	Rate schedule No.	Docket No.	Present rate (¢/Mcf) [1]	Proposed settlement rate (¢/Mcf)	Purchaser
Kerr-McGee	63	G–19307	22.8	20.625	United Gas P/L Co.
Kerr-McGee	74	CI62–390	[2] 21.75	20.625	Texas Gas Trans. Corp.
Phillips	357	G–19714	22.8	20.625	United Gas P/L Co.
Phillips	372	G–18375	21.25	20.625	Florida Gas Trans. Co.

[1] Inclusive of state tax reimbursement; pressure base 15.025 psia.
[2] Presently in effect subject to refund in Docket No. RI62–237.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

H. N. BURNETT, DOCKET NO. RI64–334

ORDER PROVIDING FOR HEARING ON AND SUSPENSION OF PROPOSED CHANGE IN RATE

(Issued November 22, 1963)

On October 23, 1963, H. N. Burnett (Burnett) [1] tendered for filing a proposed change in his presently effective rate schedule for sales of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description. Notice of change, date October 21, 1963.
Purchaser and producing area. Panhandle Producing Company, *et al.*[2] (West Panhandle Field, Hutchinson County, Tex.) (R. R. District No. 10).
Rate schedule designation. Supplement No. 2 to Burnett's FPC Gas Rate Schedule No. 4.
Effective date. November 23, 1963.[3]
Amount of annual increase. $5,220.
Effective rate. 10.0¢ per Mcf.[4]
Proposed rate. 11.0¢ per Mcf.[4]
Pressure base. 14.65 psia.

Burnett requests an effective date of September 17, 1963, for his proposed renegotiated price increase. Good cause has not been shown for waiving the 30-day notice requirement provided in Section 4(d) of the Natural Gas Act to permit an earlier effective date for Burnett's rate filing and such request is denied.

Burnett's proposed rate increase (from 10.0¢ to 11.0¢ per Mcf), relates to sweet gas being sold at the wellhead to a gasoline plant owned and operated by Panhandle Producing Company, *et al.*, (Panhandle) successors in interest to Frank C. Henderson Trust No. 2, and Elizabeth P. Henderson Trust No. 2. The residue gas, after processing, is resold at the plant outlet to Colorado Interstate Gas Co. in the West Panhandle Field, Hutchinson County, Tex. We consider the area ceiling to be applicable to the sales of residue gas by Panhandle after processing. Accordingly, Burnett's proposed increased rate, although not in excess of the increased ceiling for pipeline quality gas for Texas Railroad District No. 10 as set forth in the Commission's Statement of General Policy No. 61–1, as amended [18 CFR, Chapter I, Part 2, Section 2.56], should be suspended because the sale related thereto is considered to be for nonpipeline quality gas.

The increased rate and charge so proposed may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds:

It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the proposed change, and that Supplement No. 2 to Burnett's FPC Gas Rate Schedule No. 4 be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly Sections 4 and 15 thereof, the Commission's Rules of Practice and Procedure, and the

[1] Address is: c/o F. J. Corbin, First National Bank Bldg., Amarillo, Tex.
[2] Successors in interest to Frank C. Henderson Trust No. 2 and Elizabeth P. Henderson Trust No. 2.
[3] The stated effective date is the first day after expiration of the required 30 days' notice.
[4] Subject to a downward Btu adjustment.

Regulations under the Natural Gas Act [18 CFR, Chapter I], a public hearing shall be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in Supplement No. 2 to Burnett's FPC Gas Rate Schedule No. 4.

(B) Pending such hearing and decision thereon, Supplement No. 2 to Burnett's FPC Gas Rate Schedule No. 4 is hereby suspended and the use thereof deferred until April 23, 1964, and thereafter until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplement hereby suspended, nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C., in accordance with the Rules of Practice and Procedure [18 CFR 1.8 and 1.37(f)] on or before January 8, 1964.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

AMENDMENT TO PARTS 153 AND 157 OF SUBCHAPTER E OF THE RULES RELATING TO APPLICATIONS FOR AUTHORIZATION TO EXPORT OR IMPORT NATURAL GAS AND FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY UNDER SECTION 7 OF THE NATURAL GAS ACT AS AMENDED, DOCKET NO. R–133

ORDER TERMINATING PROPOSED RULEMAKING PROCEEDING

(Issued October 10, 1963)*

A notice in this proceeding, issued February 3, 1954 (19 F.R. 801), proposed the prescription of filing fees and other assessments in connection with applications for and authorizations granted pursuant to sections 3 and 7 of the Natural Gas Act. Views and comments of interested parties were received in response to the invitation in the notice, but the Commission has taken no further action on the proposal. The proceeding has become obsolete by the passage of time and, in any event, if the same or similar proposals are made in the future they will be initiated in a new proceeding.

The Commission finds:

Good cause exists to terminate this proceeding.

The Commission orders:

(A) Effective upon the issuance of this order, the proceeding in Docket No. R–133 is terminated.

(B) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

---

*Published in the Federal Register on October 16, 1963 (28 F.R. 11075).

[See Union Texas Petroleum, *supra*, p. 1310]

These matters should be decided at the conclusion of that proceeding and our approval of the settlement will be so conditioned.

In accordance with the above we shall sever these British-American and British-American (Operator), *et al.*, dockets from the consolidated proceeding, Union Texas Petroleum, *et al.*, Docket No. G–13221, et al., omit the intermediate decision in regard to these dockets [5] and issue certificates of public convenience and necessity and amend the order issuing certificate in accordance with the applications, settlement proposal and conditions of this order.

The Commission finds:

(1) The British-American Oil Producing Company is a "natural-gas" company within the meaning of the Natural Gas Act, and is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(2) The proposed sales of natural gas are subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) British-American is able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, are required by the public convenience and necessity and are in the public interest upon the conditions set forth below, and certificates should be issued and the amendment granted as ordered below.

(5) The conditions attached to the certificates herein issued and the amendment herein granted are required by the public convenience and necessity.

(6) No party has opposed the waiver of the intermediate decisions in these proceedings.

The Commission orders:

(A) The motion for waiver of the intermediate decision is granted.

---

[5] The hearings in *Union Texas Petroleum, et al.*, consolidated proceeding concluded July 25, 1963.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

ARKANSAS LOUISIANA GAS COMPANY, DOCKET NO. CP63-352

FINDINGS AND ORDER PERMITTING AND APPROVING ABANDONMENT OF FACILITIES AND ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 2, 1963)

On June 24, 1963, Arkansas Louisiana Gas Company (Applicant) filed in Docket No. CP63-352 an application pursuant to Sections 7(b) and (c) of the Natural Gas Act for an order permitting and approving abandonment of certain main line natural gas facilities, and for a certificate of public convenience and necessity authorizing the construction, replacement and operation of certain main line natural gas facilities and the operation in interstate commerce of certain existing main line natural gas facilities, all as more fully set forth in the application in this proceeding.

Applicant filed on September 28, 1961, as amended on November 8, 1961, in Docket No. CP62-83, an application pursuant to Section 7(b) of the Natural Gas Act requesting permission and approval to abandon certain natural gas facilities on its Texas-Oklahoma system. That application was set for formal hearing. However, before the hearing was convened, the application in subject Docket No. CP63-352 was filed changing the proposal filed in Docket No. CP62-83 in substantial and material respects, and at the same time Applicant gave notice of its withdrawal of the application in said Docket No. CP62-83. No action having been taken with regard to this notice of withdrawal, the withdrawal became effective on July 24, 1963, by operation of Section 1.11(d) of the Commission's Rules of Practice and Procedure.

In 1960, Consolidated Gas Utilities Corporation (Consolidated) merged with Applicant[1] and Applicant thereby acquired (1) Consolidated's so-called "main line system" which begins a few miles inside Texas and traverses western Oklahoma in a northeasterly direction extending on into Kansas, and (2) Consolidated's so-called "Lawton Area System" which is a system in and around the Cities of Lawton, Duncan, and Chickasha, in southern Oklahoma. Approximately 20 percent of Applicant's total natural gas sales are from these two systems. The main line system and the Lawton Area system are not connected, and the problem of moving gas from the Lawton system to the main line system has existed for years. At the time of acquisition of the Consolidated properties, Consolidated had gas reserves attached to its main line system in the total amount of approximately 56,000 MMcf, with total annual market requirements on its main line system in the order of 22,000 MMcf. On its Lawton Area system, Consolidated had gas reserves in the total amount of approximately 220,000 MMcf, with annual market requirements of approximately 17,500 MMcf.

Although the Lawton Area system is not attached to the main line system, gas available to it in excess of the annual market requirements on that system had for some time been transported to Consolidated's main line system by Cities Service Gas Company (Cities Service) pursuant to an exchange agreement. Gas from the Lawton Area system is still being delivered to Cities Service at a point of connection in that area and returned to Applicant at re-delivery points at Blackwell, Oklahoma and Hutchinson, Kansas. Applicant's main line system continues to be vitally dependent upon this arrangement with Cities Service.

---

[1] FPC order issued July 27, 1960, in Docket No. CP60-79, 24 FPC 91.

However, the reserves attached to the Lawton Area system began to become depleted and Applicant launched a vigorous reserve acquisition program designed to build up the reserves directly attached to its main line system, resulting in the acquisition to date of 342,000 MMcf of additional proven, recoverable reserves.

Applicant contracted for sizeable amounts of gas reserves which the producers were agreeable to committing to interstate commerce. However, there were many other producers who insisted upon initial deliveries at firm intrastate prices but who indicated a willingness to commit their gas later for movement in interstate commerce. Accordingly, Applicant contracted for substantial volumes of gas to be delivered only in Oklahoma for at least two years. The two-year intrastate limitation clauses in these contracts expired in August 1963.

With its contractual limitations lifted, Applicant needs to make this gas available to its interstate system, but to do so it must have the authorization sought in the instant application.

The application reflects a planned general upgrading and reorganization of the facilities and operation of Applicant's Texas-Oklahoma-Kansas System acquired through the aforementioned merger. This program is in line with position changes of delivery points of major supply and needs for greater capacity brought about by normal system growth. In detail, Applicant seeks authorization to:

(1) Construct and operate a new 2400 HP compressor station near Enid, Oklahoma, on its Oklahoma-Kansas main line system, together with approximately 20.4 miles of new 12-inch pipeline extending in a northeasterly direction from said station to the "Hunter-Kremlin Junction" and a point of connection with the proposed 12-inch line described in (3) below;

(2) Construct and operate a new 12-inch pipeline river crossing on the Salt Fork River near Lamont, Oklahoma, as a replacement for two existing 8-inch river crossings, and construct and operate approximately 2.2 miles of 12-inch pipeline as a replacement for an equal length of old 8-inch line extending in a northerly direction from the north end of the proposed 12-inch line described in (3) below to a point of connection with Applicant's 10-inch Line A–4 near the Armour-Webb Field;

(3) Operate approximately 23 miles of existing 12-inch line extending in a northeasterly direction from the "Hunter-Kremlin Junction" to a point of connection with the proposed 2.2 miles of 12-inch line referred to in (2) above, together with connecting field laterals and gathering lines including approximately 55 miles of 4-, 6- and 8-inch supply laterals now attached to the main line system, all previously operated solely in intrastate commerce;

(4) Abandon its Twitty, Pitsch, Brick, Carpenter, Kellerville, Enid and Eagle City Compressor Stations together with Compressor Units Nos. 1 through 10 of its Hunnewell Compressor Station, all of which are either of inefficient and obsolete design or are now idle or will no longer be required when operating pressures are increased on the new facilities; and

(5) Abandon approximately 36 miles of 8-inch line extending from Enid to Deer Creek, Oklahoma, together with the 2.2-mile 8-inch portion of Line A–4, referred to in (2) above, none of which is necessary or capable of use in connection with Applicant's proposed 800-pound 12- and 10-inch pipeline facilities extending from its proposed Enid Compressor Station to its Hunnewell Station.

The estimated total cost of the proposals under the subject application is $3,315,000, to be financed by cash generated within the company and by short-term loans.

Applicant was granted temporary authorization on October 4, 1963, to construct and operate the facilities as applied for pursuant to Section 7(c) of the Natural Gas Act.

Pursuant to due notice, a public hearing was held in Washington, D.C., on November 13, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Arkansas Louisiana Gas Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the facilities as proposed by Applicant, are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) The abandonment of the facilities hereinbefore described, as more fully described in the application in this proceeding, is subject to the provisions of Section 7(b) of the Natural Gas Act.

(7) The abandonment of facilities as proposed by Applicant is required by the public convenience and necessity and should be permitted and approved as hereinafter ordered.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Arkansas Louisiana Gas Company, to construct and operate natural gas facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) Permission for and approval of the abandonment by Applicant, Arkansas Louisiana Gas Company, of the facilities as hereinbefore described, all as more fully described in the application in this proceeding, be and the same are hereby granted upon the terms and conditions of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

J. B. MITCHELL, ET AL., DOCKET NO. RI60-282

ORDER DENYING OFFER OF SETTLEMENT

(Issued December 2, 1963)

On July 8, 1963, J. B. Mitchell, *et al.* (Mitchell), filed an Offer of Settlement pursuant to Section 1.18 of the Commission's Rules of Practice and Procedure. The offer relates to proposed increased rates of 17.24347¢ per Mcf,[1] designated as Supplement No. 6 to J. B. Mitchell, *et al.*, FPC Gas Rate Schedule Nos. 1 and 2, for sales of gas at 14.65 psia to Tennessee Gas Transmission Company (Tennessee) from Zim and Zim-Richaby Fields, Starr County, Texas (Railroad District No. 4). The proposed increased rates were suspended by Commission order issued April 27, 1960, and were subsequently made effective subject to refund under bond on September 28, 1960, in the above-entitled proceeding.

Under the terms of the Offer, Mitchell proposes settlement rates of 16.25¢ per Mcf less 1.25¢ per Mcf for dehydration and compression. In effect, Mitchell is requesting net settlement rates of 15.0¢ per Mcf. Mitchell also proposes to eliminate from the contracts comprising the subject rate schedules all favored-nation, price redetermination and periodic escalation clauses, and to also make all necessary refunds with interest. Mitchell claims that the proposed settlement rates apply to "pipeline quality gas", as required by the Statement of General Policy No. 61–1, asserting that the term as it is generally understood in the producing area involved herein means non-dehydrated gas of sufficient flowing pressure to enter the buyer's line at point of delivery. Thus, Mitchell's position is that any charge for dehydration and compression after the gas enters the buyer's line is a reduction in price and not a cost of making delivery.

We cannot accept Mitchell's position as to the meaning of the term "pipeline quality gas". The price levels for the area involved are considered to apply to the contractually provided price *before* any applicable deductions are taken. Any contractual deductions for dehydration or compression from the base price, such as recited above, are considered to be deductions for non-pipeline quality gas within the meaning of the Policy Statement. Accordingly, the proposed 16.25¢ per Mcf settlement rates, less 1.25¢ per Mcf for dehydration and compression, exceed the area price level set out in the Second Amendment,[2] and the Offer of Settlement should be denied.

Mitchell further requests that if the offer is denied, an early date to be set for a public hearing at which he be permitted to introduce cost-of-service data. In view of the Commission's announced intention to proceed on an area approach in producer cases, this request is denied. Of course, Mitchell will be permitted to submit its cost data in an area proceeding involving Texas District No. 4 for

---

[1] From each rate there is deducted 1.25¢ per Mcf for dehydration and compression by buyer.

[2] Issued by the Commission on December 20, 1960, 24 FPC 1107, as amended by Order No. 264 issued March 27, 1963, 29 FPC 589.

incorporation in the composite industry data of record in that proceeding. However, for the reasons indicated in our previous orders in Docket No. AR61–1, Mitchell's individual presentation would not be competent evidence in an area proceeding. We shall also re-examine in the applicable area proceeding our position, as set forth, that contractual deductions for dehydration or compression should be considered as deductions for non-pipeline quality gas.

The Commission finds:

It is necessary and proper in carrying out the provisions of the Natural Gas Act and the Regulations thereunder to deny Mitchell's Offer of Settlement filed with the Commission on July 8, 1963.

The Commission orders:

The Offer of Settlement filed by J. B. Mitchell, *et al.*, on July 8, 1963, in Docket No. RI60–282 is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

THE UNION WATER-POWER COMPANY, PROJECT NO. 2302

ORDER ISSUING LICENSE

(Issued December 2, 1963)

Application was filed on October 5, 1961 by The Union Water-Power Company (Applicant) of Lewiston, Maine, for a license under the Federal Power Act (Act) for constructed Project No. 2302 located on the Androscoggin River in Androscoggin County, Maine, in the towns of Lewiston and Auburn.

According to the application, in 1836, the Great Androscoggin Falls Mill Dam Locks and Canal Company was formed for the purpose of erecting and constructing dams, locks, canals, mills, etc., and undertook limited construction work of a permanent nature. In 1845 the name of the company was changed to Lewiston Water-Power Company which planned and commenced construction of the canal system, a log or timber crib dam having been constructed at the head of Lewiston Falls and which increased the total available fall to about 50 feet. The exact height of the dam and the date of its construction are not known but a dam was there in 1836 when the Great Androscoggin Falls Mill Dam Locks and Canal Company was formed. Construction work on the present canal system was started in the Spring of 1850. During 1850–51 the Main Gatehouse was constructed and 1,900 feet of the Upper Canal and all of Cross Canal #1 were excavated and walled. This system encompassed all the canal construction work undertaken by Lewiston Water-Power Company. Ownership of this property was transferred in 1857 to Franklin Company which extended the main canal to its present length, constructed the Lower Canal, Cross Canal #2 and Cross Canal #3. The wooden dam remained in service until 1862 when a section was washed out. Between 1862 and 1865, Franklin Company replaced the wooden structures with stone masonry structures. In 1956, a spillway section identified as Dam #5, was constructed replacing a previously existing bulkhead section of the dam.

The pool behind the dam has a surface area of about 200 acres at elevation 168.17 feet and extends about two and one half miles upstream from the dam. The project, as operated, provides water through a diversion canal system to several industrial users who generate electrical energy and use the water for

industrial purposes. The total installed capacity of the generating facilities in these plants is about 14,000 kilowatts. In addition, applicant has a 40-horsepower hydro-turbine at the project, and the mechanical power developed thereby is used in applicant's machine shop.

The Secretary of the Army and the U.S. Corps of Engineers have reported that the plans of the project structures affecting navigation are satisfactory insofar as the interests of navigation are concerned and the plans were approved pursuant to Section 4(e) of the Act.

The Department of the Interior recommended for inclusion in any license issued for the project certain conditions in the interest of fish life.

In its order issued July 24, 1958,[1] the Commission found that the Androscoggin River throughout its entire length is a "navigable water" as defined in Section 3(8) of the Federal Power Act and a "navigable water of the United States" within the meaning of Section 23(b) of the Act. The basis of this finding was that the Androscoggin River is presently, and for more than a century has been used for the transportation of logs and other forest products by water.

Applicant requests a 50-year license effective as of the date of its issuance. However, as we stated in our Opinion No. 357 pertaining to the Public Service Company of New Hampshire's Project No. 2288 at Gorham, New Hampshire (27 FPC 830, 834), if a company whose project has enjoyed three or more decades of unregulated operation were granted a full 50-year license term from date of issuance, it would reap a substantial benefit from its prolonged delay in filing. For the reasons set forth in Opinion No. 357, therefore, the license herein granted shall have a termination date of 1993. Since part of the dam was replaced by construction of a spillway section in 1956, we will make the license effective as of January 1, 1956.

The Commission finds:

(1) The project affects navigable waters of the United States.

(2) Applicant is a corporation organized under the laws of the State of Maine, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effect the purposes of a license.

(3) No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) The project will be best adapted to a comprehensive plan for improving and developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes, upon compliance with the terms and conditions hereinafter imposed.

(6) The amount of annual charges to be paid under the license for the purpose of reimbursing the United States for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(7) The exhibits described and designated in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of this license.

The Commission orders:

(A) This license is hereby issued to The Union Water-Power Company of Lewiston, Maine, under Section 4(e) of the Act for a period effective January 1, 1956 and terminating December 31, 1993, for the continued operation and maintenance of Project No. 2302 on the Androscoggin River, Maine, and affecting

[1] *New Hampshire Water Resources Board*, docket No. E-6807, 20 FPC 99-101.

navigable waters of the United States, subject to the terms and conditions of the Act which is incorporated herein by reference as a part of this license and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2302 consists of:

(i) All lands constituting the project area and inclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the licensee or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit J: (FPC No. 2302–1) General Map;

Exhibit K: Sheet 1 (FPC No. 2302–2) Detail Map of Reservoir; Sheet 2 (FPC No. 2302–3) Detail Map—Dams, Gatehouses, and Upper Section of Canal; Sheet 3 (FPC No. 2302–4) Detail Plan—Upper, Lower & Cross Canal; Sheet 4 (FPC No. 2302–5) Detail Plan—Upper Canal; and Sheet 5 (FPC No. 2302–6) Canal Profiles.

(ii) A dam comprised of four main sections of stone-masonry capped with concrete all equipped with removable steel pins to hold four feet of flashboards, a concrete section equipped with 16-inch flashboards, and a wasteway section built as part of one main section; a canal system comprised of an upper and lower canal connected by cross-canals; a reservoir, extending upstream about two and one half miles, having a surface area of about 200 acres at elevation 168.17 feet (USGS datum); a 40-horsepower turbine used to develop mechanical power; and appurtenant facilities; the location, nature, and character of which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also formed part of the application for license and which are designated and described as follows:

Exhibit L: Sheet 1 (FPC No. 2302–7) Typical Plan—Sections, Dams Nos. 1, 2, 3, 4, & 5; Sheet 2 (FPC No. 2302–8) Little Gate House—Cowan Weir; Sheet 3 (FPC No. 2302–9) Main Gate House; Sheet 4 (FPC No. 2302–10) Bates Weir—Androscoggin Weir; Sheet 5 (FPC No. 2302–11) Red Shop—Continental Weir; and

Exhibit M: Four typewritten pages, entitled "General Description and Specifications of Equipment and Appurtenances", filed in the Commission October 5, 1961.

(iii) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located upon the project area, and all rights and interests the possession of which is necessary or appropriate in the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L–3, November 1, 1963, 30 FPC 1658, entitled "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States", which terms and conditions, designated as Articles 1 through 27, are attached hereto and made a part hereof; and subject to the following special conditions set forth herein as additional articles:

Article 28. The Licensee shall pay to the United States the sum of Fifty Dollars ($50.00) annually for the purpose of reimbursing the United States for the costs of administration of Part I of the Act; or such other amount as may hereafter be determined as necessary to reimburse the United States for the costs of administration.

Article 29. The Licensee shall within one year from the date of issuance of the license, file with the Commission for approval its proposed recreational use

plan for the project. The plan shall be prepared after consultation with appropriate Federal, State and local agencies, and shall include recreational improvements which may be provided by others in addition to the improvements the Licensee plans to provide.

(D) The exhibits described and designated in paragraph (B) above are hereby approved as part of this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

COLORADO INTERSTATE GAS COMPANY, DOCKET NO. CP64-60

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 3, 1963)

On September 13, 1963, Colorado Interstate Gas Company (Applicant) filed in Docket No. CP64-60 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of measuring facilities to be used in the sale and delivery of natural gas to Plateau Natural Gas Company (Plateau), all as more fully set forth in the application.

The proposed facilities include:

1. an additional meter run on the site of Applicant's Security Sales Meter Station, El Paso County, Colorado—the gas to be resold by Plateau to the Subdivision of Widefield, El Paso County, Colorado;

2. enlargement of Applicant's Franktown metering facilities, Douglas County, Colorado—the gas to be resold by Plateau in the Towns of Elizabeth and Kiowa in Elbert County, Colorado;

3. a new meter station near Pritchett in Baca County, Colorado—the gas to be resold in the Town of Pritchett; and

4. a new meter station in Baca County, Colorado, on Applicant's main transmission line north of Morton Junction—the gas to be resold to irrigation customers in Baca County, Colorado.

Plateau proposes to purchase gas at Applicant's proposed new meter stations and sell it in the various communities listed above. With the exception of Widefield, the proposed facilities will make natural gas available for the first time to the above communities. In the case of Widefield, Plateau will be able to purchase gas at a wholesale price rather than at the retail rates it is presently paying to another supplier, the City of Colorado Springs.

The estimated cost of the proposed facilities is $19,520.00, to be financed from cash on hand.

Pursuant to due notice, a public hearing was held on November 12, 1963, respecting the matters involved in and the issues presented by the application herein. No protest or petition to intervene has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Colorado Interstate Gas Company, a Delaware Corporation having its principal place of business in Colorado Springs, Colorado, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed sale and delivery of natural gas by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) A request during public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Colorado Interstate Gas Company, to construct and operate facilities and to sell and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission Regulations, within thirty days from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. Charles R. Ross, Harold C. Woodward, and David S. Black.

MOUNTAIN FUEL SUPPLY COMPANY, DOCKET NO. CP63-258

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 3, 1963)

On September 23, 1963, Mountain Fuel Supply Company (Applicant) filed an application to amend the Commission's order, issued June 17, 1963, 29 FPC 1174, in Docket No. CP63-258, by authorizing Applicant to construct and operate 3.7

miles of 16-inch pipe in lieu of 3.7 miles of 24-inch pipe presently authorized by said order, all as more fully set forth in the application to amend.

The order of June 17, 1963, authorized Applicant to construct and operate, among other facilities, 3.7 miles of 24-inch pipeline in Weber Canyon, Utah, replacing and relocating a portion of a 14-inch line. Such replacement and relocation was due to the construction of Interstate Highway 80. The relocated line was to be constructed along a bench high above the canyon, and Applicant desired to install 24-inch pipe because it was understood that the bench would be too narrow to allow for the looping, at a subsequent time, of a smaller diameter pipe in the event that increased capacity would be required. It has now been determined that the bench will have sufficient room to permit looping in the future, if required.

Therefore, Applicant requests that the order of June 17, 1963, issued in the subject docket, be amended to permit the installation of 16-inch pipe.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on October 22, 1963 (28 F.R. 11288). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order, issued June 17, 1963, in Docket No. CP63-258 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order, issued June 17, 1963, in Docket No. CP63-258 be and the same is hereby amended by authorizing Applicant to construct and operate 3.7 miles of 16-inch pipe in lieu of 3.7 miles of 24-inch pipe heretofore authorized by said order, all as hereinbefore described and as set forth in the subject application to amend.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

NEVADA POWER COMPANY, DOCKET NO. E-6832

ORDER AMENDING ORDER FOR HEARING AND SUSPENSION OF RATE SCHEDULES AND INSTITUTING INVESTIGATION

(Issued December 3, 1963)

By order of July 9, 1958, the Commission suspended Supplement No. 1 to Nevada Power Company's (Nevada Power) Rate Schedules[1] FPC Nos. 1 and 2, and provided for a hearing. Since the date of the aforesaid order, Nevada Power has placed in effect a third rate schedule under its Schedule LGS providing for a sale for resale to Southern California Edison Company for a new service area in the Death Valley area designated in the Commission files as Nevada Power Company's Rate Schedule FPC No. 3.

Data currently available to this Commission indicate the need for a formal investigation concerning the lawfulness of Electric Rate Schedule Tariff "LGS",

[1] On June 1, 1961 the Company adopted its present name, prior thereto it was known as the Southern Nevada Power Company.

filed pursuant to Section 205 of the Federal Power Act by Nevada Power. The monthly demand charge is $1.65 per kw, and the energy charge, 7 mills per kwh for the first 100,000 kwh and 6 mills per kwh for all additional kwh. The rate schedule tariff contains a fuel clause based on 12,000 Btu per net kwh delivered. A discount of $.15 per kw of demand is provided for purchase at or above 33 kv.

The Commission finds:

Review and analysis of available office data indicate that the aforesaid rate schedules may result in excessive rates or charges or may be unduly discriminatory, unduly preferential, or otherwise unjust, unreasonable and unlawful within the meaning of the Federal Power Act. Additional factual data necessary for a resolution of those questions must be obtained. Accordingly, it is necessary and appropriate for the purposes of the Federal Power Act, particularly Sections 205, 206, 304, 307, 308 and 309 thereof, that the Commission enter upon an investigation concerning the lawfulness of Nevada Power's "LGS" Electric Rate Schedule Tariff which is embodied in Nevada Power's Rate Schedules FPC Nos. 1, 2 and 3 and the supplements thereto; and that Nevada Power be directed to submit cost and revenue data all in the manner as hereinafter provided.

The Commission orders:

(A) A public hearing shall be held concerning the lawfulness of Nevada Power's Rate Schedules Nos. 1, 2 and 3 and the supplements thereto at a time and place and in the manner all to be fixed by notice of the Secretary.

(B) Nevada Power shall file, on or before April 1, 1964, cost and revenue data, using 1963 as the test year, showing Nevada Power's costs of rendering service to each wholesale customer for resale under the rate schedules referred to in Paragraph (A) above, calculated in accordance with applicable Commission precedents.

(C) The foregoing showing shall not preclude or limit any additional showing by Nevada Power or others and shall be without prejudice to future action taken by the Commission or its staff, or to any future position Nevada Power or others may wish to take as to the significance of, or conclusions to be drawn from, the above factual showing.

(D) The foregoing showing shall be submitted in writing with sufficient copies to provide this Commission with six copies, to provide each State Commission affected with a like number of copies and to provide one copy each to all other parties as may be granted intervention in this proceeding.

(E) Notices of intervention or petitions to intervene in this proceeding may be filed with the Commission on or before December 23, 1963 in accordance with the Commission's Rules of Practice and Procedure (18 C.F.R. 1.8 and 1.37).

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP64-54

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 3, 1963)

On September 3, 1963, Northern Natural Gas Company (Applicant) filed in Docket No. CP64-54 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the

construction during the calendar year 1964 and the operation of compression and pipeline facilities on existing gathering systems to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

The total cost of the facilities proposed hereunder will not exceed a maximum of $3,000,000, with no single project to exceed a cost of $500,000.

Pursuant to due notice, a public hearing was held in Washington, D.C., on November 12, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-280 (3 FPC 967).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit, pursuant to Section 2.58(c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization granted hereinafter, a statement showing by projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects constructed pursuant to the authorization hereinafter granted, (d) the location of said project or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing, metering, and appurtenant facilities, and (f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate authorizations.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1964 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $3,000,000, with no single project to exceed a cost of $500,000.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Northern Natural Gas Company, to construct during the calendar year 1964, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit pursuant to Section 2.58(c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization herein granted, a statement showing by projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects that have been constructed pursuant to the authorization herein granted, (d) the location of said project or projects, (e) the actual installed cost of said facilities and (f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate authorizations.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1964, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $3,000,000, with no single project to exceed a cost of $500,000.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

BROWN COMPANY, PROJECT NO. 2311

ORDER ISSUING LICENSE (MAJOR)

(Issued December 4, 1963)

Application was filed on April 6, 1962 by Brown Company (Applicant) of Berlin, New Hampshire, for a license under Section 4(e) of the Federal Power Act (Act) for its constructed Project No. 2311, known as Gorham Hydroelectric Development, located on the Androscoggin River in the Town of Gorham in Coos County, New Hampshire.

According to the application, construction of the original dam and powerhouse was commenced in 1903 and completed in 1904 by Berlin Mills Company, which was the former name of Applicant. In 1921, the powerhouse was rebuilt by

replacing the original three generating units with the presently existing four 1,400-horsepower horizontal turbines, reconstruction of the penstocks and other minor additions. There have been no major changes in the project works since 1921.

The Gorham Hydroelectric Development, which is one of several being operated by Applicant on the Androscoggin River, has a total installed capacity of 6,400 horsepower. The energy generated by the project is used by Applicant in its mills located in the towns of Berlin and Gorham, New Hampshire.

In its order issued July 24, 1958,[1] the Commission found that the Androscoggin River throughout its entire length is a "navigable water" as defined in Section 3(8) of the Federal Power Act and a "navigable water of the United States" within the meaning of Section 23(b) of the Act. The basis for this finding was that the Androscoggin is presently, and for more than a century has been used for the transportation of logs and other forest products by water.

The Secretary of the Army and the Chief of Engineers, in reporting on the application, advised that the project structures affecting navigation were considered satisfactory; that special terms and conditions in the interest of navigation were not considered necessary; and that the plans of the project structures affecting navigation had been approved pursuant to Section 4(e) of the Act.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license issued for the project a special condition in the interest of fishlife.

Applicant requests a 50-year license, effective as of the date of its issuance. However, as we stated in our Opinion 357 pertaining to Public Service Company of New Hampshire's Project No. 2288 at Gorham, New Hampshire (27 FPC 830, 833), if a company whose project has been operated for three or more decades without a license under the Federal Power Act were to be granted a full 50-year license term from date of issuance, it would reap a substantial benefit from its prolonged delay in filing. For the reasons set forth in Opinion No. 357, therefore, the license herein granted shall have a termination date of 1993. Since there was no project construction after 1935, we will make the effective date of the license July 1, 1958, the first day of the month in which we determined the Androscoggin River to be a navigable water, as set forth above.

The Commission finds:

(1) Applicant is a corporation organized under the laws of the State of Maine and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purpose of a license for the project.

(2) No conflicting application is before the Commission. Public notice of the filing of the application has been given as required by the Act. No protests have been received.

(3) The issuance of a license as hereinafter provided will not affect a Government dam or the development of any water resources for public purposes which should be undertaken by the United States.

(4) The project will be best adapted to a comprehensive plan for improving and developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes, upon compliance with the terms and conditions hereinafter imposed.

---

[1] *New Hampshire Water Resources Board*, docket No. E-6807, 20 FPC 99-101.

(5) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 6,400 horsepower.

(6) The energy generated by the constructed project is used by Applicant in its mills located in Berlin and Gorham, New Hampshire.

(7) The exhibits hereinafter designated and described in ordering paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of the license for the project.

The Commission orders:

(A) This license is hereby issued to Brown Company of Berlin, New Hampshire, under Section 4(e) of the Federal Power Act for a period effective as of July 1, 1958, and terminating December 31, 1993, for the continued operation and maintenance of the Gorham Development, Project No. 2311, located on the Androscoggin River, a navigable water of the United States, in Coos County, New Hampshire, subject to the terms and conditions of the Act, which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Constructed Project No. 2311 consists of:

(a) All lands constituting the project area and inclosed by the project boundary or the limits of which are otherwise defined, and/or interest in, such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the licensee or by the United States; such project area and project boundary being more specifically shown and described by a certain exhibit which formed part of the application for license and which is designated and described as follows:

Exhibit J: (FPC No. 2311–1) General Map showing Plan View of Project Area.

(b) A timber-crib rock-fill dam surmounted with five foot flashboards, concrete wing walls and earth abutment sections; a gatehouse structure located adjacent to the timber dam at the head of the canal; a canal about 3,350 feet long with walls and bottom of riprap construction; a gatehouse and powerhouse located at the lower end of the canal with the powerhouse containing four 1,400-horsepower horizontal turbines each connected to a 1,200-kilowatt generator; a tailrace; step-up transformers, and appurtenant electrical and mechanical facilities; the location, nature and character of which are more specifically shown and described by the exhibit hereinbefore cited and by certain other exhibits which also formed a part of the application for license and which are designated and described as follows:

Exhibit L: General Design Drawings of Gorham Hydroelectric Development.

FPC No.	*Sheet No.*	*Description*
2311–3	1	Plan View of Dam & Head Gatehouse
2311–4	2	Plan View of Station & Gatehouse
2311–5	3	Elevations of Station & Gatehouse
2311–6	4	Elevation & Section—Upper Gatehouse
2311–7	5	Section Views of Station
2311–8	6	Plan View of Operating Floors

Exhibit M: Eleven typewritten pages, "General Description of Mechanical and Electrical Equipment", filed in the Commission April 6, 1962.

(c) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, in-

THE ARMY LIBRARY
Washington, D.C.

cluding such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as a part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L–3, November 1, 1963, 30 FPC 1658, entitled "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States", which terms and conditions, designated as Articles 1 through 27, are attached hereto and made a part hereof; and subject to the following special conditions set forth herein as additional articles:

Article 28. The Licensee shall pay to the United States the following annual charge:

For the purpose of reimbursing the United States for the cost of administration of Part I of the Act one (1) cent per horsepower on the authorized installed capacity (6,400 horsepower) plus two and one-half (2½) cents per 1,000 kilowatthours of gross energy generated during the calendar year for which the charge is made; or such other amounts as may hereafter be determined as necessary to reimburse the United States for the costs of administration.

Article 29. The Commission reserves the right to determine at a later date what additional transmission facilities, if any, should be included in the license as part of the project works.

Article 30. The Licensee shall within one year from the date of issuance of the license, file with the Commission for approval its proposed recreational use plan for the project. The plan shall be prepared after consultation with appropriate Federal, State and local agencies, and shall include recreational improvements which may be provided by others in addition to the improvements the Licensee plans to provide.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. G–4769, G–12948, G–17929 AND RP60–3

ORDER APPROVING RATE SETTLEMENT PRESCRIBING REFUNDS AND TERMINATING PROCEEDINGS

(Issued December 4, 1963)

The above dockets relate to rate proceedings arising from proposed increases in rates and charges tendered for filing by El Paso Natural Gas Company (El Paso) pursuant to Section 4 of the Natural Gas Act. The periods during which

the proposed increases in the respective dockets have been collected by El Paso, subject to refund of excess charges, are as follows:

Docket No.	Filing date	Period covered by suspended rate
G–4769	Oct. 14, 1954	Apr. 15, 1955–Dec. 31, 1957
G–12948	June 28, 1957	Jan. 1, 1958–July 31, 1959
G–17929	Jan. 28, 1959	Aug. 1, 1959–Aug. 24, 1960
RP60–3	Feb. 23, 1960	Aug. 25, 1960–

In the proceeding in Docket No. G–4769, hearings were held and the Commission issued its opinion and order on August 10, 1959.[1] On petitions for review the case went to the Fifth Circuit Court of Appeals and on August 2, 1960, the Court remanded the case to the Commission (281 F. 2d 567) for consideration of the limited issue of a fair return on El Paso's wellmouth rate base.

The Commission, by order issued June 20, 1961, consolidated the above-captioned four dockets for purposes of hearing and decision. Hearings commenced on July 24, 1961, and were concluded on June 5, 1962. Initial and reply briefs were filed.

During the hearing staff counsel on November 16, 1961 orally moved for application of the interim order procedure and waiver of the intermediate decision with respect to the issue of rate of return in the four dockets. The Commission, by order issued December 27, 1961, adopted the interim order procedure, omitted the intermediate decision and fixed dates for filing of briefs. On October 19, 1962, the Commission issued its opinion and order[2] finding the fair, just and reasonable rate of return to be allowed El Paso in these proceedings. This order directed an immediate payment of refunds in Docket No. G–4769 (in which the only remaining issue was rate of return) and an immediate interim reduction in rates for the future of 1.76¢ per Mcf, the amount calculated to reflect the effect of the rate of return determination.

Petitions seeking review of the Commission's determination on the issue of rate of return were filed in the United States Court of Appeals for the Fifth Circuit (Nos. 20180, 20203, 20336 and 20543). El Paso also filed a request for stay of the Commission's order. Such stay having been denied, El Paso filed revised tariff sheets reflecting the reduced rates (as to rate of return) to become effective as to deliveries of natural gas from and after December 1, 1962. On May 17, 1963, El Paso made refunds in Docket No. G–4769 in the total amount of $40,086,567.

The opinion and order issued October 19, 1962 specifically noted that rates and refunds there prescribed were subject to such further adjustments as might be required after further hearing on the other issues in the proceedings. Such issues were thereafter heard and briefed before the Presiding Examiner. No decision thereon was rendered during the pendency of settlement negotiations.

Conferences between the representatives of El Paso, the Commission staff and parties to the proceeding have been held from time to time to discuss settlement of the issues herein. Upon request of El Paso and after direct notice to all of El Paso's customers and the parties to the proceedings, further settlement conference was held on November 20, 1963. As a result of this conference all parties present have agreed, subject to the Commission's approval, to a settlement of the above dockets and all issues involved therein and all matters on appeal from said dockets.

---

[1] FPC Opinion No. 326, 22 FPC 260.
[2] FPC Opinion No. 366, 28 FPC 688.

On November 20, 1963, El Paso filed a document entitled "Stipulation and Agreement" with the Commission and served copies thereof upon all interested parties to the proceeding. Briefly summarized, the proposed stipulation and agreement which is attached hereto as an exhibit, provides in part, as follows:

(1) El Paso will tender for filing with the Commission within 10 days of the order approving the stipulation and agreement, revised tariff sheets acceptable to the Commission which will reflect for El Paso's Southern Division, effective as of November 1, 1963, a further reduction in rates of 1.54¢ per Mcf for all jurisdictional customers other than California and for California's customers a reduction in the demand rate of 46.8¢ for each Mcf of billing demand.[3]

(2) Within 30 days after the Commission order is issued approving the stipulation and agreement, El Paso will refund to its Southern Division customers the sum of one hundred fifty-five million dollars ($155,000,000.00), which includes $8,781,219 to El Paso's so-called "keyed non-jurisdictional" customers. This amount includes refunds received by El Paso from producers for gas purchased for the Southern Division prior to November 1, 1963 ($2,995,171.00) and includes refunds in the amount of $40,086,567 previously made on May 17, 1963 in Docket No. G-4769 and is to cover all claims with respect to principal and interest accumulated to November 1, 1963. El Paso will also refund the amounts collected since November 1, 1963 in excess of amounts which would have been collected under the aforementioned settlement rates. In addition, El Paso will refund as to all principal amounts such interest as may have accrued, at the rate applicable to the respective dockets, from November 1, 1963 to date of refund.

(3) El Paso agrees to refund to its Southern Division jurisdictional customers the jurisdictional portion of any refunds received from its gas suppliers or from the State of Texas if the Texas Dedicated Reserve tax is finally declared unconstitutional, whenever such monies are received by El Paso, to the extent that such refunds are applicable to gas volumes purchased for El Paso's Southern Division during the period commencing April 15, 1955, and ending on the first date on which a rate increase sought by El Paso's Southern Division becomes effective after the expiration of the moratorium period. However, this particular refund provision does not apply to any refunds from gas purchase increases becoming effective after November 1, 1963, unless El Paso files therefor, nor does it apply to any refunds from sources of supply connected to El Paso's system subsequent hereto. The agreement further provides that this proviso clause is not intended to limit any authority this Commission may exercise, nor any position which any interested party may take, in respect to the latter mentioned refunds.

(4) El Paso will file appropriate reductions in its rates to reflect any reductions in present rates for gas supplied to the Southern Division ordered by the Commission during the period commencing November 1, 1963 and ending with the first date on which a rate increase sought by El Paso becomes effective after November 1, 1965. However, El Paso may offset against such reductions any increase in cost of gas supplied for its Southern Division which may become effective during such period by order of the Commission.

(5) El Paso will make no rate increase filings for its Southern Division which will become effective before November 1, 1965; however, El Paso may apply for rate increases, limited to offset of net gas supplier rate increases

[3] These reductions are in addition to the 1.76¢ per Mcf reduction placed in effect on December 1, 1962, pursuant to Opinion No. 366.

to its Southern Division, aggregating more than $1,000,000, to become effective no sooner than January 1, 1965.

(6) El Paso pursuant to Commission order will reverse the depreciation accruals on its Southern Division and common-system properties during the period from January 1, 1958 through October 31, 1963, to reflect a 4.04% depreciation rate on production and gathering, products extraction and underground storage properties and a depreciation rate of 3.14% on transmission properties. The resulting amount (approximately $21,000,000) is to be excluded in computing the rate base of the Southern Division in any rate proceeding initiated by El Paso in which the rate may become effective prior to November 1, 1966. Commencing November 1, 1963, El Paso, pursuant to Commission order, will use a 3.92% depreciation rate on its entire gas production and gathering, extracted products and underground storage plant and a 3.05% depreciation rate on its entire gas transmission plant, and existing depreciation rates on all other depreciable gas plant.

Upon approval by the Commission without modification of the stipulation and agreement and payment by El Paso of the refunds, the appeals cases Nos. 20180, 20203, 20336 and 20543, now pending in the United States Court of Appeals for the Fifth Circuit will be withdrawn by the petitioners in these cases.

The stipulation and agreement also contains certain general provisions including, *inter alia*, a request by the parties that the Commission waive compliance with its Rules and Regulations to the extent necessary to effectuate all the provisions of the agreement; reservations that no party to the proceeding shall be bound or prejudiced by any part of the stipulation and agreement, unless it is approved without modification; and a reservation that none of the parties, nor any other affected person, is to be deemed to have approved, accepted, agreed or consented to any rate-making principle, or any method of cost of service determination, or any allocation underlying or supposed to underlie any of the rates or any of the refunds provided for in the settlement agreement.

The stipulation and agreement further provides that the provisions thereof shall not apply to any customer of El Paso who opposes the Commission's approval thereof, and that El Paso is not obligated to reduce it rates or make refunds, as provided in the stipulation and agreement to any such customer. The parties to the stipulation and agreement waive such rights as they might have to additional refunds and rate reduction and El Paso waives any rights it might have to the recovery of any part of the refunds and to rate increases, which might accrue should the Commission approval be reversed, remanded or otherwise set aside.

No objections to the proposed stipulation and agreement have been submitted.

The Commission finds:

(1) The proposed settlement of these rate proceedings upon the basis set forth in the stipulation and agreement attached hereto as an exhibit is appropriate and in the public interest in carrying out the provisions of the Natural Gas Act and should be approved and made effective subject to the terms and conditions hereinafter provided and ordered.

(2) The increased rates and charges contained in El Paso's filing in these dockets and which were the subject of these proceedings have not been shown to be just and reasonable, or otherwise lawful under the Natural Gas Act and should be disallowed and denied, as hereinafter provided and ordered.

(3) Good cause exists for the Commission to waive its applicable rules and regulations under the Natural Gas Act, in order that the tariff sheets to be filed under the stipulation and agreement may become effective November 1, 1963, as hereinafter ordered.

The Commission orders:

(A) The proposed increased rates and charges contained in El Paso's filings in these dockets are hereinabove first set out be and the same are disallowed and denied.

(B) The settlement of these proceedings upon the bases set forth in the stipulation and agreement (hereto attached and made a part hereof) is approved and made effective as proposed therein, subject to the terms and conditions hereinafter ordered.

(C) El Paso, within the time set forth in the aforesaid stipulation and agreement, shall refund to its customers the amount shown opposite such customer's name in Appendix A to the stipulation and agreement, plus such refunds as provided for in Article II, 2, and Article III, 2.

(D) El Paso shall comply with each of the provisions of the stipulation and agreement.

(E) Within 20 days of making refunds in accordance with the stipulation and agreement, El Paso shall report to the Commission in writing and under oath, the amount of the refund to each customer, showing separately the amount of principal and interest so paid together with a computation showing the manner in which such refund was determined and shall serve a copy of this report upon each customer, and shall submit to the Commission a copy of the release signed by such customer acknowledging receipt of the amount refunded.

(F) The 30-day notice provision of Section 154.22 of the Commission's Regulations under the Natural Gas Act is hereby waived and within 10 days of the issuance date of this order, El Paso shall tender with the Commission for filing revised tariff sheets, acceptable to the Commission, reflecting the reductions in rates for El Paso's Southern Division to be effective as of November 1, 1963, as provided for in the stipulation and agreement.

(G) Upon compliance with the terms and conditions of this order, the proceedings in Docket Nos. G–4769, G–12948, G–17929 and RP60–3 are hereby terminated subject to the terms of the stipulation and agreement as to all parties.

(H) El Paso shall reverse the depreciation accruals in its depreciation accounts during the period January 1, 1958 through October 31, 1963 under the conditions set forth in Article VII, 1, of the stipulation and agreement.

(I) El Paso shall, commencing November 1, 1963, use a 3.92 percent depreciation rate on its entire gas production and gathering, extracted products and underground storage plant, a 3.05 percent depreciation rate on its entire gas transmission plant, and existing depreciation rates on all other depreciable gas plant.

(J) Upon payment of El Paso of the refunds described in paragraph (C) above and as provided by the stipulation and agreement, the appeals in case Nos. 20180, 20203, 20336 and 20543, now pending in the United States Court of Appeals for the Fifth Circuit shall be withdrawn by the Petitioners in those cases.

(K) This order is without prejudice to any findings or orders which have been or may hereafter be made by the Commission and is without prejudice to any claims or contentions which may be made by the Commission, El Paso, the Commission staff, or any other party affected by this order, in any proceeding now pending or hereafter instituted by or against El Paso Natural Gas Company or any other persons or parties affected by this order.

APPENDIX A—continued

EL PASO NATURAL GAS COMPANY

COMPUTATION OF REFUNDS—$155,000,000 TOTAL REFUND THROUGH OCT. 31, 1963

Line No.	Description	Docket No. G-12948			Docket No. G-17929			Docket No. RP60-3			Line No.
		Principal refunds	Interest	Total refunds including interest	Principal refunds	Interest	Total refunds including interest	Principal refunds	Interest	Total refunds including interest	
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	
	Jurisdictional sales										
	Other than California companies:										
1	Ajo Improvement Co	$3,074	$929	$4,003	$2,086	$461	$2,547	$4,309	$617	$4,926	1
2	Arizona Public Service Co	744,479	219,772	964,251	643,666	139,179	782,845	1,592,053	215,874	1,807,927	2
3	Benson, City of	3,862	1,138	5,000	2,801	608	3,409	6,253	886	7,139	3
4	Citizens Utilities Co	6,886	2,061	8,947	5,379	1,170	6,549	12,886	1,762	14,648	4
5	Dell City Gas Corp	11,879	3,499	15,378	8,794	1,857	10,651	18,648	2,224	20,872	5
6	Deming, Village of	9,816	2,943	12,759	7,041	1,549	8,590	17,455	2,454	19,909	6
7	Gallup Gamerco Coal Co	15,104	4,429	19,533	12,226	2,674	14,900	10,619	1,448	12,067	7
8	General Utilities, Inc	15,968	4,521	20,489	10,778	2,227	13,005	26,005	3,445	29,450	8
9	Geronimo Natural Gas Co	260	76	336	161	34	195	394	48	442	9
10	Las Cruces, City of	42,615	12,267	54,882	32,659	6,502	39,161	75,710	10,561	86,271	10
11	Lordsburg, City of	30,632	9,059	39,691	24,155	5,173	29,328	66,296	8,892	75,188	11
12	Magma Natural Gas Co	9,867	2,892	12,759	6,592	1,383	7,975	19,333	2,330	21,663	12
13	Mesa, City of	29,343	8,754	38,097	22,252	4,853	27,105	54,701	7,651	62,352	13
14	Mountainair, City of	1,430	420	1,850	1,074	232	1,306	2,264	311	2,575	14
15	Navajo Tribe, The	10,421	3,081	13,502	8,295	1,752	10,047	20,776	2,728	23,504	15
16	Pioneer Natural Gas Co., Yoakum County	3,243	988	4,231	1,394	304	1,698	2,901	351	3,252	16
17	Rio Grande Gas Co							888	25	913	17
18	Safford, City of	9,241	2,760	12,001	6,578	1,447	8,025	14,066	1,992	16,058	18
19	Salt River Project Agricultural Improvement and Power District	557,089	159,750	716,839	474,735	101,600	576,335	1,041,343	136,866	1,178,209	19
20	Socorro, City of	7,758	2,305	10,063	5,652	1,239	6,891	10,065	1,500	11,565	20
21	Southern Union Gas Co	604,562	179,635	784,197	472,659	102,174	574,833	1,156,952	156,135	1,313,087	21
22	Southern Utilities Co. of Patagonia	344	104	448	232	51	283	525	75	600	22
23	Southwest Gas Corp	524,942	151,060	676,002	403,939	83,907	487,846	1,101,521	138,406	1,239,927	23
24	Tucson Gas, Electric Light & Power Co., The	352,891	104,960	457,851	259,567	56,314	315,881	581,700	79,661	661,361	24
25	Western Gas Service Co	106,619	30,730	137,349	77,741	16,136	93,877	192,804	24,112	216,916	25
26	Wilcox, City of	5,704	1,647	7,351	3,048	665	3,713	6,964	988	7,952	26
27	Total jurisdictional sales other than California companies	3,108,029	909,780	4,017,809	2,493,504	533,491	3,026,995	6,037,431	801,342	6,838,773	27

APPENDIX A—continued

Line No.	Description	Docket No. G-12948			Docket No. G-17929			Docket No. RP60-3			Line No.
		Principal refunds	Interest	Total refunds including interest	Principal refunds	Interest	Total refunds including interest	Principal refunds	Interest	Total refunds including interest	
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	
	Jurisdictional sales—Continued										
	California companies:										
28	Pacific Gas & Electric Co	$10,832,494	$3,176,755	$14,009,249	$8,363,065	$1,805,553	$10,168,618	$17,936,712	$2,522,355	$20,459,067	28
29	Southern California Gas Co., and Southern Counties Gas Co. of California	12,751,133	3,761,145	16,512,278	9,743,751	2,102,723	11,846,474	20,110,043	2,690,666	22,800,709	29
30	Total California companies	23,583,627	6,937,900	30,521,527	18,106,816	3,908,276	22,015,092	38,046,755	5,213,021	43,259,776	30
31	Total jurisdictional sales	26,691,656	7,847,680	34,539,336	20,600,320	4,441,767	25,042,087	44,084,186	6,014,363	50,098,549	31
	Nonjurisdictional sales keyed to jurisdictional rate schedule:										
	Power plants:										
32	Arizona Public Service Co	529,687	154,571	684,258	419,384	88,303	507,687	1,192,581	161,832	1,354,413	32
33	Citizens Utilities Co	1,530	431	1,961	1,951	414	2,365	4,541	549	5,090	33
34	El Paso Electric Co	376,740	111,213	487,953	284,614	62,042	346,656	678,326	91,861	770,187	34
35	Tucson Gas, Electric Light & Power Co., The	205,831	60,044	265,875	182,198	39,198	221,396	501,358	65,063	566,421	35
36	Total power plants	1,113,788	326,259	1,440,047	888,147	189,957	1,078,104	2,376,806	319,305	2,696,111	36
	Resale field sales:										
37	Ignacio, Town of—Residential	474	141	615	448	98	546	1,380	188	1,568	37
38	Ignacio, Town of—Nonresidential	393	115	508	691	150	841	1,622	224	1,846	38
39	Southern Union—Colorado Tap	3	1	4	5	1	6	33	4	37	39
40	Southern Union—Farwell	2,776	820	3,596	1,898	410	2,308	4,622	622	5,244	40
41	Southern Union—Farmington Tap	406	93	499	281	61	342	1,117	139	1,256	41
42	Total resale field sales	4,052	1,170	5,222	3,323	720	4,043	8,774	1,177	9,951	42
43	Total nonjurisdictional refunds	1,117,840	327,429	1,445,269	891,470	190,677	1,082,147	2,385,580	320,482	2,706,062	43
44	Total jurisdictional and nonjurisdictional sales keyed to jurisdictional rate schedules	27,809,496	8,175,109	35,984,605	21,491,790	4,632,444	26,124,234	46,469,766	6,334,845	52,804,611	44

APPENDIX A—continued

Line No.	Description	Subtotal			Docket No. G-4709			Total			Line No.
		Principal refunds	Interest	Total refunds including interest	Principal refunds	Interest through May 17, 1963	Total refunds including interest	Principal refunds	Interest	Total refunds including interest	
	(a)	(k)	(l)	(m)	(n)	(o)	(p)	(q)	(r)	(s)	
	Jurisdictional sales:										
	Other than California companies:										
1	Ajo Improvement Co.	$9,469	$2,007	$11,476	$3,574	$1,408	$4,982	$13,043	$3,415	$16,458	1
2	Arizona Public Service Co.	2,980,198	574,824	3,555,023	957,024	375,484	1,332,508	3,937,222	950,309	4,887,531	2
3	Benson, City of	12,916	2,632	15,548	4,951	1,966	6,917	17,867	4,598	22,465	3
4	Citizens Utilities Co.	25,151	4,993	30,144	8,690	3,435	12,125	33,841	8,428	42,269	4
5	Dell City Gas Corp.	39,321	7,580	46,901	20,573	8,054	28,627	59,894	15,634	75,528	5
6	Deming, Village of	34,312	6,946	41,258	13,488	5,280	18,768	47,800	12,226	60,026	6
7	Gallup Gamerco Coal Co.	37,949	8,551	46,500	18,016	7,013	25,029	55,965	15,564	71,529	7
8	General Utilities, Inc.	52,751	10,193	62,944	32,542	12,741	45,283	85,293	22,934	108,227	8
9	Geronimo Natural Gas Co.	815	158	973	640	266	906	1,455	424	1,879	9
10	Las Cruces, City of	150,984	29,330	180,314	50,695	19,581	70,276	201,679	48,911	250,590	10
11	Lordsburg, City of	121,063	23,124	144,207	84,010	33,255	117,265	205,093	56,379	261,472	11
12	Magma Natural Gas Co.	35,792	6,605	42,397	23,392	9,355	32,747	59,184	15,960	75,144	12
13	Mesa, City of	106,296	21,258	127,554	32,150	12,631	44,781	138,446	33,889	172,335	13
14	Mountainair, City of	4,768	963	5,731	1,419	540	1,959	6,187	1,503	7,690	14
15	Navajo Tribe, The	39,492	7,561	47,053	16,483	6,278	22,761	55,975	13,839	69,814	15
16	Pioneer Natural Gas Co., Yoakum County	7,538	1,643	9,181	2,111	701	2,812	9,649	2,344	11,993	16
17	Rio Grande Gas Co.	888	25	913				888	25	913	17
18	Safford, City of	29,885	6,199	36,084	12,907	5,096	18,003	42,792	11,295	54,087	18
19	Salt River Project Agricultural Improvement and Power District	2,073,167	398,216	2,471,383	790,430	306,426	1,096,856	2,863,597	704,642	3,568,239	19
20	Socorro, City of	23,475	5,044	28,519	7,868	3,033	10,901	31,343	8,077	39,420	20
21	Southern Union Gas Co.	2,234,173	437,944	2,672,117	935,162	368,399	1,303,561	3,169,335	806,343	3,975,678	21
22	Southern Utilities Co. of Patagonia	1,101	230	1,331	396	156	552	1,497	386	1,883	22
23	Southern Gas Corp.	2,030,402	373,373	2,403,775	615,112	240,587	855,699	2,645,514	613,960	3,259,474	23
24	Tucson Gas, Electric Light & Power Co., The	1,194,158	240,935	1,435,093	534,712	211,194	745,906	1,728,870	452,129	2,180,999	24
25	Western Gas Service Co.	377,164	70,978	448,142	151,103	57,930	209,033	528,267	128,908	657,175	25
26	Willcox, City of	15,716	3,300	19,016	8,459	3,458	11,917	24,175	6,758	30,933	26
27	Total jurisdictional sales other than California companies	11,638,964	2,244,613	13,883,577	4,325,907	1,694,267	6,020,174	15,964,871	3,938,880	19,903,751	27

APPENDIX A—continued

Line No.	Description	Subtotal			Docket No. G-4769			Total			Line No.
		Principal refunds	Interest	Total refunds including interest	Principal refunds	Interest through May 17, 1963	Total refunds including interest	Principal refunds	Interest	Total refunds including interest	
	(a)	(k)	(l)	(m)	(n)	(o)	(p)	(q)	(r)	(s)	
	Jurisdictional sales—Continued										
	California companies:										
28	Pacific Gas & Electric Co	$37,132,271	$7,504,663	$44,636,934	$10,784,548	$4,256,187	$15,040,735	$47,916,819	$11,760,850	$59,677,669	28
29	Southern California Gas Co., and Southern Counties Gas Co. of California	42,604,927	8,554,534	51,159,461	11,110,774	4,367,143	15,477,917	53,715,701	12,921,677	66,637,378	29
30	Total California companies	79,737,198	16,059,197	95,796,395	21,895,322	8,623,330	30,518,652	101,632,520	24,682,527	126,315,047	30
31	Total jurisdictional sales	91,376,162	18,303,810	109,679,972	26,221,229	10,317,597	36,538,826	117,597,391	28,621,407	146,218,798	31
	Nonjurisdictional sales keyed to jurisdictional rate schedule:										
	Power plants:										
32	Arizona Public Service Co	2,141,652	404,706	2,546,358	1,423,762	566,575	1,990,337	3,565,414	971,281	4,536,695	32
33	Citizens Utilities Co	8,022	1,394	9,416	8,126	3,220	11,346	16,148	4,614	20,762	33
34	El Paso Electric Co	1,339,680	265,116	1,604,796	739,824	293,018	1,032,842	2,079,504	558,134	2,637,638	34
35	Tucson Gas, Electric Light & Power Co., The	889,387	164,305	1,053,692	360,836	142,292	503,128	1,250,223	306,597	1,556,820	35
36	Total Power Plants	4,378,741	835,521	5,214,262	2,532,548	1,005,105	3,537,653	6,911,289	1,840,626	8,751,915	36
	Resale field sales:										
37	Ignacio, Town of—Residential	2,302	427	2,729	143	49	192	2,445	476	2,921	37
38	Ignacio, Town of—Nonresidential	2,706	489	3,195	395	140	535	3,101	629	3,730	38
39	Southern Union—Colorado Tap	41	6	47				41	6	47	39
40	Southern Union—Farwell	9,296	1,852	11,148	6,436	2,541	8,977	15,732	4,393	20,125	40
41	Southern Union—Farmington Tap	1,804	293	2,097	319	65	384	2,123	358	2,481	41
42	Total resale field sales	16,149	3,067	19,216	7,293	2,795	10,088	23,442	5,862	29,304	42
43	Total nonjurisdictional refunds	4,394,890	838,588	5,233,478	2,539,841	1,007,900	3,547,741	6,934,731	1,846,488	8,781,219	43
44	Total jurisdictional and nonjurisdictional sales keyed to jurisdictional rate schedules	95,771,052	19,142,398	114,913,450	28,761,070	11,325,497	40,086,567	124,532,122	30,467,895	155,000,017	44

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

SUNRAY DX OIL COMPANY, ET AL., DOCKET NO. G-4281, ET AL.

ORDER DENYING PETITION FOR AN ORDER STAYING PROCEEDINGS

(Issued December 4, 1963)

On October 14, 1963, Pan American Petroleum Corporation (Pan American) filed a petition requesting that the Commission issue an order staying the above-styled proceedings.[1] Pan American specifically requested that the Commission stay these proceedings pending the conclusion of *F.P.C.* v. *H. L. Hunt, et al.*, Case No. 273, and *F.P.C.* v. *Texaco Inc.* and *Pan American Petroleum Corp.*, Case No. 386, October Term, 1963, Supreme Court of the United States [decided March 30, 1964, 376 U.S. 515 and April 20, 1964, 377 U.S. 33, respectively]. In addition to staying these proceedings pending the final judicial determination of the above-noted cases by the Supreme Court of the United States, Pan American further requested that the stay be continued until such time as the Commission issues a notice specifying "the substantive issues on which evidence should be introduced herein with particularity sufficient to show the factual matters upon which Commission experience indicates evidence ought to be introduced."

We think that no useful purpose can be served by staying the above-styled proceedings pending the final judicial determination of those cases noted above that are presently before the Supreme Court of the United States. The issues presented in those cases are not similar to those presented here.

In *H. L. Hunt, et al.* v. *Federal Power Commission*, 306 F. 2d 334 at page 335 the Court recognized that the issue therein was whether the Federal Power Commission in granting a temporary certificate for the sale of natural gas at a designated initial price could lawfully impose a condition prohibiting the increase of such a price without the express approval of the Commission. The instant proceedings relate to the issuance of permanent certificates to numerous independent producers who seek permission to make sales of natural gas in interstate commerce for resale The Commission by it order of May 28, 1963, required that formal hearings be conducted with respect to the above-styled proceedings; hence, the parties to these proceedings will be afforded the opportunity to show whether or not any provisions in their gas-purchase contracts that might be challenged are required by the public convenience and necessity.

In *Texaco Inc., et al.* v. *F.P.C.*, 317 F. 2d 796, also pending review by the Supreme Court of the United States, as indicated above, the United States Court of Appeals for the Tenth Circuit at page 798 defined the issue in that case as "* * * the right of the Commission to reject summarily and without a hearing a gas-purchase contract between a producer and a pipeline company on the ground that the contract contains indefinite price-changing clauses forbidden by Commission regulations". The instant proceedings make provision for a hearing

[1] These proceedings were initiated by an order of the Commission issued on May 28, 1963. At a pre-hearing conference held on October 1, 1963, the Presiding Examiner fixed the following schedule in order to enable the parties to make preparations for the hearings contemplated by the Commission's Order of May 28, 1963:

December 6, 1963, as the date on which to mail all direct testimony;
December 20, 1963, as the date on which to mail rebuttal testimony;
December 27, 1963, as the date on which to mail motions to strike;
January 7, 1964, as the date on which to mail answers to motions to strike;
January 14, 1964, commencement of the formal hearing. (Tr. 118.)

on those issues involved therein and cannot be considered as summary action on the part of the Commission.

Pan American also requests that a stay be granted in these proceedings until the Commission issues a notice specifying the substantive issues on which evidence should be introduced herein with particularity sufficient to show factual matters upon which Commission experience indicates evidence ought to be introduced. We think the order of May 28, 1963, sufficiently specified the substantive issues.

Appendix A to the order of May 28, 1963, specified certain evidence that we thought would be helpful in arriving at an appropriate resolution to those issues raised by this order. The Commission also noted therein that this evidence was not intended to restrict the scope of any additional presentation that the parties may desire to make and that "* * * all of the parties will be given an opportunity to present evidence in order to show whether the Commission should allow Btu provisions to become fully effective, only partially effective or whether it should reject them completely." If Pan American feels that its interests in the resolution of these proceedings will best be served by presenting relevant evidence in addition to that specified by the Commission, it certainly is free to act accordingly.

Lastly, Pan American alleges that the Commission's May 28, 1963, Order is ambiguous with respect to the Docket No. R–200 involvement in these proceedings. Pan American points out that the parties do not have a basis to determine what additional evidence, if any, should be presented in these proceedings because of the Commission's comments with respect to Docket No. R–200 in its order of May 28, 1963.[2]

Our primary purpose in instituting these proceedings is to dispose of independent producer applications presenting a common issue with respect to provisions calling for upward Btu adjustment in producer contracts. It is our belief that this type of a provision has been generally confined to an area which includes the State of Oklahoma and some of the territory adjacent thereto. On May 22, 1961, the Commission issued its Notice of Proposed Rule-Making in Docket No. R–200 which covered the issue of upward adjustments in Btu provisions in producer contracts. Pursuant to the aforementioned Notice, the Commission has received many comments and views concerning the amendments proposed in the proceeding Docket No. R–200.

In light of the fact that the instant proceedings are focused solely on the necessity for and the propriety of these Btu provisions, we expect to obtain information in these formal proceedings that might be of benefit in resolving the gas energy level question raised in the Rule-Making proceeding in Docket No. R–200.

We have enlarged the scope of the instant proceedings to insure that different parties with varied points of view on the question of Btu adjustments would be afforded a full opportunity to present evidence and develop on the record their respective contention with respect to this issue.[3] It seems manifest that the evidence presented would differ materially depending upon the contention of the parties.

---

[2] The Commission's comments with respect to Docket No. R–200 in its order of May 28, 1963, were naturally restricted to amendments in that Rule-Making Order relating to the heating value of natural gas.

[3] The order of May 28, 1963, also makes these proceedings investigatory in nature as they were instituted pursuant to Sections 7, 14 and 16 of the Natural Gas Act.

The Commission finds:

The reasons and allegations relied upon by Pan American Petroleum Corporation in its Petition are not sufficient to warrant the stay requested by it.

The Commission orders:

That the Petition for a Stay of the above-styled proceedings filed by the Pan American Petroleum Corporation be and is hereby denied in all respects.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black

CITY OF TACOMA, WASHINGTON, PROJECT NO. 2016

ORDER EXTENDING TIME FOR COMPLETION OF PROJECT CONSTRUCTION

(Issued December 4, 1963)

The City of Tacoma, Washington, Licensee for Project No. 2016 on the Cowlitz River in Lewis County, Washington, filed an application on July 22, 1963, for amendment of its license to extend the time for completion of construction of the project to December 31, 1968.

The License as originally issued on November 28, 1951, provided for completion of this development by December 31, 1956. Due to litigation and general construction delays the completion date has been extended to April 1, 1965. The Licensee states that the additional time requested is necessary to provide time to design and prepare construction specifications, revise and update construction costs, economic and financial studies; relocation of highways; construction of access roads and preparation of construction sites; acquisition of reservoir lands; obtaining bid proposals and awarding of construction contracts for Mossyrock. In its request for extension the Licensee has also provided the following schedule for completion of the entire project:

Complete engineering studies, etc. on Mossyrock—April 1, 1964
Award general construction contract for Mossyrock—August 1, 1964
Close Mossyrock Diversion Tunnel—November 1, 1967
Complete Construction of Project No. 2016—December 31, 1968

The Licensee has also provided a "Schedule for Property Acquisition and Reservoir Clearing—Mossyrock Project" dated June 17, 1963 showing acquisition of the remaining 10,108 acres of the necessary 13,000 acres for the project site and reservoir area in five blocks, in five consecutive periods of seven months each, beginning in January of 1964.

The Commission finds:

In the circumstances recited above, it will not be incompatible with the public interest to grant a further extension as hereinafter provided.

The Commission orders:

(A) Article 28 of the license for Project No. 2016 is hereby modified to extend the time specified for completion of construction of the project works to December 31, 1968.

(B) The following additional article is hereby included in the license for Project No. 2016.

Article 36. The Licensee shall acquire the remaining lands necessary in accordance with the schedule dated June 17, 1963, entitled "Schedule for Property

Acquisition and Reservoir Clearing—Mossyrock Project," as prepared by Major Projects Division, Department of Public Utilities, City of Tacoma, which schedule is hereby approved and made a part of this license by reference.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgment of the acceptance of this order, it shall be signed by the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

LONE STAR GAS COMPANY, DOCKET NO. CP64-72

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 5, 1963)

On September 23, 1963, Lone Star Gas Company (Applicant) filed in Docket No. CP64-72 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1964 and the operation of various lateral pipelines and related facilities to enable Applicant to take into its certificated main pipeline system natural gas which it will purchase from producers in the general area of its existing transmission system, at a total cost not to exceed $1,700,000, with the total cost of any single project limited to $425,000, all as more fully set forth in the application herein.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its existing pipeline system new supplies of gas in producing areas generally co-extensive with said system.

Pursuant to due notice, a public hearing was held in Washington, D.C., on November 19, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Lone Star Gas Company, a Texas corporation having its principal place of business in Dallas, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of April 11, 1944, in Docket No. G-442 (4 FPC 565).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit, pursuant to Section 2.58(c) of the Commission's General Policy and Interpretations, with 60 days after the expiration of the authorization granted hereinafter, a statement showing by projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects constructed pursuant to the authorization hereinafter granted, (d) the location of said project or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing, metering, and appurtenant facilities, and (f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate authorizations.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1964 and the total expenditures for facilities to be constructed thereunder should be limied to a maximum of $1,700,000, with no single project to exceed a cost of $425,000.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c) (1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Lone Star Gas Company, to construct during the calendar year 1964, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit pursuant to Section 2.58(c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization herein granted, a statement showing by projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects that have been constructed pursuant to the authorization herein granted, (d) the location of said project or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing, metering and appurtenant facilities, and (f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producers certificate authorizations.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1964, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $1,700,000, with no single project to exceed a cost of $425,000.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

MAINE PUBLIC SERVICE COMPANY, DOCKET NO. E-6751

ORDER AUTHORIZING TRANSMISSION OF ELECTRIC ENERGY TO CANADA AND SUPERSEDING PREVIOUS AUTHORIZATION

(Issued December 5, 1963)

Maine Public Service Company (Applicant), incorporated under the laws of the State of Maine and doing business in that State, with its principal place of business at Presque Isle, Maine, filed an application on August 19, 1963, as supplemented September 3, 1963 for a supplemental order, pursuant to Section 202(e) of the Federal Power Act, authorizing a modification in the amount and rate of transmission of electric energy which Applicant is presently authorized to transmit from the United States to Canada.

Applicant is presently authorized, pursuant to Commission's order issued October 17, 1957 in this docket (18 FPC 504) to transmit electric energy from United States to Canada (1) in an amount not to exceed 30,000,000 kwh per year at a maximum rate of transmission of 20,000 kw for delivery to the New Brunswick Electric Power Commission (New Brunswick Commission) an instrumentality of the Province of New Brunswick, Canada, with its principal place of business in Fredricton, New Brunswick, over a 69 kv transmission line extending from Applicant's Flo's Inn switching station near Presque Isle to a point on the international border between the United States and Canada;[1] and (2) in an amount not to exceed 30,000,000 kwh per year without limitation as to the rate of transmission except insofar as such transmission is limited by the carrying capacity of the facilities used, for delivery to Applicant's wholly-owned subsidiary, Maine and New Brunswick Electrical Power Company, Limited (Canadian Subsidiary) over facilities located adjacent to Fort Fairfield, Maine and at other points on the international border between United States and Canada by means of Applicant's facilities located in the United States.[2] The amount of energy authorized to be exported by Applicant to its Canadian Subsidiary includes 26,000,000 kwh per year of energy generated in Canada by its Canadian Subsidiary and imported into the United States by Applicant for redelivery to its Canadian Subsidiary.

On December 31, 1962, according to the Application, the New Brunswick Commission expropriated all of the distribution facilities and most of the transmission facilities of the Canadian Subsidiary located in New Brunswick. The Canadian Subsidiary retained the ownership of its 10,040 kw hydroelectric and 1,000 kw diesel-electric generating plants both located at Tinker Dam, New Brunswick and now has only one customer, Andover and Perth Electric Light Commission, to whom it sells electric energy at wholesale for resale. All other areas previously served by the Canadian Subsidiary, except Clair and St. Hillaire, are now being served directly by New Brunswick Commission. Applicant continues to supply the requirements of Clair and St. Hillaire. It is anticipated that the New Brunswick Commission will serve the St. Hillaire load directly, beginning

[1] Facilities covered by Presidential Permit issued in Docket No. E-6752.
[2] Facilities covered by Presidential Permit issued in Docket No. IT-6027.

sometime in December, 1963, but that the Applicant will continue to supply the requirement of Clair for an indefinite period.

Applicant states that 5,100,000 kwh per year at a maximum rate of delivery of 1200 kw will be sufficient to serve the load of St. Hillaire and Clair until 1968. However, this energy will be supplied pursuant to a contract which provides (1) that Applicant will deliver to New Brunswick Commission, its power and energy requirements for these two areas, and (2) that the New Brunswick Commission will deliver to Applicant an equivalent amount of power and energy over the existing interconnection covered by the Permit in Docket No. E–6752.

Applicant will continue to transmit energy to its Canadian Subsidiary to serve the load of the Andover and Perth Electric Light Commission. The maximum electric energy requirements for this load until 1968 will be 8,200,000 kwh per year at a maximum rate of delivery of 8,200 kw. However, the Canadian Subsidiary will continue to transmit to Applicant 26,000,000 kwh per year of electric energy generated in its Tinker generating station. Part of this energy will be retransmitted to Canada to serve the Andover and Perth Electric Light Commission load and the balance will be utilized in Applicant's system. It is anticipated that the Tinker generating plant will eventually be operated primarily as a peaking plant and will be shut down during off-peak hours during which time the Canadian Subsidiary will be supplied by the Applicant from its own and/or New Brunswick Commission generation. Whenever the Canadian Subsidiary is unable to supply its full requirements because of extreme low water conditions, breakdown or other unavoidable outage of the Tinker generating plant, Applicant will use its best efforts to supply all or part of the Canadian Subsidiary requirements, but is not obliged to do so if it would impair service to Applicant's customers in Maine.

Applicant states that no change is necessary or requested regarding its present authorization to export a maximum of 30,000,000 kwh of electric energy per year at a maximum rate of transmission of not to exceed 20,000 kw to the New Brunswick Commission over facilities covered by the Permit issued in Docket No. E–6752. In this regard, Applicant reports that it has supplemented its interconnection agreement with the New Brunswick Commission with a surplus capacity agreement dated October 11, 1960, under which they will maintain 10% reserves in each system, buy surplus capacity, not to exceed 20,000 kw from one another to make up reserve deficiency, and plan the installation of additional generating capacity on a more economical basis as to timing, location, and size of units.

As a result of the proposed changes in operations, most of Applicant's connections at the border with the Canadian Subsidiary will be removed, others will be modified and some new facilities will be constructed. These changes and modifications are covered by an Amended Presidential Permit, Docket No. IT–6027, issued concurrently with this order.

Applicant requests that its authorization to export electric energy to Canada be modified in accordance with changes in operations outlined above and specified in its application.

Written notice of the application has been given to the Public Utilities Commission of Maine, and to the Governor of the State. Notice of the filing of the application has also been given by publication in the Federal Register on September 5, 1963 (28 F.R. 9708), stating that any person desiring to be heard or to make any protest with reference to the application, should on or before September 20, 1963, file with the Federal Power Commission, Washington, D.C., 20426, a petition or protest in accordance with the Commission's Rules of Practice and Procedure. No protest or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

The transmission of electric energy from the United States to Canada as limited herein and as hereinafter authorized, will not impair the sufficiency of electric supply with the United States and will not impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of this Commission.

The Commission orders:

(A) Applicant is authorized to transmit electric energy from the United States to Canada, in accordance with the terms and conditions set forth in the application, and subject to the provisions of this order.

(B) The electric energy which Applicant is hereby authorized to transmit from the United States to Canada shall be:

(1) an amount not to exceed 5,100,000 kwh per year at a rate of 1,200 kw for delivery to the New Brunswick Commission at Clair and St. Hillaire, New Brunswick;

(2) an amount not to exceed 8,200,000 kwh per year at a maximum rate of 2,200 kw for delivery to Canadian Subsidiary, and

(3) an amount not to exceed 30,000,000 kwh per year at a maximum rate 20,000 kw for delivery to the New Brunswick Commission over facilities covered by the Presidential Permit issued in Docket No. E–6752.

(C) The electric energy authorized for delivery to the New Brunswick Commission at Clair and St. Hillaire is upon the condition that the New Brunswick Commission will return an equal amount of energy to the Applicant plus certain costs for transmission facilities and losses. Energy transmitted to the New Brunswick Commission or to Canadian Subsidiary for emergency purposes shall be limited to the amount of energy Applicant can make available at the time without impairing service to its customers in the United States.

(D) The transmission of electric energy to Canada authorized herein shall be over facilities specified in the Presidential Permit heretofore issued in Docket No. E–6752 and the Amended Presidential Permit issued concurrently with this order in Docket No. IT–6027.

(E) The authorization herein granted may be modified from time to time or terminated by further order of the Commission, but in no event shall such authorization extend beyond the dates of termination or expiration of the Permits referred to in Paragraph (D) above.

(F) Applicant shall conduct all operations, pursuant to the authorization herein granted in accordance with the provisions of the Federal Power Act and pertinent rules and regulations or orders issued by the Commission.

(G) Applicant shall install and maintain adequate metering equipment to measure the flow of all electric energy transmitted from, the United States to Canada, pursuant to the authority herein granted; shall make, keep and preserve full and complete records with respect to the movement of such energy; and shall furnish, in triplicate, a report annually, on or before February 15, showing for each month of the preceding calendar year (1) the quantity of electric energy transmitted to and received from New Brunswick Commission, together with the maximum rate of transmission and the consideration received therefor, and (2) the quantity of electric energy received from Canadian Subsidiary and the quantity delivered thereto together with the consideration received therefor.

(H) The authorization to transmit electric energy from the United States to Canada shall not be transferrable or assignable, but in the event of the involuntary transfer of facilities used for such transmission by operation of law (including such transfers to receivers, trustees or purchasers under foreclosure or

judicial sale), shall continue in effect temporarily for a reasonable time thereafter, pending the making of an application for permanent authorization and decision thereon, provided notice is given in writing to the Commission, accompanied by a statement that the physical facts relating to sufficiency of supply, rates, and nature of use remain substantially the same as before the transfer.

(I) This authorization shall be without prejudice to the authority of any State or State regulatory commission for the exercise of any lawful authority vested in the State or State regulatory commission over Applicant.

(J) This authorization is without prejudice to the authority of this Commission, or any other regulatory body, with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission.

(K) Concurrently with the issuance of this order, the Amended Permit signed by the Chairman of the Federal Power Commission (Docket No. IT-6027), referred to in Paragraph (D) above, shall be issued and transmitted by the Secretary to the Applicant.

(L) The authorization herein granted shall supersede the authorization heretofore granted by Commission order issued October 17, 1957 (Docket No. E-6751, *et al.*).

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

MOUNTAIN FUEL SUPPLY COMPANY, DOCKET NO. CP64-55

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 5, 1963)

On September 4, 1963, Mountain Fuel Supply Company (Applicant), filed in Docket No. CP64-55 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of approximately 22 miles of 8⅝-inch pipeline extending from a central gathering point in Nitchie Gulch Field to a point of interconnection with Applicant's existing 8-inch pipeline in North Baxter Field, Sweetwater County, Wyoming.

Applicant has contracted with American Metal Climax, Incorporated, with Amax Petroleum Corporation and with Sohio Petroleum Company to purchase gas supplies totaling a minimum volume of 3,246 Mcf per day at a price of 15¢ per Mcf (at 15.025 psia). This gas is to be transported by means of the facilities herein proposed and will be used to offset declining deliverability from other producing areas committed to and presently supplying Applicant.

The total estimated cost of the proposed facilities is $441,000, which will be financed from internal sources and short term bank loans.

Pursuant to due notice, a public hearing was held in Washington, D.C., on November 21, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Mountain Fuel Supply Company, a Utah corporation having its principal place of business in Salt Lake City, Utah, is a "natural-gas com-

pany" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of March 9, 1943, in Docket No. G–313 (3 FPC 938).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation of natural gas by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Mountain Fuel Supply Company, to construct and operate the proposed facilities and to transport natural gas as hereinbefore described, all as more full described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The construction authorized in paragraph (A) above shall be completed and the facilities placed in actual operation, as provided by Section 157.20(b) of the Commission's Regulations under the Natural Gas Act, within 4 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

SUNRAY DX OIL COMPANY, DOCKET NO. RI63–60

ORDER DETERMINING LEGALLY EFFECTIVE RATE AND PROVIDING FOR REFUNDS

(Issued December 5, 1963)

This proceeding was initiated by an order issued August 28, 1962, requiring Sunray DX Oil Company (Sunray)[1] to show cause, if any there be, why the Commission should not find and determine:

---

[1] Formerly Sunray Mid-Continent Oil Company.

(A) That Sunray is charging and collecting rates in violation of the Natural Gas Act and the Commission's Regulations thereunder;

(B) That this action by Sunray is a willful and knowing violation of the Natural Gas Act and the Regulations thereunder;

(C) That Sunray be required to collect the legally effective rate of 16.0¢ per Mcf and to refund, with interest, any amounts collected in excess of such effective rate, if any such amounts were collected, and report such amounts and facts relative thereto, to this Commission.

The facts leading to the issuance of the show cause order are hereinafter set forth.

The subject gas is sold under the terms of a contract dated November 7, 1955, between Carter Oil Company (now Humble Oil & Refining Company) and Natural Gas Pipeline Company of America. The sales are made at or near the wellhead in Camrick Field, Texas County, Oklahoma. Sunray ratified that contract by an agreement dated January 6, 1956. On April 30, 1956, Sunray filed an application for a certificate to make the sale (Docket No. G–10325), submitting therewith the ratification, the contract, and a billing statement reflecting a rate of 16.0¢ per Mcf plus Btu adjustment, which was the initial rate under the contract. The ratification and contract are designated as Sunray's Rate Schedule No. 114 and Supplement No. 1 thereto, respectively. Sunray's lease was pooled with other acreage (including Carter's, the operator) to form a single unit by order of the Oklahoma Corporation Commission. Sunray owns 12.5 percent of such unit. Sunray never applied for temporary authorization for this sale.

On January 14, 1957, Sunray filed a periodic increase of 0.2¢, from 16.0¢ to 16.2¢ per Mcf, under the subject rate schedule. The accompanying comparative statement of volumes and revenues showed Sunray's sales as beginning on March 21, 1956. The notice of change was designated as Supplement No. 2 to Sunray's FPC Gas Rate Schedule No. 114 and the proposed increased rate contained therein was suspended in Docket No. G–11992. On April 12, 1957, Sunray filed a notice of withdrawal of the suspended rate increase contending that is was erroneously filled since the rate schedule was not effective and no gas was being delivered thereunder.[2] By order issued May 9, 1957, in Docket No. G–11992, Sunray's Rate Schedule No. 114 and Supplement No. 1 thereto (providing for a 16¢ initial rate) were allowed to become effective as of March 21, 1956, and the proposed notice of withdarwal was rejected. The Commission pointed out, among other things, that Carter did not file to cover Sunray's interest. Sunray was thus put on notice by the foregoing order that the Commission did not consider Sunray's sale to be covered by the rate schedule of Carter or its successor, Humble. While the rejection of the withdrawal of the increase filing to 16.2¢ made possible its going into effect at the end of the statutory suspension period, Sunray did not make the necessary filing under Section 4(e) of the Act to place the increased rate in effect.

By order issued December 15, 1958, Sunray was given certificate authorization for the subject sale in Docket No. G–10325. This was accepted unconditionally by Sunray, along with a number of other certificates by letter of December 1, 1960, which was filed on December 7, 1960. The reason for the delay since the December 1958, authorization was that in the meantime the certificate applications, including Docket No. G–10325, had been involved in the litigation in *Sunray Mid-Continent Oil Company* v. *F.P.C.* (CA10, No. 6142), and the petition for review therein had been only recently dismissed.

[2] Sunray claimed its gas was being delivered under the operator's rate schedule.

By letter dated December 8, 1960, which was filed on December 13, 1960, Sunray submitted a revised billing statement purporting to reflect an initial rate of 16.8¢ per Mcf. Sunray asserted in the letter that their rate schedule would become effective upon deliveries of gas thereunder in January 1, 1961, and that the billing statement was submitted to reflect the initial price payable under the rate schedule as of that date. The revised billing statement was placed in the rate schedule, but was never formally accepted or rejected.

By letter dated July 25, 1962, Sunray submitted a purported two-step periodic rate increase of 0.4¢ per Mcf, from 16.8¢ to 17.2¢ per Mcf. The notice of change in rate, designated as Supplement No. 3 to Sunray's FPC Gas Rate Schedule No. 114, was suspended by order issued August 28, 1962 in Docket No. RI63–57 and the use thereof was deferred until January 26, 1963, at which time the increased rate was made effective subject to refund in the manner prescribed by the Natural Gas Act.

The Commission's show cause order resulted from the filing by Sunray of the proposed increased rate of 17.2¢ per Mcf which was suspended in Docket No. RI63–57. Sunray in its notice of change claimed that the underlying rate was 16.8¢ per Mcf. However, as indicated above, 16¢ per Mcf was the initial rate provided for under the contract comprising Sunray's rate schedule. The Commission in its order to show cause indicated:

> * * * The only manner in which Sunray could make effective an increased rate in excess of 16.0¢ per Mcf would be by a motion making effective the 16.2¢ per Mcf rate suspended in Docket No. G–11992, or by filings of increased rates above that figure pursuant to contractual authorization. Sunray's filing of Supplement No. 3 to its FPC Gas Rate Schedule No. 114 apparently indicates it is now charging a rate of 16.8¢ per Mcf without having filed a notice of change in rate, and in reliance only on a revised billing statement. The Natural Gas Act requires that any change in a rate or charges may only be made by filing a "new schedule". A billing statement is not a notice of change within the purview of the Natural Gas Act and the Regulations thereunder, and it appears that the 16.0¢ per Mcf rate is Sunray's presently effective rate.

Sunray filed an answer to the show cause order contending, among other things, that (1) Sunray's gas produced from the unit here involved prior to January 1, 1961, was sold and delivered to the purchaser by the operator, Carter (now Humble) pursuant to certificate authorization granted to Carter and pursuant to the terms and provisions of Carter's FPC Gas Rate Schedule No. 35 (now Humble's FPC Gas Rate Schedule No. 191); (2) Sunray's rate schedule did not become effective prior to January 1, 1961, because of lack of certificate authorization; and (3) Sunray's rate schedule became effective as of January 1, 1961, at a rate of 16.8¢ per Mcf, the applicable contract rate at that time, as reflected in its billing statement filed on December 13, 1960, pursuant to the certificate authorization granted by order issued December 15, 1958, in Docket No. G–10325 and Sunray's acceptance thereof on December 1, 1960.

No reference to Sunray's interest is made in either Carter's certificate application or the rate schedule filing relating thereto. It is therefore clear that Carter did not intend to cover Sunray's interest in its filings. Sunray, moreover, by filing its own certificate application and rate schedule negated any presumption that its interest might properly be covered by the operator's rate schedule. It is also clear that Sunray commenced service from the subject properties on March 21, 1956, as indicated in the original billing statement filed by Sunray. This is at least implicit in our May 9, 1957 order, wherein we rejected Sunray's

notice of withdrawal of its rate schedule, and accepted the rate schedule as of March 21, 1956.

We need not decide here whether the effect of the May 9, 1957 order was to grant temporary certificate authorization to Sunray for the instant sales as of March 21, 1956 or whether the effect of the December 15, 1958 order was to grant retroactive permanent authorization to Sunray effective as of March 21, 1956. In either event Sunray's rate schedule became effective as of March 21, 1956 at an initial rate of 16.0¢ per Mcf.

The contract filed by Sunray as a part of its certificate application in Docket No. G–10325 provided for an initial rate of 16¢ per Mcf. Sunray did not at any time seek to amend its certificate application to request a higher initial rate. It therefore cannot be reasonably argued that the Commission authorized in its December 15, 1958 order an initial rate higher than the one sought by applicant, even assuming *arguendo* that the Commission had the power to do so if it desired. Moreover, as previously indicated, Sunray was aware at least subsequent to the issuance of the May 9, 1957 order that the Commission did not consider Sunray's interest to be covered by Carter's rate schedule and that Sunray's rate schedule was deemed to be effective as of March 21, 1956 at an initial rate of 16¢. Accordingly, Sunray had no right under the instant certificate authorization to collect an initial rate in excess of 16.0¢.

Nor can the Commission's inaction with respect to the revised billing statement tendered by Sunray on December 13, 1960, purporting to reflect a 16.8¢ initial rate in any way alter the certificate authorization granted to Sunray. The amended billing statement could not effectuate an increase in the authorized initial rate of 16.0¢, for such submittal did not constitute a notice of change in rate within the meaning of Section 4 of the Act and the appropriate Commission Rules and Regulations. *Cf. Sunray Mid-Continent Oil Company* v. *F.P.C.*, 290 F. 2d 552 (CA10, 1961). A billing statement is merely an ancillary document attached to the rate schedule purporting to show the estimated sales and price to be charged for the first month of service in sufficient detail to show how the billing amount is determined. The initial rate was therefore not changed in accordance with the provisions of Section 4(e) until January 26, 1963, the date the 17.2¢ rate became effective subject to refund in Docket No. RI63–57.

In view of the above, we must conclude that Sunray's FPC Gas Rate Schedule No. 114 became effective as of March 21, 1956, and that 16.0¢ per Mcf was the legally effective rate thereunder at that time, and that such rate was not changed in accordance with the provisions of Section 4(e) of the Act until January 26, 1963, the date the 17.2¢ per Mcf rate became effective subject to refund in Docket No. RI63–57. It appears that Sunray has charged and collected a rate higher than the legally effective rate herein determined. We shall, therefore, require Sunray to refund, with interest, any amounts collected above the legally effective rate of 16.0¢ per Mcf between March 21, 1956 and January 26, 1963.

The Commission finds:

(1) The legally effective rate under Sunray's FPC Gas Rate Schedule No. 114 is 16.0¢ per Mcf from March 21, 1956 until January 26, 1963.

(2) Sunray should be required to refund, with interest, any amounts collected in excess of 16.0¢ per Mcf from March 21, 1956, until January 26, 1963, and to report such amounts and the facts relative thereto to this Commission.

The Commission orders:

(A) Within 90 days from the date of issuance of this order, Sunray shall refund to its purchaser the difference between the amounts collected from such purchaser pursuant to Sunray's FPC Gas Rate Schedule No. 114 and the rate

of 16.0¢ per Mcf for sales of gas from March 21, 1956, until January 26, 1963, together with simple interest to the date of refund at 6 percent on the excess collected prior to March 1, 1960, and interest at 7 percent on the excess collected thereafter. Sunray shall bear all costs incidental to the making of the refund.

(B) Within 120 days from the date of issuance of this order, Sunray shall report to the Commission in writing and under oath the details of its calculations resulting in refunds ordered pursuant to paragraph (A) above, together with a copy of release from its purchaser with respect to such refunds.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. CP64-63

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 5, 1963)

On September 16, 1963, Texas Eastern Transmission Corporation (Applicant) filed in Docket No. CP64-63 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1964 and the operation of field facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally co-extensive with said system.

The total cost of the proposed facilities will not exceed a maximum of $5,000,000 and no single project will exceed a cost of $500,000. The proposed facilities will be financed from funds on hand.

Pursuant to due notice, a public hearing was held in Washington, D.C., on November 19, 1963, respecting the matters involved in and the issues presented by the application herein. No protest to the granting of the application or petition to intervene has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of its Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Texas Eastern Transmission Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of facilities to take natural gas purchased from producers thereof as proposed by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit pursuant to Section 2.58(c) of the Commission's General Policy and Interpretations, within 60 days after the expiration of the authorization hereinafter granted, a statement showing by projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects that have been constructed pursuant to the authorization hereinafter granted, (d) location of said project or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing, metering and appurtenant facilities, and (f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate applications.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1964, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $5,000,000 with no single project to exceed a cost of $500,000.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Texas Eastern Transmission Corporation to construct during the calendar year 1964, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Texas Eastern Transmission Corporation.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) Applicant shall submit pursuant to Section 2.58(c) of the Commission s General Policy and Interpretations, within 60 days after the expiration of the authorization herein granted, a statement showing by projects: (a) names of fields connected, (b) estimates of gas supplies attached in Mcf at 14.73 psia, (c) a description of the project or projects that have been constructed pursuant to the authorization herein granted, (d) the location of said project or projects, (e) the actual installed cost of said facilities subdivided by size of pipe, compressing, metering and appurtenant facilities, and (f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate applications.

(D) The authorization granted by paragraph (A) above is hereby limited to construction during the calendar year 1964, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $5,000,000, with no single project to exceed a cost of $500,000.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. CP64–70

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 5, 1963)

On September 19, 1963, Texas Eastern Transmission Corporation (Applicant) filed in Docket No. CP64–70 an abbreviated application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to sell and deliver to Indiana Gas & Water Company an additional 408 Mcf per day of natural gas on a firm basis for resale and distribution in the City of Greensburg, Indiana and environs, all as more fully set forth in the application.

The application shows that a recent increase in both industrial and residential requirements necessitates the additional volumes requested. Applicant has adequate supply and capacity to render the additional service.

The sale and delivery will be made by means of presently authorized facilities and under Applicant's presently effective Rate Schedule DCQ–C.

Pursuant to due notice, a public hearing was held in Washington, D.C., on November 21, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Texas Eastern Transmission Corporation, a Delaware Corporation with its principal place of business in Houston, Texas is a natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The proposed transportation and sale of additional natural gas to Indiana Gas & Water Company by Applicant hereinbefore described, as more fully described in the application in this proceeding, will be in interstate commerce, subject to the jurisdiction of the Commission, and such proposed transportation and sale are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed transportation and sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's com-

pliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c) (1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Texas Eastern Transmission Corporation, to transport and sell natural gas as hereinbefore described all as more fully described in the application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3) and (e) of Section 157.20 of such Regulations.

(C) The sale of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within thirty days from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

ALABAMA-TENNESSEE NATURAL GAS COMPANY, DOCKET NO. RP63-15

ORDER ACCEPTING OFFER OF SETTLEMENT, DISMISSING PETITION FOR DECLARATORY ORDER, WAIVING REQUIREMENT, PERMITTING SUPERSEDING SERVICE AGREEMENT TO BECOME EFFECTIVE AND TERMINATING PROCEEDING

(Issued December 6, 1963)

Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) filed petition for declaratory order herein on June 17, 1963, requesting resolution of issues in a dispute concerning service to one of its customers, the Gas Board of the City of Russellville, Alabama (Russellville).

The present service to Russellville was initiated by service agreements executed December 1, 1955 and February 20, 1962, providing respectively for service under Rate Schedule SG-1 and Rate Schedule I-1 as contained in Alabama-Tennessee FPC Gas Tariff. The pleadings, including Russellville's answer to the foregoing petition, raised issues, among others, as to the appropriate rate schedules for billing; as to the appropriate billing demand and whether Alabama-Tennessee could unilaterally cancel a service agreement.

The dispute and the issues raised, developed from a break in Russellville's line during the winter of 1962-1963 and from the taking by Russellville of daily volumes in excess of the 1,500 Mcf prescribed as the maximum volume in rate schedule SG-1 which pertains to small general service. Thereafter, continuing disagreements between the parties concerning their respective rights under the service agreements led to the filing of a suit by Russellville in a state court and by Alabama-Tennessee in a District Court of the United States.

On October 21, 1963, the parties filed with the Commission a proposed settlement agreement for the termination of their dispute. At the same time Alabama-

Tennessee filed notice of withdrawal of its petition for declaratory order, referring therein to the settlement agreement and to attached documents which indicate termination of litigation between the parties in the state and federal courts.

The settlement agreement provides, among other things, for termination of the service agreements for service under Rate Schedule SG–1 and Rate Schedule I–1 of Alabama-Tennessee's FPC Gas Tariff as of midnight on December 31, 1962. The foregoing schedules pertain respectively to Small General Service and to Interruptible Industrial Gas Service.

In lieu of the foregoing service which the settlement proposes to terminate, it proposes that a new service agreement for service under Rate Schedule G–1, dated January 1, 1963 and filed with the Commission on October 14, 1963, be made effective as of January 1, 1963. This rate schedule permits the taking of volumes in excess of the 1,500 Mcf peak-day limitation found in Rate Schedule SG–1.

Further, the settlement provides that Russellville's billing demand for the calendar year 1963, will be 1,800 Mcf; that billing will be at the rate prescribed under Rate Schedule G–1 and that the maximum daily obligation on January 1, 1964, and thereafter for the remaining term of the service agreement shall be 1,550 Mcf.

It appears that the settlement makes provision for a substantial reduction in the cost of purchased gas to Russellville as compared with its expenditures had a billing demand of 1,947 Mcf under Rate Schedule G–1 been employed for the calendar year 1963. At the same time the settlement conforms with the established operations of Alabama-Tennessee under its FPC Gas Tariff except for the above-identified means of adjusting the disputed charges for the period January 1, 1963, through December 31, 1963. It appears that the proposed settlement is devoid of prejudice to other persons and that the proposed settlement of the dispute is in the public interest.

Alabama-Tennessee requests that the thirty-day period of notice required by the Commission's Regulations under the Natural Gas Act be waived to permit the proposed service agreement to become effective as provided therein.

The Commission finds:

(1) The termination of this proceeding on the terms proposed and agreed upon by the parties in their settlement agreement as filed with the Commission on October 21, 1963, is in the public interest in carrying out the provisions of the Natural Gas Act. The settlement agreement should be accepted and made effective as hereinafter ordered.

(2) With respect to the effective date of the new service agreement, tendered to supersede two extant service agreements which provide for service under Rate Schedules SG–1 and I–1, the thirty-day notice period provided in Section 4(d) of the Act and in Section 154.22 (18 CFR 154.22) of our Regulations thereunder should be waived so as to permit the tendered service agreement providing for service under Rate Schedule G–1 of Alabama-Tennessee's FPC Gas Tariff to become effective as of January 1, 1963, subject to the terms of the settlement agreement; particularly those embracing adjustments of billing demand and rate of charge for the calendar year 1963.

(3) Alabama-Tennessee's petition for declaratory order should be dismissed.

The Commission orders:

(A) The termination of this proceeding on the terms set forth in the settlement agreement between Alabama-Tennessee and Russellville as filed with the Commission on October 21, 1963, is hereby approved and made effective, subject to the terms and conditions hereinafter ordered.

(B) The proposed cancellation of the service agreements entered into on December 1, 1955 and on February 20, 1962, providing respectively for service to Russellville under Rate Schedules SG–1 and I–1 of Alabama-Tennessee's FPC Gas Tariff is hereby approved and the above-identified service agreements are hereby terminated, effective as of midnight on December 31, 1962.

(C) The thirty-day period of notice provided in Section 4(d) of the Act and in Section 154.22 of our Regulations thereunder (18 CFR 154.22) is hereby waived with respect to the superseding service agreement dated January 1, 1963, providing for service under Rate Schedule G–1; the service agreement is permitted to become effective under Alabama-Tennessee's FPC Gas Tariff as of January 1, 1963, subject to the terms of the settlement agreement; particularly those embracing adjustments of billing demand and rate charge for the calendar year 1963.

(D) Alabama's petition for declaratory order is hereby dismissed and this proceeding is hereby terminated.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

THE CINCINNATI GAS & ELECTRIC COMPANY, DOCKET NO. E-7125

ORDER AMENDING ORDER TO SHOW CAUSE

(Issued December 6, 1963)

On November 18 and 27, 1963 Cincinnati Gas and Electric Company (Cincinnati Company) filed requests for an extension to April 15, 1964 of time within which to respond to an order to show cause issued September 4, 1963, 30 FPC 641, in the above matter and for a change in the test period of certain cost and revenue data from a split year 1963 to a calendar year 1963.

The Commission's September 4, 1963, order instituted an investigation into the lawfulness of certain rate schedules of the Cincinnati Company and required it to show cause why it should not file others, and provided for hearing. That order, Paragraph (C), directed the company to file on or before December 9, 1963, cost and revenue data showing Cincinnati Company's costs of rendering service to each wholesale for resale customer referred to in Paragraph (A) thereof, calculated in accordance with applicable Commission rulings and utilizing as the test period, the period beginning July 1, 1962 and ending June 30, 1963, showing both historical revenues and *pro forma* adjustments thereto, a prudent net investment rate base, and a fair rate of return thereon. Paragraph (B) of the same order required the company, also, on or before December 9, 1963, to respond to the show cause order in accordance with the Commission's Rules of Practice and Procedure.

The Commission finds:

It is appropriate for the purposes of the Federal Power Act, practicularly Sections 201, 205, 206, 304, 307, 308 and 309 thereof, that Paragraph (C) of the Commission's order issued September 4, 1963, in this docket be amended: (1) to change the date by which cost and revenue data must be submitted to April 15, 1964, and (2) to change the test period which shall be utilized from the 12 months' period ending June 30, 1963 to calendar year 1963; and that Paragraph (B) of the order be amended to require the Cincinnati Company to respond through Answer on or before April 15, 1964.

The Commission orders:

(1) Paragraph (B) of the Commission's order issued on September 4, 1963 in this Docket is hereby amended to read as follows:

(B) On or before April 15, 1964, Cincinnati Company shall respond to this order to show cause through Answer as provided in Section 1.9(c) of the Commission's Rules of Practice and Procedure, 18 CFR 1.9(c).

(2) Paragraph (C) of the Commission's order issued September 4, 1963 in this Docket is hereby amended to read as follows:

(C) Cincinnati Company shall file, on or before April 15, 1964, cost and revenue data showing Cincinnati Company's cost of rendering service to each wholesale for resale customer referred to in paragraph (A) above, calculated in accordance with applicable Commission rulings and utilizing, among other things, as the test period the calendar year 1963, showing both historical revenues and *pro forma* adjustments thereto, a prudent net investment rate base, and a fair rate of return thereon.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

DAIRYLAND POWER COOPERATIVE, ET AL., DOCKET NO. E-7113

ORDER DENYING MOTION FOR POSTPONEMENT

(Issued December 6, 1963)

Dairyland Power Cooperative, Minnkota Power Cooperative, Inc., South Central Rural Electric Cooperative, Inc. (Respondents), and the Intervenors in the above-entitled proceeding with the exception of the Secretary of Agriculture and the Public Service Commission of North Dakota, by joint motion filed December 2, 1963, request an indefinite continuance of the public hearing in this proceeding now scheduled to commence December 12, 1963. The motion was accompanied by the prepared written testimony and exhibits of the movants in support of their claims that this Commission is currently without jurisdiction over the Respondents as "public utilities" under Parts II and III of the Federal Power Act. This filing completed the filing of the testimony and exhibits of all parties to the proceeding.

In support of the motion are cited pending legislative proposals dealing with the question at issue in this proceeding. In addition the movants quote from the report of the Senate Committee on Appropriations which accompanied H.R. 8746 and urge that the quoted language is an "interdiction" to continuing this proceeding. The Committee's statement was as follows:

> The committee is advised that the Commission is seeking to assert jurisdiction over rural electric cooperatives. During the 27 years since passage of the REA statute, the Commission has not asserted general jurisdiction over such cooperatives.
>
> This assertion of jurisdiction has raised a number of questions concerning the responsibilities of the two Federal agencies involved, interpretations of the laws establishing them, and the intent of Congress concerning its actions on these and other related laws. It is the committee's opinion that any new assertion of Federal regulatory authority, especially as it conflicts with, or overlaps the field of another Federal agency, should be a matter for consideration by Congress.

> The committee, therefore, feels that no funds should be used by FPC to establish regulatory authority over REA cooperatives until the Congress has had an opportunity to consider appropriate legislation, such as the clarifying legislation which has been introduced in both the House and the Senate.

Considered in the light of the background of this matter, we cannot believe that the statement of the Committee on Appropriations was intended to be a direction to terminate the pending proceeding. Nor do we see how the proper discharge of our statutory responsibilities could be effected were we to suspend an administrative hearing because legislative proposals have been made which, if adopted, might abort the proceeding. Many times in the past, and in at least three other instances during the present Congress, legislation has been introduced which might affect or moot proceedings pending before this Commission. We have many other proceedings pending which the introduction of legislation might affect if we were to adopt such a policy.

As has been made clear in our previous orders, the present proceeding was instituted so that the Commission might re-evaluate previous holdings that cooperatives which owned or operated electric facilities for use in interstate commerce were public utilities within the meaning of Section 201(e) of the Federal Power Act. The earliest such holding concerning a particular cooperative was in 1947. In a recent proceeding, however, it was brought to our attention that the issue of our jurisdiction over cooperatives had never been tested in judicial proceedings. We immediately asked our General Counsel for a formal opinion on the subject. In addition we requested the opinion of the Rural Electric Administration and gave opportunity to file an opinion to counsel for a large group of cooperatives which felt they might be affected.

From the time we requested those opinions to the present date we have refrained from asserting any jurisdiction over any rural electric cooperative. It was for this reason that we did not list any cooperatives in our list of Class A public utilities subject to the Commission's jursidiction made public on July 1, 1963. Moreover, there are presently pending before the Commission several other proceedings in which if the Commission had followed past practice it would have required filings by certain interstate electric cooperative corporations.

The opinions received from the three sources mentioned above were in conflict. That of our General Counsel held that rural electric cooperatives were public utilities within the meaning of Section 201(e) of the Federal Power Act but concluded that this Commission did not have jurisdiction under the Act over the transactions by which many of the rural electric cooperatives have secured loans from the Rural Electric Administration. The other two opinions held that this Commission has no jurisdiction over any cooperative organization.

It was by reason of this conflict of opinions that the present proceeding was initiated. As we stated in our order of October 14, 1963, after citing numerous instances in which the Commission had held cooperatives to be public utilities:

> We wish to make it clear that the purpose of this hearing is to re-examine this question of jurisdiction on the basis of the record in this proceeding and that we do not consider the cited cases as necessarily controlling our decision herein.

It is true that the original order in this proceeding in terms directs the three named cooperatives to file certain information or rate schedules with the Commission in the event they are found to be subject to our jurisdiction. This was done, however, solely in order to assure that there would be a case, or controversy, which could be taken on appeal to an appropriate court in the event we concluded that one or more of the cooperatives were in fact subject to our juris-

diction. And we have made clear, and here reiterate, that pending final resolution of the jurisdictional issues here raised, we have no intention of asserting or exercising any jurisdiction over any cooperatives. We believe, for this reason and for the one set forth immediately below, that a continuation of the present hearing to re-examine the jurisdictional question is not inconsistent with the intent of the Senate Committee on Appropriations.

In the ordinary course of our proceedings, which include the hearing now scheduled for December 12, briefs thereafter to the presiding examiner, the initial decision by the presiding examiner, opportunity to file exceptions to the decision of the presiding examiner, oral argument before the Commission and the Commission's decision, there is no likelihood that our decision in this matter will be arrived at prior to September 1964. Thereafter, in the event we find that interstate cooperatives are public utilities within the meaning of the Federal Power Act, there will, of course, be opportunity for court review before our decision can become final. The continuation of the hearing should, therefore, in no way inhibit any consideration which the Congress may choose to give to the matter.

For the foregoing reasons we can find no basis on which to grant the motion for postponement. Full and extensive presentations have been filed on behalf of the Secretary of Agriculture and this Commission's staff, in addition to the case-in-chief of the cooperatives. Passage of time through an indefinite continuance of the hearing can only result in the outdating of material, possible future unavailability of witnesses and other consequences affecting the probative value of the testimony and exhibits now in the record. Indeed the motion does not request continuance on any ground other than the pending legislation, recognizing, perhaps, that we have already granted two extensions of time in which to prepare testimony and for the convenience of an intervenor's counsel in order to fully cooperate in building a sound and meaningful record upon which proper conclusions on the underlying legal issues may be reached.

The Commission orders:

The joint motion for postponement filed in the above-entitled proceeding on December 2, 1963, hereby is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

NORTHERN STATES POWER COMPANY (MINNESOTA), DOCKET NO. E-7140

ORDER DIRECTING STAFF INVESTIGATION INTO WHOLESALE RATES

(Issued December 6, 1963)

Northern States Power Company (NSP-Minn.) a Minnesota corporation, with principal offices in Minneapolis, Minnesota, from time to time filed as rate schedules pursuant to Section 205 of the Federal Power Act: contracts for all requirements wholesale electric service to sixteen municipalities; contracts for supplemental wholesale service to ten municipalities receiving firm and supplemental power from the Bureau of Reclamation (Bureau); contracts for supplementary service to seven municipalities having their own generating plants; contracts providing for all requirements service to one rural electric cooperative; and contracts with 18 rural electric cooperatives providing for the delivery of

power from the Bureau over the facilities of either NSP-Minn. or others and for supplemental power; and certain other contracts. In some instances the various types of service are provided for in one rate schedule. The aforementioned services are provided for under rate schedules as designated in the files of the Commission and shown in Appendix A hereto.

Examination of the aforementioned rates schedules, particularly NSP-Minn.'s rates and charges including fuel cost adjustments and service conditions, indicates the need for further analysis thereof. Those and other matters bearing upon NSP-Minn.'s rate level and rate design make it desirable, in the interests of all consumers served by or through that Company, that the Commission staff conduct an investigation and study of NSP-Minn.'s electric utility operations, system costs, and rate and charges subject to this Commission's jurisdiction pursuant to Section 205 of the Federal Power Act affecting NSP-Minn's utility operations, including transactions with its affiliated Company, Northern States Power Company of Wisconsin, Eau Claire, Wisconsin.

It is anticipated that the Commission staff investigation as to NSP-Minn.'s rates and charges and its utility operations and system costs will require the submission by NSP-Minn. and others associated with NSP-Minn.'s services under the aforementioned rate schedules of cost, revenue, and other operating data, and such data will be requested by the staff or obtained by the staff through field studies. This Commission's rate regulatory jurisdiction over public utilities is continuous.

The Commission finds:

Review and analysis of available office data indicate that certain of NSP-Minn.'s Rate Schedules FPC Nos. 82, 89, 94, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 125, 126, 127, 133, 134, 137, 138, 140, 141, 142, 145, 146, 147, 148, 149, 150, 151, 152, 153, 155, 158, 159, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 192, 193, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 219, 220, 221, 222, 223, 224, 225, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 268, 269, 275, 276, and 277 as supplemented and more fully described in Appendix A, may result in excessive rates or charges or may be unduly discriminatory, unduly preferential, or otherwise unjust, unreasonable and unlawful within the meaning of the Federal Power Act. Additional factual data necessary for a resolution of those questions must be obtained. Accordingly it is necessary and appropriate for the purposes of the Federal Power Act, particularly Sections 205, 206, 207 and 309 thereof, that the Commission staff conduct an investigation and study as set forth above and that a hearing be held as hereinafter provided.

The Commission orders:

(A) A public hearing shall be held concerning the lawfulness of NSP-Minn.'s wholesale rate schedules and supplements thereto enumerated in the aforesaid finding, at the time and place and in the manner all to be fixed by notice of the Secretary.

(B) NSP-Minn. shall file, on or before April 30, 1964, cost and revenue data, using 1963 as the test year, showing NSP-Minn.'s costs of rendering service to each wholesale customer for resale under the rate schedules enumerated in the findings above, calculated in accordance with applicable Commission precedents.

(C) The foregoing showing shall not preclude or limit any additional showing by NSP-Minn. or others and shall be without prejudice to future action taken by the Commission or its staff, or to any future position NSP-Minn. or others

may wish to take as to the significance of, or conclusions to be drawn from, the above factual showing.

(D) The foregoing showing shall be submitted in writing with sufficient copies to provide this Commission with ten copies, to provide each State Commission affected with a like number of copies and to provide one copy each to all other parties as may be granted intervention in this proceeding.

(E) Notices of intervention or petitions to intervene in this proceeding may be filed with the Commission on or before January 30, 1964, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.37).

APPENDIX A

NORTHERN STATES POWER COMPANY (MINNESOTA)

FPC No.—	*Rate schedule designation*	*Other party*
82		City of Hillsboro, N. Dak.
89		Home Light & Power Co.
94 and Supplement Nos. 1–4 dated June 17, 1958, June 17, 1958, Mar. 13, 1961, and Feb. 13, 1962, respectively.		Cooperative Power Association.
98		Lake Region Cooperative Electrical Association.
99		Do.
100		Do.
101		Do.
102		Do.
103		Do.
104		Do.
105		Do.
106		Lyon-Lincoln Electric Cooperative, Inc.
107		Do.
108		Do.
109		Do.
110		Do.
114		Runestone Electric Association.
115		Do.
116		Do.
117		Do.
118		Traverse Electric Cooperative, Inc.
119		Do.
120		Do.
121		Do.
122		Do.
123		Do.
125		Agra-Lite Cooperative.
126		Do.
127		Do.
133 with Exhibit A, dated July 2, 1956 and Supplement Nos. 1 and 2, dated Nov. 21, 1963 and Feb. 26, 1962, respectively.		Bureau of Reclamation.

APPENDIX A—continued

FPC No.—	Rate schedule designation	Other party
134 and Supplement Nos. 1 and 3, dated Apr. 5, 1960 and June 15, 1962, respectively.		City of Marshall, Minn.
137		L and O Power Cooperative.
138 and Supplement Nos. 2 and 3, dated Sept. 30, 1960 and May 1, 1963, respectively.		Northern States Power Co. (Wis.).
140		Lake Region Cooperative Electrical Association.
141		Do.
142		Do.
145		City of Lake City, Minn.
146		Minnesota Valley Cooperative Light & Power Association.
147		Do.
148		Do.
149		Do.
150		Do.
151		Do.
152		Do.
153		Do.
155 and Supplement Nos. 1–8, dated May 29, 1961, June 30, 1961, Nov. 14, 1961, Jan. 17, 1962, Mar. 30, 1962, June 1, 1962, Feb. 1, 1963, and June 20, 1963.		Northwestern Public Service Co.
158 and Supplement Nos. 1–3, dated Nov. 8, 1961, Nov. 22, 1961, and July 2, 1962.		City of East Grand Forks, Minn.
159 and Supplement Nos. 1 and 2, dated Nov. 15, 1961 and July 2, 1962, respectively.		City of Ada, Minn.
171		Dairyland Power Cooperative. Northern States Power Co. (Wis.)
172		City of Anoka, Minn.
173		City of Arlington, Minn.
174		Village of Bayport, Minn.
175		Village of Brownton, Minn.
176		Village of Buffalo, Minn.
177		City of Chaska, Minn.
178		City of Granite Falls, Minn.
179		Village of Kasota, Minn.
180		Village of Kasson, Minn.
181		Village of North St. Paul, Minn.
182		City of St. Peter, Minn.
183		City of Shakopee, Minn.
184		City of Waseca, Minn.

APPENDIX A—continued

FPC No.—	Rate schedule designation	Other party
185		City of Winthrop, Minn.
186		Village of Olivia, Minn.
187		City of Sauk Centre, Minn.
188		City of St. James, Minn.
189		Village of Delano, Minn.
190		Village of Fairfax, Minn.
192		City of Melrose, Minn.
193		City of Redwood Falls, Minn.
195		Blue Earth-Nicollet Cooperative Electric Association.
196		Do.
197		Do.
198		Do.
199		Do.
200		Do.
201		Do.
202		Goodhue County Cooperative Electric Association.
203		Do.
204		Do.
205		Do.
206		Do.
207		Do.
208		Brown County Rural Electric Association.
209		Do.
210		Do.
211		Do.
219		Minnesota Valley Electric Cooperative.
220		Do.
221		Do.
222		Minnesota Valley Electric Association.
223		Do.
224		Redwood Electric Cooperative.
225		Do.
230		McLeod Cooperative Power Association.
231		Do.
232		Do.
233		Do.
234		Meeker Cooperative Light & Power Association.
235		Do.
236		Do.
237		Do.
238		Do.
239		Do.
240		South Central Electric Association.
241		Do.
242		Stearns Cooperative Electrical Association.
243		Do.
244		Do.
245		Do.
246		Do.

APPENDIX A—continued

FPC No.—	Rate schedule designation	Other party
247		Stearns Cooperative Electrical Association
248		Do.
249		Do.
250		Do.
251		Steele-Waseca Electric Cooperative.
252		Do.
253		Agra-Lite Cooperative.
254		Lake Region Co-op Electrical Association.
255		Do.
256		Runestone Electric Association.
257		Do.
258		Do.
259		Lyon-Lincoln Electric Cooperative, Inc.
260		Dakota County Electric Cooperative.
261		Do.
262		Do.
263		Do.
264		Do.
265		Do.
266		Do.
268 and Supplement No. 1, dated Sept. 11, 1963.		Renville-Sibley Cooperative Power Association.
269 and Supplement No. 1, dated Aug. 14, 1963.		Nobles Cooperative Electric Association.
275		Village of Kenyon, Minn.
276		Village of Mazeppa, Minn.
277		City of Sioux Falls, S. Dak.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

AREA PRICE LEVELS FOR SALES OF NATURAL GAS BY PRODUCERS, DOCKET NO. R-252

ORDER NO. 275

EIGHTH AMENDMENT TO STATEMENT OF GENERAL POLICY NO. 61-1

(Issued December 9, 1963)*

The Commission's Statement of General Policy No. 61-1 issued September 28, 1960, announced a price level of 18 cents per Mcf for initial sales in Texas District No. 2 (at 14.65 psia). The Statement of Policy specified that the price levels announced therein were to be "adjusted from time to time as such facts as may come before us compel such adjustments." The price level previously announced for District No. 4 was in fact adjusted by the Fifth Amendment to the Statement of General Policy on August 30, 1962, 28 FPC 441 (27 F.R. 8918), and

*Published in the Federal Register on December 14, 1963 (28 F.R. 13547).

the price level for District No. 3 was adjusted by the Sixth Amendment dated March 27, 1963, 29 FPC 590, (28 F.R. 3203).

The Commission in its Opinion No. 412 in the *Hunt* case issued this date, *infra*, p. 1438, has had occasion to re-examine the question of the in-line price in Texas District No. 2 immediately prior to September 28, 1960, in light of the subsequent court decisions dealing with the initial pricing question in producer certificate cases.

We have also reviewed the sales in District No. 2 subsequent to September 28, 1960. We have carefully re-examined the appropriate level of initial ceilings in this District in light of present conditions in the area giving due consideration to the applicable court decisions and the factors set forth in our original statement of policy.

Just as was the case in our revision of the ceiling prices in Texas Districts No. 3 and 4, our guiding purpose here is to arrive at a revised price which will enable the Commission to hold the line on new sales in this area at a level consistent with the public interest and, at the same time, to enable producers to obtain authorizations which provide them a reasonable basis for proceeding with their operations and furnishing needed supplies of gas. We conclude that, effective this date, the ceiling price level for initial sales in Texas District No. 2, inclusive of state taxes, shall be 16 cents per Mcf (at 14.65 psia). Accordingly,

The Commission finds:

(1) No notice or hearing is necessary under section 4(a) of the Administrative Procedure Act.

(2) In view of the purpose, intent and effect of the amendment herein ordered, good cause exists for making it effective forthwith.

The Commission, acting pursuant to authority granted by the Natural Gas Act, as amended, particularly sections 4, 5, and 16 thereof (52 Stat. 822, 823, 830, 15 U.S.C. 717c, 717d, 717o), *orders:*

(A) Effective upon the issuance of this order, the table in the note at the end of § 2.56, Part 2, Statements of General Policy and Interpretations, Chapter I of Title 18, Code of Federal Regulations, is amended by deleting the figure "18.0", the initial service rate for Texas District No. 2, and inserting "16.0" in lieu thereof.

[Secs. 4, 5, 16, 52 Stat. 822, 823, 830; 15 U.S.C. 717c, 717d, 717o.]

(B) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Commissioner Ross *concurring.*

Commissioners O'Connor and Woodward *dissenting.*

Ross, Commissioner, *concurring:*

Under normal circumstances, my decision as to a revision of the Policy Statement No. 61–1 would be based on policies enunciated in my dissents to the Fifth and Sixth Amendments to the Statement involving similar situations. In this case, since 15¢ per Mcf constitutes the in-line price found appropriate in a litigated proceeding involving Texas District No. 2, I would have amended the Policy Statement to prescribe a guide line price at the same level. However, without a concurrence in the instant order, there would be no majority and the clearly excessive rate of 18¢ per Mcf would remain in effect. Solely for this reason, I concur.

O'Connor and Woodward, Commissioners, *dissenting:*

For the same reasons expressed in *Hassie Hunt, et al.*, which led us to conclude that the in-line price for Texas Railroad District No. 2 sales prior to Septem-

ber 28, 1960, should be 16.0 cents per Mcf, we further conclude that effective upon the issuance of this order the guideline price for District No. 2 sales should be established at 17.0 cents per Mcf, as was previously established in Texas Railroad District No. 3.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

CITIZENS UTILITIES COMPANY, PROJECT NO. 2306

ORDER DENYING APPLICATION FOR REHEARING

(Issued December 9, 1963)

On November 6, 1963, 30 FPC 1213, the Commission issued an order modifying and adopting the presiding examiner's initial decision granting a license to the Citizens Utilities Company, of Stamford, Connecticut (Citizens), for existing project works on the Clyde River, and a tributary, in Orleans County, Vermont. By its application, filed on November 14, 1963, Citizens requests rehearing on the same grounds advanced before the examiner and in its exceptions to the examiner's decision. After full consideration of the application for rehearing, we conclude that the arguments therein justify no change or modification in our order issued November 6, 1963, and that the applications should be denied.

The Commission further finds:

The assignments of error and grounds for rehearing set forth in the application for rehearing filed by citizens on November 14, 1963, of the Commission's order present no facts or principles of law which were not considered by the Commission when it issued its aforesaid order, or which having now been considered warrant any change or modification of the said order.

The Commission orders:

Citizens Utilities Company's application filed on November 14, 1963, for rehearing of the Commission's order issued herein on November 6, 1963, is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

SALINA F. HILL, PROJECT NO. 945

ORDER ACCEPTING SURRENDER OF LICENSE (MINOR)

(Issued December 9, 1963)

Application was filed on September 24, 1963, by Salina F. Hill (Licensee) of Government Camp, Oregon, for surrender of the license for minor Project No. 945, located on Camp Creek, a headwater of the Sandy River, in Clackamas County, Oregon, and affecting lands of the United States within the Mount Hood National Forest.

According to the application, the project changed ownership and the new owner does not desire to operate the project. The Licensee's copy of the license instrument has been returned, and annual charges under the license have been paid through December 31, 1962.

The U.S. Forest Service has advised that: the power plant has not operated over three years; the facilities previously served by the project are now served by commercial power sources; the lands of the United States occupied by the project have been restored to a condition satisfactory to the Service; and the latter has no objection to our acceptance of surrender of the license.

The Commission finds:

Acceptance of surrender of the license for Project No. 945 is appropriate.

The Commission orders:

Surrender of the license for minor Project No. 945 is hereby accepted, effective as of December 31, 1962.

OPINION NO. 412

HASSIE HUNT TRUST, OPERATOR, ET AL., DOCKET NO. G–19115; H. L. HUNT, OPERATOR, ET AL., G–19116; HUNT OIL COMPANY, G–19117; WILLIAM HERBERT HUNT TRUST ESTATE, OPERATOR, G–19118; LAMAR HUNT TRUST ESTATE, G–19119; GEORGE W. GRAHAM, INC., OPERATOR, ET AL., G–19123; PLACID OIL COMPANY, OPERATOR, ET AL., G–19124 AND G–19125; H. L. HUNT, OPERATOR, ET AL., CI61–1221; H. L. HUNT, CI61–1282; HASSIE HUNT TRUST, OPERATOR, ET AL., CI61–1283; CAROLINE HUNT SANDS, CI61–1343; CAROLINE HUNT TRUST ESTATE, CI61–1344; LAMAR HUNT TRUST ESTATE, CI61–1345; NELSON BUNKER HUNT, CI61–1346; LAMAR HUNT, ET AL., CI61–1736

OPINION AND ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 9, 1963)*

Syllabus

1. Reaffirming *Skelly* and *Seaboard*, Commission *conditions* District No. 3 sales made under Pre-Policy Statement contracts at 16 cents; those in District 4 at 15 cents. P. 1441.
2. Evidence here does not offer basis for concluding that pre-policy levels must automatically prevail for post-policy contracts. P. 1442.
3. Citing *Skelly* Commission *severs* applications containing post-policy contracts for consolidation and further hearing with others involving like contracts. P. 1443.
4. Fact that parties chose to make a post-policy sale by ratifying pre-policy contract of different party cannot make the agreement retroactive to earlier [higher-priced] contract date. P. 1444.
5. Under instant circumstances Commission *rejects* contention that offshore production with onshore delivery entitles producer to higher price for gas—*distinguishing Socony Mobil*. P. 1445.
6. District No. 2 sales made under Pre-Policy Statement contracts conditioned at 15 cents. P. 1445.
7. Commission *issues* certificates of public convenience and necessity under Section 7 of the Natural Gas Act. P. 1447.

Commissioner Ross *concurring in part; dissenting in part.*

Commissioners O'Connor and Woodward *dissenting in part.*

---

*Initial decision appears on p. 1450. Opinion No. 412–A, issued January 24, 1964, denied rehearing, granted stay, etc., 31 FPC 181. Petition to Review pending in CA5, No. 21286, *Margaret Hunt Hill Trustee*, v. *F.P.C.*

Robert W. Henderson and *Robert Kennedy* for Hassie Hunt Trust, Operator, et al.; H. L. Hunt, Operator, et al.; Hunt Oil Company; William Herbert Hunt Trust Estate, Operator; Lamar Hunt Trust; H. L. Hunt; Caroline Hunt Sands; Caroline Hunt Trust Estate; Nelson Bunker Hunt; Lamar Hunt, et al.

Richard F. Generally for George W. Graham, Inc., Operator, et al.

Paul Hicks for Placid Oil Company, Operator, et al.

Kent H. Brown, Mrs. Barbara M. Suchow and *Morton L. Simons* for Public Service Commission of the State of New York.

William E. Hynan, Jr. for The Staff of The Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

SWIDLER, *Chairman:*

This consolidated proceeding, arising under Section 7(c) and (e) of the Natural Gas Act, involves sixteen applications for permanent certificates of public convenience and necessity for sales of gas to Natural Gas Pipeline Company of America from five fields located in Texas Railroad Commission Districts No. 2, 3 and 4, that is to say, the Texas Gulf Coast.[1] The contracts, as initially submitted, each provide for an initial price of 20 cents per Mcf at 14.65 psia with four escalations of 2 cents per Mcf occurring at 4-year intervals. The only issue under contention throughout the proceeding has been the initial price at which the certificates should issue, all other elements having been resolved to the satisfaction of the participants.[2] The case is now before the Commission on joint exceptions filed by the producers to the presiding examiner's initial decision issued April 11, 1963, conditioning the certificates to provide for an initial price of 15 cents per Mcf for the sales in Districts No. 2 and 4, and 16 cents in District No. 3.

Certain of the sales are identifiable by the prefix letter "G" in their docket numbers while the remainder of the dockets carry a "CI" designation. The "G" dockets, which were established pursuant to applications filed July 31, 1959, for sales under contracts dated May 15, 1959, are before us for a second time. By orders issued July 1 and July 29, 1960,[3] permanent certificates were issued to those applicants on condition that the price for the District No. 3 sales be 20 cents per Mcf with a single 3-cent escalation after ten years and that the Districts No. 2 and 4 sales carry an initial price of 18 cents per Mcf with the original escalations. Acceptances of the certificates were filed by all producers and deliveries began. However, on June 15, 1961,[4] the Circuit Court for the District of Columbia ruled that the Commission had acted improperly when, on March 21, 1960, it denied intervention in the proceeding to the New York Public Service Commission (PSC).[5] Thereafter, by order issued November 2, 1961,[6] the Commission (1) set aside the orders granting permanent certificates to the "G" docket applicants, (2) issued temporary authorizations conditioned to the prices which had been approved, (3) imposed a general refund condition as to excess amounts thereafter collected, and (4) granted intervention to PSC in the reopened proceeding. The order also (5) required that the initial prices allowed in the

[1] Some of the sixteen are initial sales while others are applications to sell additional gas from the same fields. Each, however, was docketed separately and is treated independently for the purpose of this decision.

[2] Other than staff and the applicants the Public Service Commission of the State of New York was the only active party.

[3] *Peoples Gulf Coast Natural Gas Pipeline Company and Natural Gas Pipeline Company of America, et al.*, Docket No. G–19086, *et al.*, 24 FPC 1, 106.

[4] *Public Service Comm. of New York* v. *F.P.C.*, 295 F. 2d 140, cert. denied, 368 U.S. 948 (1961).

[5] Order denying application for rehearing issued May 5, 1960.

[6] 26 FPC 689, rehearing denied by order issued December 28, 1961, 26 FPC 930.

temporaries remain in effect until changed by Commission order, *i.e.*, that they not be escalated. Our order denying rehearing indicated that this was the "only action we could have taken" to protect the right of PSC to contest fully the initial prices. The applicants filed purported rejections of the temporary authorizations, contending that our order revoking their permanent certificates is invalid and that such certificates are still outstanding, and have petitioned for court review;[7] they also have attempted to break the order by filing for a price escalation. Our rejection thereof likewise has been taken to court.[8]

The hearing in the reopened proceeding began March 28, 1962, the "CI" dockets having been consolidated with the "G" dockets in the interim. Applicants' direct presentation continued through April 3, 1962, during which period they presented nine witnesses who sponsored 142 exhibits. The bulk of these exhibits consisted of company-wide cost-of-service presentations and supporting engineering material for four of the twelve applicants,[9] utilizing various test years and predicated on differing theories of cost allocation. Other exhibits involved such items as trends in exploration and developmental drilling costs, unit cost and revenue trends, costs of transporting the gas beyond the wellhead to the point of sale, and a variety of reserve information. On May 31, 1962, the examiner, ruling on motions by staff and PSC excluded all of the system-wide cost-of-service and related exhibits on the ground that they have no probative value as an evidentiary standard for the purpose of determining initial price or prices to meet the test of the public convenience and necessity for the gas involved in this proceeding. The examiner's ruling was upheld by us on appeal by order issued July 19, 1962. The exclusion of this type of evidence from proceedings under Section 7 has more recently been affirmed in the *Skelly*[10] and *Texaco Seaboard*[11] cases and particularly in the *Placid Oil Company*[12] opinion, where we held that "economic and financial evidence, whether on an individual company or on an area-wide basis and whether of the type characterized as cost-of-service studies, cash flow studies, demand-supply, cost, profit and market price trends, area cost-revenue trends, comparative well cost data and gas replacement costs, plays no part in and is irrelevant to the determination of the initial price question in independent producer certificate cases." The decisions in *Atlantic Refining Co.* v. *F.P.C.*, 316 F. 2d 677 (CADC, March 21, 1963) and *California Oil Co.* v. *F.P.C.*, 315 F. 2d 652 (CA 10, March 28, 1963) affirm our use of sales prices in the area as the basis for fixing the initial prices in certificate cases and indicate that evidence as to financial position and costs of production are not requisite

---

[7] *Hassie Hunt Trust, et al.* v. *F.P.C.*, CA 5, No. 19499; *Placid Oil Co.* v. *F.P.C.*, CA 5, No. 19500. These cases had been held in abeyance pending determination of our motions to dismiss or transfer. By order entered August 26, 1963, the court denied the motions and consolidated No. 19499 with Nos. 19218 and 20202, and No. 19500 with Nos. 20204 and 20218, for argument and submission.

[8] *Hunt Oil Co.* v. *F.P.C.*, CA 5, No. 19218, *et al.*; *Placid Oil Co.* v. *F.P.C.*, CA 5, No. 20204. Some of these have been consolidated with the proceedings in the previous footnote, others are still in progress. To the present date this proceeding has been the subject of approximately twenty petitions for review in the Circuit Courts and two appeals to the Supreme Court.

[9] Hassie Hunt Trust, Hunt Oil Company, H. L. Hunt and Placid Oil Company.

[10] *Skelly Oil Company, et al.*, Docket No. G–18638, *et al.*, Opinion No. 362, 28 FPC 401, issued August 30, 1962; Opinion No. 362–A, 28 FPC 1065, issued December 18, 1962.

[11] *Texaco Seaboard Inc., et al.*, Docket No. CI61–118, *et al.*, Opinion No. 383, 29 FPC 593, issued March 27, 1963; Opinion No. 383–A, 30 FPC 613, issued August 27, 1963.

[12] *Placid Oil Company, et al.*, Docket No. G–13183, *et al.*, Opinion No. 398, 30 FPC 283, issued July 17, 1963; Opinion No. 398–A, 30 FPC 682, issued September 11, 1963.

considerations. Applicants'[13] exceptions to the exclusion of its cost evidence is rejected for the reasons set out in the foregoing cases.

The initial decision by the examiner relies almost entirely upon a staff price exhibit (No. 236) recounting the various sales permanently certificated and temporarily authorized in Districts No. 2, 3 and 4 as of April 15, 1962, and the decisions in *Skelly* and *Texaco Seaboard* to find that the "in-line" prices should be the same as determined in those decisions, 15 cents in District No. 4 and 16 cents in District No. 3. Turning to the two sales in District No. 2,[14] where an "in-line" price had not yet been determined by the Commission, the examiner concluded on review of the staff exhibit that these sales should be certificated at 15 cents. Applicants except to the use of the "in-lineness" concept in determining the initial price issue, to reliance on Opinions No. 362 and 383 as having established the public convenience and necessity initial prices for the instant sales in Districts No. 3 and 4, to employing exhibit 236 in determining the price line in District No. 2, to the examiner's failure to sever out the "CI" dockets for consideration and disposition in another proceeding on the ground that the contracts were executed subsequent to our *Statement of General Policy No. 61–1*, 24 FPC 818, and to the reissuance of permanent certification and the direction of refunds with interest in the "G" dockets. Other specific exceptions are comprehended within those listed.

We agree with the examiner that the determinations herein are to be made in accordance with our decisions in *Skelly Oil Co.* and *Texaco Seaboard Inc.* In the *Skelly* opinion we found that the "in-line" price in District No. 4 was 15 cents at 14.65 psia for those contracts executed in 1958, 1959, and in 1960 prior to September 28, 1960, when the *Policy Statement* was issued. In *Texaco Seaboard*, which involved sales from both Districts No. 3 and 4, we found that comparison of the staff's pricing exhibits as to District No. 4 revealed no material difference from that presented in *Skelly* and concluded that the sales to be made in this District by Texaco also should be conditioned at 15 cents. We then proceeded to determine that pre-*Policy Statement* "in-line" price for District No. 3, deriving a price of 16 cents per Mcf. A similar comparison of the present exhibit No. 236, which includes the sales executed in the same 1958–September 1960 time period relied on in those proceedings and which, in addition, has been updated to reflect Commission action occurring subsequent to the preparation of the *Skelly* and *Texaco Seaboard* studies with regard to sales in these Districts, reveals no substantial dissimilarities or considerations sufficient to establish that the "in-line" prices were in fact higher than the levels determined by us. Accordingly, it is our conclusion that the District No. 3 sales in this proceeding made under contracts executed before the date of the *Policy Statement* should be conditioned at a price of 16 cents per Mcf at 14.65 psia and those in District No. 4 at a price of 15 cents per Mcf at 14.65 psia.

Although fully cognizant of our decision in *Skelly* to hold a separate hearing to determine the prices for the post-*Policy Statement* contracts,[15] the examiner

---

[13] As pointed out in the initial decision, appellants averred throughout the hearing that they were "respondents" insofar as the "G" dockets are concerned rather than "applicants." A reading of their initial brief confirms that the reason behind this characterization is to enforce their contention that they have no burden of proof in the instant proceeding with regard to those dockets. They have taken exception to the examiner's refusal to confirm this status. Our order of November 2, 1961, makes it obvious that the producers continue to hold the position of applicants seeking permanent certificates under Section 7 of the Natural Gas Act and that the burden of coming forward with evidence to justify either their proposed contract prices or the prices at which these sales have been temporarily authorized rests with them.

[14] Docket Nos. G–19119 and CI61–1736.

[15] 28 FPC 401, 412, 417–418, 1069.

made no distinction between those contracts in this proceeding executed before the Policy Statement and those executed after its issuance in deciding the appropriate prices for permanent certification. He stated that "The fact that not only was each one of the contracts executed at the same level without regard to date and that such level was at a higher rate than that set forth in the Commission's *Statement of General Policy* in the case of each contract points to the absence of any reliance by any party on the levels set forth in the Commission's Policy Statement and to the immateriality of the dates of execution of the contracts." [16] Our decision in *Skelly* to sever the contracts entered into after September 28, 1960, for determination in another proceeding was based on our conclusion that the record contained inadequate information for evaluating the changes which may have taken place after that date, including the effect, if any, of the Commission's enunciation of an 18-cent ceiling upon the "in-line" price in the area at the time the post-area ceiling contracts were made. In our opinion the present record is equally deficient. The examiner's efforts to overcome this lack of evidence on the ground that the parties made no attempt "to show that the difference in the dates of execution of the contracts or that the issuance of the Commission's *Policy Statement* had any relationship whatsoever to the prices which were reached in the contracts" has, essentially, a negative basis and is not equivalent to the positive determination called for by our action in *Skelly*, *i.e.*, the ability to make a firm finding that the evidence shows that the situation after the ceiling prices went into effect, including the impact of the *Policy Statement*, either made or did not make a difference in determining the initial price under contracts executed after the ceiling prices were put into effect. In so holding we state again that we do not imply that our announcement of the guideline rates, or other circumstances, necessarily had the effect of changing the "in-line" price level, but only that the evidence before us in the present proceeding does not permit us to make a valid finding as to such effect, if any.

While the impact of the policy statement is one factor to be considered in the proceeding covering the post-policy statement contracts, there are other compelling reasons for severing these contracts and consolidating them with all of the other applications contemporaneously executed. It is important to recognize that the key element in our in-line determination is the time at which the contract in issue was executed. We cannot assume that the evidence upon which we govern an in-line determination for contracts in the late 1950's can automatically be applied to contracts executed in the 1960's. On the contrary it would seem clear that the evidence must relate to a period reasonably contemporaneous with the contracts in issue. The evidence in this proceeding was focused upon the pre-policy statement period and the date of the policy statement therefore provides a convenient dividing point, without which we would be determining 1963 prices on the basis of contract prices in the previous decade.

Another reason for severing the post-ceiling dockets is the fact that there are numerous other contracts contemporaneously executed which were not consolidated in this hearing. We must hold a hearing on the other post-ceiling applications. The post-*Policy Statement* contracts herein should obviously be decided in the proceeding with their contemporaries rather than in this proceeding which primarily relates to the pre-*Policy Statement* period.

We are convinced that the evidence before us does not offer any solid basis for concluding that the pre-policy level must automatically prevail for the post-

[16] The hearing in this proceeding was concluded in June 1962, prior to the August 30, 1962, issuance of the *Skelly* opinion. Applicants' reply brief, which is dated September 15, 1962 (16 days after *Skelly*), does not attempt to show a price distinction based on the Policy Statement's promulgation. This is not necessarily surprising in view of the brevity of the time period which had then elapsed.

policy contracts. The dissent of Commissioner Ross refers to several permanent certificates issued in 1960, but it must be recognized that after the issuance of our policy statement we did not grant permanent certificates to the many applicants with contract prices in excess of our ceiling. These applicants all received temporary authority and the proper price line will be the subject of the forthcoming hearing. The only permanents that were granted were to the relatively few applicants whose contract prices were below our ceiling. To suggest that these contracts alone, although inherently non-representative, are determinative of the in-line price of this period would in our judgment be to ignore the bulk of the evidence.

As in *Skelly* we are severing from this proceeding the applications for permanent certificates containing contracts executed after the Policy Statement issued [17] and shall hold them over for a new hearing on their permanent certificates, to be conducted in conjunction with other holders of temporary authorizations similarly situated. A review of the contracts shows that those in Docket Nos. CI61–1221, CI61–1282, CI61–1283 and CI61–1736 fall within this category and are thus to be excluded from the determinations made herein.[18] The situation is the same with respect to the contracts in Docket Nos. CI61–1343, CI61–1344, CI61–1345 and CI61–1346. These dockets concern a "Ratification and Amendment of Gas Sales Contract" (Exhibit 140) entered into by the applicants involved and the pipeline purchaser on February 15, 1961, ratifying and amending an earlier contract executed May 15, 1959, which is the subject of the sale at Docket No. G–19116. From the record it appears that the factual background is as follows: In 1961 a circumstance arose wherein one of the sellers in Docket No. G–19116 could no longer perform. A group of other Hunt entities then came forward and agreed to furnish that share of the production which the original co-seller was unable to supply. Naturally, it was necessary that they amend the acreage dedication provisions of the original contract to specify acreage which the new sellers possessed. This new acreage is in the same county as the original dedication but in a different field. The "ratification" came in the adoption of the remaining provisions of the original contract without change, including the clause dealing with price. Temporary authorizations for each of these four new sales were granted by letter-orders dated April 25, 1961.

The Commission's decision in *CATCO* [19] holds that "in-lineness" is to be decided as of the time the contracts were made since "it was then the parties agreed on a price." In the four sales here under discussion it appears that on February 15, 1961, new parties agreed to sell gas from a new field under terms of an earlier contract with a different party. It would seem clear that the

[17] There is no question that all contracts in the "G" dockets were executed May 15, 1959.

[18] The original temporaries granted in each of the "CI" dockets, issued between March and July 1961 and accepted by the applicants, conditioned the initial price from 20 cents down to 18 cents per Mcf, but did not contain a refund condition. Contemporaneously with the filing of their acceptances applicants attempted to amend their contracts, specifically the pricing provisions, to provide for 18 cents during the first 30 days and 20 cents for the remainder of the initial four-year period. The Commission, rejecting the amendment, at that time modified the language of its temporary authorizations to provide that no change from the 18-cent rate could be made during their terms. It is to these temporaries that a court appeal was taken by applicants and is the subject of the decision in *H. L. Hunt, et al.* v. *F.P.C.*, 306 F. 2d 334, wherein the Fifth Circuit held that we could not prevent increased rate filings during the pendency of the temporaries. As is known, our application for rehearing was denied and the case has been petitioned to the Supreme Court for certiorari (No. 273, October Term 1963). On October 14, 1963, our petition was granted. Pending such review we do not intend to accept the decision of the circuit court as binding. See *Pan American Petroleum Corporation*," "Order Denying Application for Rehearing," issued August 16, 1963, 30 FPC 497; *Cities Service Gas Company*, Docket No. RP62–1, 26 FPC 665, 666. [On certiorari, the Fifth Circuit was reversed, 376 U.S. 515.]

[19] *Continental Oil Company, et al.*, 27 FPC 96.

"meeting of the minds" for the sale of this particular gas took place in February 1961, and the fact that the parties chose to make the sale by ratifying an earlier contract of another party cannot make the agreement retroactive to the earlier contract date or erase events which occurred between May 15, 1959, and February 15, 1961, and which may have led to the decision to use the earlier, high priced contract. For this reason we believe these dockets also should be severed from this proceeding and consolidated for further hearing with the other dockets involving applications for certificates under contracts executed after the Policy Statement was issued.

Elimination of Docket No. CI61–1736 leaves Docket No. G–19119, with an estimated first month's production of 219,000 Mcf, as the only remaining sale in this proceeding made in District No. 2 under a contract executed prior to September 1960. A tabulation of the producer contracts executed in this District in the three years [20] immediately prior to the *Policy Statement* having total initial prices of 14 cents per Mcf and higher reveals the following:

Price at 14.65 psia	Number of contracts under permanent certificates	Estimated first month volumes	Number of contracts under temporary certificates	Estimated first month volumes
14.0	14	459,380	3	36,750
14.18 [a]	11	[b] 1,070,385	[f] 2	114,785
14.5	2	130,000	0	0
14.75	[c] 1	600,000	0	0
15.0	1	90,000	[e] 1	93,000
15.192	3	170,000	3	134,000
15.33	1	45,000	[h] 5	239,500
15.5	0	0	[i] 1	15,000
17.0	[d] [g] 2	438,000	[f] 6	179,631
17.595	0	0	1	31,768
18.0	0	0	[e] 1	13,200

[a] Actual price 14.1792 cents.

[b] Includes separate monthly delivery estimates of 300,000, 234,000, 126,000 and 117,000 Mcf.

[c] Sale by Coastal States Gas Producing Company, admitted to be gathering company in applicants' Exhibit No. 234.

[d] One of these sales, omitted from the staff exhibit but of which we take official knowledge, is under a contract dated March 31, 1958, and was permanently certificated in Docket No. G–14836 as a sale by Middle States Petroleum Co. to United Gas Pipe Line Co. The estimated first month's volume was 93,000 Mcf. By virtue of a successorship, it is now being made by Tenneco Corp. under its Rate Schedule No. 96.

[e] The other sale at this price, at a monthly volume of 345,000 Mcf, is by Coastal States Gas Producing Co. which, as indicated, is a gathering company sale and thus is not comparable to sales by producers (*Skelly*, footnote 14). Another sale contained in the staff exhibit and permanently certificated in Docket No. G–11105 at 17 cents per Mcf is under a contract executed February 28, 1956, and is therefore outside the scope of our tabulation.

[f] Includes sale by Coastal States of 15,000 Mcf.

[g] Sale by Valley Gas Transmission Co., Inc. See footnote *e*.

[h] Excludes sale in Docket No. CI61–1409 where certificate application has been dismissed by order issued June 14, 1963, in *H. W. Klein, et al.*, Docket No. G–7825, *et al.*

[i] All of these sales, to Coastal Transmission Corp., were involved in P. S. C. v. F. P. C., 295 F. 2d 140 (CADC, June 15, 1961) where the court reversed the Commission for denial of intervention by PSC in its March 31, 1960 order, in *Coastal Transmission Corp., et al.*, Docket No. G–18338, *et al.* Temporary certificates have been granted for all these sales. See *Coastal Transmission Corporation*, Docket No. G–18338, *et al.*, 26 FPC 677, November 2, 1961.

Examination of the pattern of permanently certificated sales in District No. 2 appropriate to consider in determining the price line reveals few major sales, either individually or of collective volumes, having been made permanent at prices substantially in excess of 15 cents per Mcf. The only sale permanently

[20] The table includes one sale permanently certificated at 14.18 cents with an estimated volume of 300,000 Mcf per month under a contract executed September 23, 1957, and one sale temporarily authorized at 17 cents for 18,790 Mcf per month under a September 10, 1957 contract. Since these contracts are dated, respectively, only 5 days and 18 days before the 3-year period which we are herein concerned, we believe it appropriate to include these sales in our consideration. See *Texaco Seaboard, Inc.*, Opinion No. 383–A, 30 FPC 613, p. 617.

certificated at an initial price greater than 15.33 cents and appropriate to consider is at Docket No. G–14836 (footnote *d*). However, other sales at 15.5 cents and 17 cents per Mcf are still under Commission review by reason of the court's decision in *P.S.C.* v. *F.P.C.*, *supra*, and have the effect of diminishing the weight which can be attributed to this one sale.[21] Furthermore, as brought out in *CATCO* and in our March 7, 1962, order in *Texaco Seaboard*,[22] the price line does not accord with the highest price or prices permanently authorized but falls between the highest group of prices and the median price.

In excepting to the examiner's determination applicants contend that the remainder of the sales in District No. 2 are not comparable to the sale in Docket No. G–19119 of an estimated monthly production of 219,000 Mcf. It may be noted however, that in two instances sales have been permanently certificated at 14.1792 cents which have monthly volumes (300,000 and 234,000 Mcf) in excess of the instant sale. Moreover, the escalations of 2 cents each four years called for by the contract exceed the price increase provisions in all other contracts permanently certificated in this District, which provide for an increase of only one cent each five years.[23]

Applicant in this docket also contends that it is entitled to a higher price because the gas is offshore production with onshore delivery, a situation in which we have, in another proceeding,[24] allowed a 2-cent per Mcf additional charge for transportation. In that case the producer actually paid a line rental, whereas here the delivery line is owned by the applicant. The present gathering and transportation of under two miles appears to differ little from the normal gathering performed by other producers in making field deliveries[25] except insofar as it is from an offshore platform to the coast rather than wholly on land. The fact that the actual delivery point may be a short distance outside the field boundaries is likewise of little consequence.

In our opinion the "in-line" price in District No. 2 applicable to all producer contracts entered into prior to September 28, 1960, was 15 cents per Mcf, including all reimbursements and charges, and certification of prices above this rate would not be in the public interest and would not serve the public convenience and necessity. We shall, therefore, condition the certificate issued in Docket No. G–19119 to this price. As indicated in Opinion No. 383, the issuance of the permanent certificates herein will not impair the applicants' right to charge their full contract prices until such time as just and reasonable rates can be fixed for their sales. However, such increases will, of course, be subject to a full refund obligation.

The examiner's decision imposes an obligation in all "G" dockets requiring each producer to refund, with interest, all amounts collected subsequent to November 2, 1961, in excess of the amount computed at the rates determined to be required by the public convenience and necessity in the proceeding herein. This requirement is in accordance with our order issued on the date designated. All exceptions addressed thereto are denied and the refund requirement is hereby confirmed.[26]

---

[21] *U.G.I.* v. *F.P.C.*, 283 F. 2d 817 (CA9), cert. denied 365 U.S. 881.

[22] Docket No. G–13169, *et al.*, 27 FPC 482, 485.

[23] This feature is to some degree, although not completely, offset by the fact that many of these other contracts call for a price redetermination in approximately their ninth year, a provision which this contract lacks.

[24] Citing *Socony Mobil Oil Co., Inc.*, Docket No. G–13780, order issued February 9, 1962, 27 FPC 347.

[25] Exhibit No. 236 shows that with one exception all sales in District No. 2, whether permanently certificated or temporarily authorized, provide for field delivery.

[26] See *Placid Oil Company, et al.*, Opinion No. 398, 30 FPC 283, p. 290, *et seq.*

Although no question was raised in the course of this reopened proceeding concerning the pipeline's obligation to pay for gas not taken, our examination of the record reveals that some if not all of the contracts contain provisions of this type. In line with the general practice in our recent decisions, we shall condition the certificates issued herein, as does the initial decision, to make them subject to the results of the rule-making proceeding in Docket No. R–199.

At the time of our issuance of the opinions in *Skelly* and *Texaco Seaboard* we issued amendments to our *Statement of General Policy No. 61–1* decreasing the initial ceiling prices thenceforth to be effective. At the present time it is in the public interest, in our opinion, to issue an Eighth amendment to our *Policy Statement*, effective immediately, decreasing the ceiling price for Texas District No. 2 from 18 cents to 16 cents per Mcf. We intend, at the appropriate opportunity to institute a proceeding consolidating all existing applications in this District involving contracts executed in the period between the issuance of the Policy Statement and the present and shall establish an initial price for these sales which will be consistent with our area pricing policy and with the public convenience and necessity standard of Section 7 of the Natural Gas Act.

The Commission further finds:

(1) The following applicants:

	Docket No.
Hassie Hunt Trust, Operator, *et al*	G–19115
H. L. Hunt, Operator, *et al*	G–19116
Hunt Oil Company	G–19117
William Herbert Hunt Trust Estate, Operator	G–19118
Lamar Hunt Trust Estate	G–19119
George W. Graham, Inc., Operator, *et al*	G–19123
Placid Oil Company, Operator, *et al*	G–19124 G–19125

are engaged in the sale of natural gas in interstate commerce for ultimate public consumption and each is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The sales of natural gas hereinbefore described, as more fully described in the applications, are made in interstate commerce, subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Subject to the requirements of our order herein and the conditions attached to the certificates herein issued, the applicants referred to in the above paragraph (1) are able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The sales of natural gas by the independent producers referred to in the above paragraph (1), together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are and have been required by the public convenience and necessity, and certificates therefor should be issued as hereinafter ordered and conditioned.

(5) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

(6) Except as herein granted, the exceptions to the examiner's decision should be denied.

The Commission orders:

(A) Certificates of public convenience and necessity are hereby issued to the applicants named in paragraph (1) above for the sale of gas in interstate commerce for resale as proposed in their applications, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, upon the terms and conditions of this order.

(B) The certificates issued to the applicants in Docket Nos. G–19117, G–19118, G–19119, G–19123 and G–19124 are hereby conditioned to prohibit any total initial price, including all reimbursements and charges, greater than 15 cents per Mcf at 14.65 psia from the date of issuance of this order and until such prices may be lawfully changed in the manner provided for in the Natural Gas Act.

(C) The certificates issued to the applicants in Docket Nos. G–19115, G–19116, G–19125 are hereby conditioned to prohibit any total initial price, including all reimbursements and charges, greater than 16 cents per Mcf at 14.65 psia from the date of issuance of this order and until such prices may be lawfully changed in the manner provided for in the Natural Gas Act.

(D) Docket Nos. CI61–1221, CI61–1282, CI61–1283, CI61–1343, CI61–1344, CI61–1345, CI61–1346 and CI61–1736 are hereby severed from this proceeding. Pending further determination, the temporary authorizations granted in these dockets are continued without change.

(E) Within 30 days from the date of issuance of this order each of the applicants in the dockets designated in paragraphs (B) and (C) above shall file supplements to their presently filed rate schedules reflecting the conditioned price as its initial price in lieu of the initial price provided in its contract; provided that the notice provisions of Section 154.94(b) and the detailed submittal provisions of Section 154.94(f) of the Commission's Regulations Under the Natural Gas Act are waived insofar as they apply to the reductions in rates hereby ordered.

(F) Within 60 days from the date of issuance of this order each of the applicants in Docket Nos. G–19115, G–19116, G–19117, G–19118, G–19119, G–19123, G–19124 and G–19125 shall refund to Natural Gas Pipeline Company of America, with interest calculated at 7 percent per annum to continue until full refund has been made, a sum equal to the difference between the price charged to and collected from such purchaser and the respective initial price set forth in paragraphs (B) and (C) above, applied to all volumes paid for by such purchaser after November 2, 1961, and until the date on which this order shall issue.

(G) Within 10 days of the date of the refund provided in paragraph (F) above, each of the applicants involved shall file with the Commission an officially certified statement showing the amount of the refund, its manner of computation, the interest payments related thereto, and a statement from the purchaser acknowledging receipt thereof.

(H) The certificates herein issued are granted upon the further express condition that the allowance of the take-or-pay for provisions in the applicants' contracts is subject to our ultimate disposition with respect to such provisions in the rule-making proceeding in Docket No. R–199. Upon the establishment, by regulation or policy statement, of a general policy governing such provisions in producer contracts, the applicants shall within 30 days file amended rate schedules in conformity therewith, acceptable to the Commission. The producers shall not be required to file take-or-pay provisions for less than 80 percent of the annual contract quantities. Any changes or modifications to be made in accordance with this paragraph shall be prospective only.

(I) The certificates herein issued are not transferable and shall be effective only so long as each of the applicants continues the acts and operations hereby

authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(J) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or of Part 154 of the Regulations thereunder. Such grant is without prejudice to any findings or order which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the applicants. Further, the action in this proceeding shall not foreclose nor prejudice any further proceedings or objections by the Commission relating to the operation of any price or related provision in the gas purchase contracts here involved.

(K) Except as herein granted, the exceptions to the examiner's decisions are hereby denied.

(L) The examiner's decision, to the extent not inconsistent herewith, is hereby adopted as part of this opinion and order.

Commissioner Ross *concurring in part* and *dissenting in part.*

Commissioners O'Connor and Woodward *dissenting in part.*

Ross, Commissioner, *concurring in part* and *dissenting in part:*

I dissent to the majority's certification of sales from Texas District No. 3 at 16¢ per Mcf for the reasons set forth in my dissent in *Texaco-Seaboard.*[1] The in-line price for this area should be 15¢ per Mcf. I also dissent to the majority's nonaction on seven of the ten applications fully tried in this case which involve District No. 3 sales under contracts executed after September 28, 1960, consistent with my *Skelly* dissent.[2]

With respect to Texas District No. 2, the majority has found, and I agree, that the in-line price is 15¢ per Mcf. However, here as in *Skelly*, the majority refuses to apply this determination to a District No. 2 contract executed a couple of months after the magic date of September 28, 1960. What an ironic twist it must be to the intervenors that the *Policy Statement*, which was promulgated to keep prices down, is being used by this Commission as a possible means of escalation over the legal in-line level! The result, of course, is that consumers will continue to pay 18¢ per Mcf for gas under this contract until some day in the future when the majority will again consider this application after another hearing. And they will pay 18¢ with no hope of receiving the amount in excess of the appropriate in-line level, as eventually determined. This is because the temporary under which the gas is presently being sold contains no refund conditions.

The refusal to consider this District No. 2 sale seems particularly questionable in view of the history of the price structure of that area for the period September 28, 1960, through the end of 1960. During that time, seven permanent certificates were issued—all at the prices specified in the contracts. Three were in the 10¢ range, three were in the 14¢ range, and one soared to a height of 15.2¢.[3] Nothing can change these facts. They will be the same in any future case as they are right now. Irrespective of "reliance" on the *Policy Statement* or anything else, it is most difficult to envision an in-line price for this period in excess of 15¢, at least one which could be legally sustained. Moreover, as the Examiner has properly pointed out in his decision

[1] Docket No. CI61–118, *et al.*, Opinion Nos. 383 and 383-A, issued March 27 and August 27, 1963, 29 FPC 593 and 30 FPC 613, respectively.

[2] *Skelly Oil Co.*, 28 FPC 401, 421.

[3] Docket Nos. CI61–624, 1450, 690, 884, 905, 633, and 635 having contract dates of September 28, December 14, September 29, October 25, 7, 17 and 1, 1960 respectively.

in *Amerada Petroleum Corp.*,[4] it would be inconsistent with prior Commission decisions and legally erroneous to justify a price hike on the basis of reliance on the Policy Statement.

Significantly, the producer applicants here at no time have sought to reopen the record to submit evidence called for by *Skelly*. One can only conclude that such evidence, if it exists, would not be of decisional significance. It is also interesting to note that the Examiner in *Amerada* found an in-line price for post-September 28, 1960 contracts in a related area identical to the pre-September 28, 1960 in-line level.

The majority's reason for failing to decide this docket and the seven others being severed is that the record is deficient. The opinion implies that the only relevant evidence regarding price relates to a period ten years removed from the contract dates of those dockets being severed. Staff's exhibit 236 received in evidence in this case covers a period from 1955 to April 15, 1962 and includes both permanently and temporarily certificated contracts. What more need be said, except perhaps, to recall a unanimous order issued herein 22 months ago. That order consolidated the very same dockets that are now being severed. It stated:

> The public convenience and necessity require that the matters listed in the caption above be heard on a consolidated record and disposed of as promptly as possible . . . .[5]

For the foregoing reasons, I would certificate all the applications here conditioned to 15¢ per Mcf.

---

[4] Docket No. CI62–1544, *et al.*, Initial Decision issued July 23, 1963.

[5] *Hassie Hunt Trust, Operator, et al.*, Docket No. G–19115, *et al.*, Notice of applications, consolidation of proceedings and setting date for hearing issued February 7, 1962, page 2.

O'CONNOR and WOODWARD, Commissioners, *dissenting in part:*

We respectfully dissent from the decision of the majority that the "in line" price for gas purchased in Texas Railroad District No. 2 for the period prior to September 28, 1960, should be 15 cents per Mcf. This is the same price established as "in line" for pre-policy sales in Texas District No. 4.[1] We strongly urge that the price to be established as "in line" for these sales in District No. 2 should be 16 cents per Mcf, previously established as "in line" for similar sales in Texas Railroad District No. 3.

Historically, geographically and geologically, District No. 2 has always been considered by the petroleum industry as closely related to District No. 3, not to District No. 4. Together, these two districts make up the Upper Texas Gulf Coast, and, generally speaking, for the last forty years any gas purchasing company operating in both of these districts has paid the same price for its gas. In view of the fact that today's decision would sever this historic relationship, and would attempt to identify District No. 2 with District No. 4, it draws our strong disapproval.

Aside from being critical of the result, we are most critical of the method by which the majority arrive at the result. They totally disregard four sales of considerable magnitude which would justify a price at least one cent per Mcf higher than that they now establish.

These sales involve total monthly volumes of 482,970 Mcf at a weighted average price of 17.07 cents per Mcf at 14.65 psia. The first sale included in the majority's tabulation but insufficiently considered, involves 93,000 Mcf per month being made by Tenneco Corporation to United Gas Pipe Line Company at 17.0 cents per Mcf. The second sale involves 345,000 Mcf per month at 17.0 cents per Mcf

---

[1] *Skelly Oil Company, et al.*, 28 FPC 401 (1962), modified 28 FPC 1065 (1962).

being made by Coastal States Gas Producing Company, which is engaged in both gathering gas and producing gas for resale. The third and fourth sales involve, respectively, 13,200 Mcf per month at 18.0 cents being made by a gatherer, Valley Gas Transmission Company, and 31,768 Mcf per month at 17.595 cents being made by Western Natural Gas Company. Both sales are being made under temporary authorization. All four of these sales were either excluded from consideration or included but discounted, for one or a combination of three reasons: first, they were under temporary authorization; secondly, because they were made by companies engaged in the gathering of gas; or thirdly, because they were "tainted". In the instant proceedings, we consider all three of these reasons unpersuasive.

First, although two of these sales are being made under temporary authorization, there is little question but that had they been requested at the time, unconditioned permanent certificates would have been granted. Consequently, we do not consider the temporary authorization to necessitate giving these sales any less weight than given to those permanently certificated. Secondly, area prices for Texas Railroad District No. 2 have been interpreted by the Commission to include the cost of gathering the gas and getting it to the transmission company. We thus consider the price of gathered gas for District No. 2 to be a legitimate consideration regardless of whether this gathering is done by the producer or a separate entity. We find particularly unjustifiable the total exclusion of the 345,000 Mcf per month sale by Coastal States Gas Producing Company, part of which represents their own production. Thirdly, the so called "tainted" price doctrine which, along with the "hold the line" admonition articulated in *CATCO*, has been interpreted by the majority of this Commission to authorize a general roll back in prices. That doctrine, first enunciated in *United Gas Improvement Company* v. *F.P.C.*,[2] stood for one clear proposition; namely, that in any determination of the in-line price for a given area, rates then under Commission or court review, or rates in that area like those then under Commission or court review, *subject to the same infirmities*, should not be relied upon in establishing the "line". This doctrine, originally very narrow in scope, has been expanded beyond all justifiable limits. It has come to stand for the proposition that all contracts with rates higher than the ceiling which the majority seeks to establish can be discarded as "tainted". The obvious result of such an interpretation, as evidenced by this present proceeding, is to produce any desired result regardless of irrefutable facts.

[2] 283 F. 2d 817 (9th Cir. 1960).

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 11, 1963)

BINDER, *Presiding Examiner:* This is a consolidated proceeding under Section 7 (c) and (e) of the Natural Gas Act (Act) in which each of the persons named in the caption seeks a permanent certificate of public convenience and necessity, authorizing sales by him to the Natural Gas Pipeline Company of America (Natural) of natural gas for resale in interstate commerce.[1]

[1] Peoples Gulf Coast Natural Gas Pipeline Company (Peoples) was authorized to acquire all of the facilities of Texas Illinois on December 8, 1959, and was, at the same time, substituted as applicant in all of the latter's then pending applications before the Commission (22 FPC 1013). On September 29, 1960, Natural Gas Pipeline Company of America, in turn, acquired through merger all of the facilities of Peoples (24 FPC 530). The purchaser in each docket is Natural or a predecessor.

The gas involved in this proceeding is produced in various fields located in Texas Railroad Commission District Nos. 2, 3, and 4.[2]

The 16 dockets[3] involved in this proceeding may be classified on the basis of the dates of execution of the contracts involved and the Texas Railroad Commission Districts from which natural gas is being sold, as follow: Two dockets, namely Docket Nos. G–19119 and CI61–1736 deal with gas produced in Texas Railroad Commission District No. 2. The contract in the "G" docket is dated May 15, 1959, and the contract in the "CI" docket is dated December 15, 1960, *i.e.*, one contract was executed prior to the Commission's *Statement of General Policy 61–1* and the other was executed thereafter.

Ten dockets relate to contracts covering gas produced in Texas Railroad Commission District No. 3. These dockets are G–19115, G–19116, G–19125, CI61–1221, CI61–1282, CI61–1283, CI61–1343, CI61–1344, CI61–1345 and CI61–1346. The first three aforementioned dockets, *i.e.*, Docket Nos. G–19115, G–19116, and G–19125 relate to contracts dated May 15, 1959, *i.e.*, to contracts executed prior to the issuance of the Commission's *Statement of General Policy 61–1*. Three dockets, *i.e.*, Docket Nos. CI61–1221, CI61–1282 and CI61–1283 relate to contracts dated December 15, 1960, *i.e.*, to contracts which were executed subsequent to the issuance of the Commission's first *Policy Statement*.

The balance of the dockets relating to Texas Railroad Commission District No. 3, *i.e.*, Docket Nos. CI61–1343, CI61–1344, CI61–1345 and CI61–1346 concern contracts which were the subject of a "Ratification and Amendment" entered into by applicants and the pipeline on February 15, 1961. The ratification and amendment ratified and amended earlier contracts between the applicants and the pipeline which were executed on May 15, 1959. The same price terms contained in the 1959 contracts were made applicable to the sales involved in Docket Nos. CI61–1343, CI61–1344, CI61–1345 and CI61–1346. The ratification and amendment was executed subsequent to the issuance of the Commission's policy statement.[4]

---

[2] The gas involved in Texas Railroad Commission District No. 2 is produced in the Zoller Field which is in Aransas and Calhoun Counties. The gas produced in Texas Railroad Commission District No. 3 is produced in the Alta Loma, the City of Alvin, and the Chenango Fields. These fields are located in Galveston and Brazoria Counties. The gas produced in Texas Railroad Commission District No. 4 is produced from the Fulton Beach Field, which is located in Aransas County.

[3] In Peoples Gulf Coast Natural Gas Pipeline Company (Peoples Gulf Coast), 24 FPC 1, *as amended*, 24 FPC 106 (1960), certificates of public convenience and necessity, conditioned at the level of the highest previously certificated prices in Texas Railroad Commission District 2, 3 and 4, were issued in the "G" dockets. These dockets were set down for hearing in the instant proceedings because the Court of Appeals for the District of Columbia reversed a Commission order denying intervention in the "G" dockets to the Public Service Commission of the State of New York (PSC) *P.S.C.* v. *F.P.C.*, 295 F. 2d 140 (1961). Thereafter the Commission consolidated the "CI" dockets with the "G" dockets.

[4] The applicants have set forth at Footnote 19 of their initial brief that the Ratification and Amendment "appears in the record as Exhibit No. 140. Attention is directed to Exhibit Nos. 141, 142, 143 and 144, wherein the ratification instrument, dated February 15, 1961, has been designated as the rate schedule and the contract of May 15, 1959, has been designated as Supplement No. 1."

The original contract of May 15, 1959 by definition under the Regulations is in and of itself a rate schedule. For reasons not explained during the course of the hearing the Commission's records show, as applicants correctly state in their brief, that the Ratification and Amendment is not listed in the Commission's docket sheet as a Supplement to the original contract of May 15, 1959, which, in fact, it is, but instead the Ratification and Amendment appears to be listed in the Commission's records as the original rate schedule and the contract of May 15, 1959 which it ratifies was entered as Supplement No. 1 to the Ratification and Amendment dated February 15, 1961. This type of clerical

[Footnote continued on following page.]

The remaining four dockets out of the total of sixteen dockets with which we are concerned here deal with gas produced in Texas Railroad Commission District No. 4. These Docket Nos. are G–19117, G–19118, G–19123 and G–19124. The four dockets in Texas Railroad Commission District No. 4 deal with contracts dated May 15, 1959, a date which antedated the Commission's *First Policy Statement*.

All issues, including the market for the gas proposed to be sold, the economic feasibility of the pipeline purchaser's project, the ability of the producers to deliver the gas during the contract period, the volume of the reserves, the willingness and ability of the applicants to comply with the Commission's regulations and all other issues, except the "initial price" issue, were resolved and determined in earlier phases of this proceeding and are not the subject of contest in this phase of the matter.[5]

The applicants take the position that the issue is whether the proposed sales are or will be required by the public convenience and necessity. Broadly stated, the applicants' statement as to the ultimate issue to be resolved in this proceeding is correct but specifically all elements which are merged into the concept of public convenience and necessity were, with the exception of initial price, finally resolved in the earlier phases of this proceeding. No element other than the "initial price" issue remains to be decided.[6]

It is uncontradicted that the contracts were negotiated at arm's length.[7]

It should be noted that temporary authorizations have been granted in all the dockets, that the gas involved in this proceeding is flowing in interstate commerce, and that deliveries cannot lawfully be abandoned unless an application, filed under Section 7(b) of the Act, is granted.

The applicants claim that certain of the contracts dated December 15, 1960, were "not fully executed" until some time thereafter. The applicants, however, made no claim that because such contracts were executed subsequent to the issuance of the Commission's policy statement that the sellers who executed such contracts were entitled to higher rates in the later contracts than were the sellers under the contracts executed before September 28, 1960.

The major reliance for the issuance of certificates at the contract prices, *i.e.*, without any price conditions, was placed by applicants upon certain cost evidence. This evidence was excluded from this proceeding by order of the examiner issued May 31, 1962, for the reasons set forth in such order.[8]

Each contract contains the same price provisions regardless of date. The time of execution of the contracts was not claimed by applicants to be a factor affecting the price which they should receive for their natural gas.

---

aberration does not destroy or change the fact that the agreement covering the Chenango Field contracts in Texas Railroad Commission District No. 3 was merely a Ratification and Amendment of a contract dated May 15, 1959, and that the price for gas in the 1959 contract was made applicable to the new gas dedicated from the Chenango Field.

[5] See footnote 3, *supra*, as to the "G" dockets. In the "CI" dockets no issue other than the price level was raised by any party to the proceedings.

[6] The applicants have noted in their initial brief that Public Service Commission of New York (PSC) filed a Statement of Position in this proceeding. As applicants have observed "The Statement of Position clearly disclosed that PSC was opposed to the certification of the producers' initial prices and that the only issue involved in the proceedings was the initial price."

[7] However, as the Court of Appeals for the District of Columbia pointed out, in *Atlantic Refining Co.* v. *F.P.C.*, No. 17,166 316 F. 2d. 677, 679, fn 11, "To [the pipeline], the price of gas is of no great concern because whatever price it pays can be recovered from the consumer through an increase in rates".

[8] On July 19, 1962, the Commission issued its order denying on the merits applicants' appeal and request for a stay of the May 31, 1962 order.

Each one of the contracts is for a 20-year period, and the initial price per Mcf called for in each contract is 20 cents per Mcf at 14.65 psia with escalations of 2 cents per Mcf every four years until the price reaches 28 cents per Mcf. The applicants throughout these proceedings contended that they were entitled to unconditioned certificate authorizations at the levels set forth in each contract (which were the same in each contract) without relationship to the date of the execution of such contracts. In addition, it should be noted that the applicants made no claim that the prices set forth in the Commission's policy statements had any relationship to the prices which were reached in arm's length negotiations and embodied in the contracts.[6]

---

[6] It may be pointed out that at page 10 of their initial brief applicants state:

> It is the position of Respondents that the Commission's Order of November 2, 1961 is invalid and that Respondents have permanent Certificates of Public Convenience and Necessity in accordance with the Commission's Order of July 1, 1960, as amended on July 29, 1960. This is in accord with Respondents' position in the Court of Appeals for the Fifth Circuit in Cause Nos. 19499 and 19500. However, if the November 2, 1961 Order is valid insofar as it vacated the permanent certificates it will then be the position of Respondents that the contract amendments of August 9, 1960 are invalid since they were executed solely in reliance upon the permanent Certificates of Public Convenience and Necessity which were issued by the Commission. This places Respondents in the novel position of contending that if a Commission Order is valid, then they are seeking a higher price, whereas a lower price is sought if the Commission's Order in invalid.

It should be observed that the applicants use the term "Respondents" when referring to themselves in the "G" dockets. The fact is, despite contentions to the contrary by applicants, their position as applicants seeking a Section 7 certificate was never changed to that of respondents by reason of the Circuit Court's decision in *P.S.C.* v. *F.P.C.*, 295 F. 2d 140 or by reason of any Commission order issued in these proceedings. Apparently the reason that applicants refer to themselves as "Respondents" in connection with the "G" dockets is to reflect their contention that they have no burden of proof in the instant proceedings. The applicants claim that in the "G" dockets they have established their entitlement to a certificate at the prices authorized in the Commission's order of July 1, 1960, as amended on July 29, 1960, and that if these authorizations are to be modified, the burden of proof to establish that modifications should be made is on the Staff or the interveners. In addition, the applicants contend that the Commission's order of November 2, 1961, setting aside the certificate authorizations issued in July 1960 are invalid. The earlier certificate authorizations were issued to Hunt Oil Company, William Herbert Hunt Trust Estate, Lamar Hunt Trust Estate, George W. Graham, Inc., and Placid Oil Company for sales from Aransas County in Texas Railroad Commission No. 4, and Calhoun County in Texas Railroad Commission District No. 2, conditioned upon the filing of revised contracts providing for an initial price of 18 cents per Mcf. Earlier certificate authorizations were also issued to Hassie Hunt Trust, Operator, *et al.*, Hunt Oil Company, William Herbert Hunt Estate, Lamar Hunt Trust Estate, George W. Graham, Inc., and Placid Oil Company for sales from Galveston and Brazoria Counties in Texas Railroad Commission District No. 3 conditioned upon the filing of contracts providing for an initial price of 20 cents per Mcf with an escalation of 3 cents per Mcf each 10 years, rather than the 4-year period which had been in the initial contract upon which certification had been sought (24 FPC 106, 107). The applicants' contracts were filed thereafter as rate schedules, and service of natural gas was begun thereunder by each of the aforementioned producers on the basis of the acceptance of the rates conditioned as required by the July 1960 authorizations. These contracts were filed on August 9, 1960, in accordance with the Commission's orders of July 1, 1960, as amended July 29, 1960, and in reliance upon such Commission authorizations. The applicants contend that if the July 1960 authorizations are modified or amended, they should be relieved of any obligations as a result of their August 9, 1960 filing.

In its order of November 2, 1961, the Commission set aside the July 1960 permanent certificate authorizations to which we have referred in this footnote, and in their stead granted temporary authorizations providing for the continuation of the sales. In addition, the Commission conditioned the temporary authorizations issued by its November 2, 1961 order by requiring a refund to Natural Gas Pipeline Company of America of any amounts collected after the date of the issuance of this order in excess of the amount

[Footnote continued on following page.]

It should be emphasized that there is not even a scintilla of evidence in this record nor was any attempt made by any party to the contract to show that the difference in the dates of execution of the contracts or that the issuance of the Commission's policy statement had any relationship whatsoever to the prices which were reached in the contracts, or that such factors had any material relationship to "hold the line" prices for the natural gas which was the subject of contract in this proceeding. There was no evidence whatever offered by any party or the Staff which would establish or even tend to establish in any way whatsoever that the applicants were entitled to a different price for gas being sold pursuant to the contracts which were dated or executed subsequent to May 15, 1959, than they were for the gas being sold under the contracts which were entered into at subsequent dates. The effort on the part of the applicants in this proceeding was to obtain the same prices for gas sold under both the earlier contracts and the later contracts. The fact that not only was each one of the contracts executed at the same level without regard to date and that such level was at a higher rate than that set forth in the Commission's *Statement of General Policy* in the case of each contract points to the absence of any reliance by any party on the levels set forth in the Commission's policy statement and to the immateriality of the dates of execution of the contracts. Moreover, it could not be urged on any reasonable basis that the Commission intended in adopting the *Statement of General Policy* to provide a springboard to any party for the purpose of raising prices of natural gas to levels higher than those which existed prior to the date of the issuance of the policy statement.[10]

As we have noted, evidence in the form of exhibits and testimony was offered by applicants and was excluded by order of the examiner on May 31, 1962, for the reasons set forth in such order and the examiner's ruling was sustained on the merits by the Commission.[11] Such order is incorporated in this initial decision as an integral part thereof.

It may also be observed that among the major cost exhibits offered by the applicants in these proceedings to justify the issuance of a certificate at the contract prices were identical exhibits offered and relied upon by them in a Section 5(a) rate case which had been heard by another examiner of this Commission and on which he had issued an initial decision in *Hunt Oil Company, et al.*, Docket No. G–9065, *et al.* Following the issuance of the examiner's initial decision in the latter docket, the Commission on October 17, 1962 by its Opinion No. 365 and accompanying order in *Hunt Oil Company, et al.*, Docket No. G–9065, *et al.*, 28

---

computed at the rate determined to be required by the public convenience and necessity in the further proceedings which they were directing be held.

It should also be observed that the only admissible evidence in this record as to the "in line" price was evidence presented by the Staff. While the Staff does not have the burden of establishing the appropriate public convenience and initial price, the Staff voluntarily assumed the burden of going forward in this proceeding with evidence as to "in line" price for the gas being sold herein in the absence of any admissible evidence of this character presented by applicants. Apparently the Staff was acting in what it believed to be the public interest. It was the Staff's evidence which established the public convenience and necessity initial price. Accordingly, such arguments as have been advanced by applicants concerning the burden of proof and their position as respondents rather than applicants in this phase of the proceeding are wholly academic.

[10] The Commission observed in *Coastal Transmission Corp.*, 26 FPC 677, Docket No G–18338, *et al.*, Order of November 2, 1961, p. 682, that "* * * The price guides do not constitute a floor to be used to raise proposed initial prices to the highest levels abstractly permissible thereunder".

[11] See footnote 8, *supra*.

FPC 623, remanded such rate proceeding to the examiner for further proceedings, principally because the testimony and the principal exhibits employed in the latter proceeding did not satisfy statutory standards held to be appropriate in the allocation of the costs attributable to the applicants' production of natural gas. As noted, among the most important of these exhibits were the same cost exhibits as were offered in the instant case. Accordingly, it appears that applicants' cost exhibits should not have been received not only for the reasons set forth in the examiner's order of May 31, 1962, but that even if such cost exhibits had been received they would not have met appropriate standards for determining just and reasonable rates for applicants' gas even in a Section 5(a) proceeding, as pointed out in the Commission's Opinion 365 and accompanying order. Thus the applicants' direct case was not only not admissible for the reasons set forth in the examiner's order of May 31, 1962, it was inadequate and defective for the reasons expressed in Commission Opinion No. 365.[12]

Parenthetically, it may be observed that the Supreme Court's observations in *Atlantic Refining Co.* v. *Public Service Commission*, 360 U.S. 378, commonly referred to as *CATCO*, regarding the advisability of differentiating as to the types of evidence which may properly be considered by the Commission in a Section 7 case as compared with a Section 4 or 5 case have been admirably summarized by the Court of Appeals for the District of Columbia in a recent case involving the Atlantic Refining Company.[13] This case holds, among other things, that the Commission is not normally required in a Section 7 certificate case to receive cost evidence such as would ordinarily be admissible in a full-blown rate proceeding. This observation is particularly applicable in a case like the present one where there is a representative number of comparable prices in the area to which reference for "in line" comparability purposes can be made.[14]

The views expressed by the Court of Appeals in its recent Atlantic Refining Company decision (*supra*) are applicable to these proceedings.

Docket Nos. G–19117, G–19118, G–19123 and G–19124 all deal with gas produced in Texas Railroad Commission District 4 under contracts dated May 15, 1959.

The Commission issued its Opinion No. 362 in *Skelly Oil Company*, 28 FPC 401 Docket No. G–18638, *et al.*, August 30, 1962, involving contracts executed prior to September 28, 1960, relating to Texas Railroad Commission District No. 4. In its opinion in *Texaco Seaboard Inc.*, Docket No. CI61–118, *et al.*, Opinion No. 383 issued March 27, 1963, 29 FPC 593, the Commission adverted to its decision in *Skelly* and stated that:

> In District No. 4, the *Skelly* opinion found that the "in-line" price was 15 cents at 14.65 psia for those contracts executed in late 1958, in 1959 and in 1960 before September 28, 1960, when we issued our *Statement of General*

---

[12] See also Commission Op. No. 338 in *Phillips Petroleum Company*, 24 FPC 537.

[13] The *Atlantic Refining Company, Petitioner* v. *Federal Power Commission, Respondent, et al.*, United States Court of Appeals for the District of Columbia, No. 17,166 decided March 21, 1963, 316 F. 2d 677.

[14] See footnote 12, *supra*, and *United Gas Improvement Co.* v. *Federal Power Commission*, 5 Cir., 290 F. 2d 133 (1961); *United Gas Improvement Co.* v. *Federal Power Commission*, 10 Cir., 287 F. 2d 159 (1961); *Public Service Commission of New York* v. *Federal Power Commission*, 287 F. 2d 146 (1960); *United Gas Improvement Co.* v. *Federal Power Commission*, 9 Cir., 283 F. 2d 817 (1960); *California Oil Company, Western Division* v. *Federal Power Commission, Respondent*, United States Court of Appeals, Tenth Circuit, No. 7148 decided March 1963 term, 315 F. 2d 652.

Policy No. 61–1, 24 FPC 818. Our opinion was largely based on other sales in this district under contracts executed during the years 1958 through 1960. At the same time we rejected evidence introduced by Texaco, designed to show the replacement cost of the gas which Texaco sells. It presented industry-wide cost trends and also on the costs of replacing gas consumed for the United States as a whole and for the Texas Gulf Coast area, using a variety of statistical sources and employing a number of estimates based on judgment. We held that cost of service and financial requirements evidence normally is not relevant in producer certificate cases and that the initial price in such proceedings will be determined by the "in-line" price in the area at the time the producer contract in issue was executed. With respect to the sales under contracts executed after September 28, 1960, we severed the applications and consolidated them with other producer applications so that the applicants will have opportunity to show the effect of the *Policy Statement* and the Amendment issued August 30, 1962.

Since, as found by the examiner, Texaco's cost and trend evidence in this case is substantially identical with that offered in *Skelly*, it does not serve any useful purpose to discuss this evidence further, nor the arguments in opposition made by UGI, Consolidated Edison, PSC, City of Chicago and our staff. Furthermore, there is no material difference in the staff's exhibit or presentation in this case (Exh. 48) from that offered in *Skelly*, so that the examiner felt bound by the Commission's opinion in *Skelly* and on the basis of the same facts and reasoning concluded that the appropriate in-line price for Texaco in District No. 4 was 15 cents per Mcf at 14.65 psia. Since the contract was dated July 1, 1960, before the issuance of the *Policy Statement*, he would condition the certificate at a price of 15 cents per Mcf.

We agree with the examiner that the record supports the conclusions as to the "in-line" price reached in *Skelly* and that there is no reason here to depart from them. The staff's exhibit is very similar and covers the same 1958–1960 period which is as applicable here as it was in *Skelly*. Therefore, we conclude that Texaco's sales in District 4 should be conditioned at a price of 15 cents per Mcf (14.65 psia).

The only evidence of a material character remaining after the undersigned excluded applicants' cost evidence was Staff Price Exhibit No. 236 received in these proceedings, and the Staff testimony in support of such exhibit. Among other things this evidence showed that many of the contracts in each railroad district involved herein and referred to in this exhibit were reasonably comparable with the contracts under consideration here as to volumes, prices, quality of the gas, and all other material features.

Cross-examination of the Staff witness regarding this exhibit did not impair the strength of his direct testimony nor the force of the exhibit as a document reflecting comparable prices. His testimony was sophisticated, knowledgeable, and highly persuasive. Such evidence was substantially similar to that received in *Skelly* and in *Texaco Seaboard*, and this evidence supports the conclusion that the "in-line" price for these contracts is 15 cents per Mcf at 14.65 psia for the four contracts relating to Texas Railroad Commission District No. 4. On the basis of such evidence and the reasoning advanced by the Commission in *Skelly* and *Texaco Seaboard*, the examiner concludes that the applicants' sales in District 4 should be conditioned at a price of 15 cents per Mcf (14.65 psia).

As we have noted some of the contracts in Texas Railroad Commission District No. 3 were executed prior to September 28, 1960, and some were executed thereafter.

As we have pointed out, there is no evidence in the record of this proceeding to support a different price for the natural gas being sold under contracts made after September 28, 1960, than for the gas being sold under contracts made prior thereto.

Staff price Exhibit 236 received in evidence in the instant proceeding covers a period from 1955 to April 15, 1962. In the hearing in this proceeding attention was focused for comparison purposes principally on prices for the period from 1958 through 1961.[15]

The Commission's decision in *Texaco Seaboard, et al.*, Op. No. 383 issued on March 27, 1963, determining the "in line" price for contracts in Texas Railroad Commission Districts Nos. 3 and 4 was based in major part upon a Staff price exhibit and supporting testimony covering such districts. The Commission determined that the "in line" price for the contracts there involved was 16 cents per Mcf psia. The evidence presented by the Staff in the instant case is similar in all material respects to their evidence presented in *Texaco Seaboard*. In these circumstances the examiner considers that the holding in *Texaco Seaboard*, based as it was on substantially the same evidence as that presented here, is binding precedent in this proceeding.[16] Accordingly, the examiner will issue an order in this proceeding covering all contracts for gas produced in Texas Railroad Commission District No. 3 conditioning the initial price of such natural gas to 16 cents per Mcf at 14.65 psia.

There is attached to this decision and made an integral part thereof on Appendix marked "Appendix A" covering sales made by the producers selling natural gas in Texas Railroad Commission District No. 2 as reflected by Staff Exhibit 236. This Appendix excludes certain contracts because they are considered by the examiner to be in "the suspect" class and therefore these prices should not be used as standards for purposes of comparison.[17]

The prices in Texas Railroad Commission District No. 2 excluded for comparison purposes are those in Docket Nos. G–16838, G–11105, and CI61–1360 at prices of 17 cents per Mcf for the first two dockets and 17.5 cents for the third docket. In this connection see also *Public Service Commission of the State of New York* v. *Federal Power Commission*, 295 F. 2d 140, and *United Gas Improvement Co.* v. *F.P.C.*, 283 F. 2d 817 (9th Cir.) cert denied 365 U.S. 881 (1960).

Appendix A shows that the weighted average price for all sales included in Texas Railroad Commission District No. 2 is 14.43 cents per Mcf.

---

[15] Exhibit 236 consists of four schedules and three bargraphs. Schedule No. 1 is a list of the proposed sales in these proceedings and sets out the pertinent provisions under the gas purchase contracts. Schedule No. 1–A is a list of the existing certificated sales, both permanent and temporary, in District 2 and shows the salient terms and provisions under 1955 and later gas purchase contracts, starting at 14 cents per Mcf and above. Schedules Nos. 2 and 3 contain the same information concerning Districts 3 and 4, respectively. The three bargraphs represent the number and distribution of the contracts which are suspect and not a reliable basis upon which to predicate the "line". The cut-off date for the study was April 15, 1962. The contracts marked "Litigation" are involved in cases that have been remanded by the courts and those actually under Commission review.

[16] See particularly the discussion of prices in Texas Railroad Commission District No. 3 as expressed in the majority opinion beginning with the last paragraph on page 596 of Opinion No. 383 in *Texaco Seaboard, et al.*, CI61–118, *et al.*

[17] See also, for example, *United Gas Improvement Co.* v. *Federal Power Commission*, 5 Cir., 290 F. 2d 133 (1961); *United Gas Improvement Co.* v. *Federal Power Commission*, 10 Cir., 287 F. 2d 159 (1961); *Public Serv. Com'n. of New York* v. *Federal Power Commission*, 109 U.S. App. D.C. 292, 287 F. 2d 146 (1960); *United Gas Improvement Co.* v. *Federal Power Com'n.*, 9 Cir., 283 F. 2d 817 (1960).

The five largest contracts in Texas Railroad Commission District No. 2 [18] and the initial prices are as follows:

Docket No.	Rate schedule No.	Contract date	Total initial price (cents per Mcf at 14.65)	Estimated first month's production (Mcf at 14.65)
G-20333	136	Oct. 9, 1958	14.18	117,000
G-20487	8	Apr. 1, 1958	14.18	234,000
CI60-58	4	Jan. 23, 1959	14.18	126,000
G-20351	4	Sept. 23, 1957	14.18	300,000
G-14329	8	Jan. 20, 1958	14.75	600,000

The weighted average of all prices for the period May 15, 1958, to May 15, 1959, is 14.34 cents per Mcf. The weighted average of all prices for the period December 15, 1959 to December 15, 1960, is 14.26 cents per Mcf.

It will be noted from the appendix that the greatest volumes of gas in this district are sold at the 14.18 cents per Mcf level, and the largest volume contract based on estimated first month's deliveries is 600,000 Mcf per month at a 14.75 cents per Mcf level. In addition, it will be observed that there are only 9 non-suspect contracts at 15 cents per Mcf or higher, and that the prices in such contracts range from 15 cents per Mcf to 15.333 cents per Mcf. There are only six such contracts above 15 cents per Mcf. None of the volumes involved approach in substantiality the volumes selling at prices ranging from 14.18 cents to 14.75 cents per Mcf.

The highest non-suspect price in Texas Railroad Commission District No. 2 is 15.333 cents per Mcf and involves a comparatively small volume, *i.e.*, 45,000 Mcf estimated first-month deliveries.

The applicants attempted to show that they incurred certain costs in relation to services beyond the wellhead for dehydration, compression and gathering for delivery at a central point principally in the Fulton Beach, Alta Loma, and Zoller fields. Such evidence, however, does not justify the applicants' contract prices. In this connection Exhibit 236 and the Staff witness' testimony in support of the exhibit indicates that such gathering services are performed by other producers in these areas—that in fact many of the contracts require the delivery of 950–1,000 Btu of gas at 1,000-pound pressure at a central delivery point in the field. The in-line prices shown by Exhibit 236 show that such services are normally rendered at the prices contained in the exhibit.

The evidence offered by applicants does not serve to show that they are entitled to any more than 15 cents per Mcf in Texas Railroad Commission Districts 2 and 4 and 16 cents in Texas Railroad Commission District No. 3.

The examiner concludes that the "in line" price for the two contracts involved here covering natural gas produced in Texas Railroad Commission District No. 2 is 15 cents per Mcf at 14.65 psia.[19]

[18] These contracts are included as part of Appendix A and are marked by an asterisk.

[19] In this connection, the Court of Appeals for the District of Columbia in *The Atlantic Refining Company* case decided on March 21, 1963 (See footnote 13, *supra*) noted that "* * * the public must be protected from the time the gas first enters interstate commerce. Since there is no mechanism for refund of overcharges under Section 7, *if the Commission is to err in setting an initial rate, it should err on the low side* because the company under Section 4, can immediately increase the rate, subject to disallowance by the Commission after a full rate proceeding, the public being protected as to refunds in the interim." (Emphasis supplied.) The reference concerning the lack of a mech-

[Footnote continued on following page.]

On November 2, 1961, the Commission issued an order covering the eight "G" dockets set forth in the caption to these proceedings. This order granted temporary authorization to the producers named in the "G" dockets upon the following conditions:

> (1) each producer refund to Natural Gas Pipeline Company of America any amounts collected after the date of issuance of this order in excess of the amount computed at the rate determined to be required by the public convenience and necessity in the above-listed proceeding; (2) that the initial rates set forth in our order of July 29, 1960, 24 FPC 106, shall remain in effect until changed by Commission order in this proceeding.[20]

Prior to the issuance of its November 2, 1961 order, the Commission had issued orders granting temporary authority to each of the applicants named in the "CI" dockets set forth in the caption to sell and deliver natural gas to Natural.[21]

The only condition contained in the earlier temporary authorizations for the "CI" dockets related to price level and required that the rates remain at such price level until changed by Commission order.

The applicants filed petitions with the Court of Appeals for the Fifth Circuit to review the validity of the condition attached to the temporary authorizations. The Fifth Circuit held invalid the condition in the Commission's temporary authorizations in these proceedings prohibiting increases in price for the gas being sold pursuant to temporary authority granted herein without the express approval of the Commission and remanded these matters to the Commission.[22]

On August 23, 1962, the Commission filed a petition for rehearing *en banc* and that petition has not as yet been acted upon by the Court.

Presumably the Commission will issue such order as may be appropriate after the litigation over the validity of the Commission imposed conditions is concluded. The Commission has not up to this point, however, issued any order modifying the refund conditions contained in its temporary certificate authorizations in the "G" dockets, and the examiner considers that he is required to follow such Commission orders as are outstanding.

In these circumstances the examiner will issue an order directing each applicant in the "G" dockets to make refunds in accordance with the conditions set forth in the Commission's order of November 2, 1961, with interest at the rate

---

anism for refund of overcharges obviously refers to overcharges made in the context of the issuance of a permanent certificate. Both the Court of Appeals for the District of Columbia in *The Atlantic Refining Company* case and the Circuit Court of Appeals for the Tenth Circuit in *California Oil Company, Western Division* v. *Federal Power Commission*, No. 7148, decided in the March 1963 Term (See footnote 14, *supra*) referred to "the purpose of the Natural Gas Act to 'underwrite just and reasonable rates to the consumers of natural gas' and 'As the original § 7(c) provided, it was "'the intention of Congress that natural gas shall be sold in interstate commerce for resale for ultimate public consumption for domestic, commercial, industrial, or any other use at the lowest possible reasonable rate consistent with the maintenance of adequate service in the public interest.'" 52 Stat. 825. The Act was so framed as to afford consumers a complete, permanent and effective bond of protection from excessive rates and charges.'" *Atlantic Refining Co.* v. *Public Service Commission, supra*, 360 U.S. at page 388.

[20] A very brief outline of the procedural background of the eight "G" dockets above listed is given in the November 2, 1961 order of the Commission issued herein. See 24 FPC 1 and 24 FPC 106.

[21] The temporary authorizations in the "CI" dockets were issued in Docket No. CI61–1221 on March 17, 1961, in Docket Nos. CI61–1282 and CI61–1283 on April 7, 1961, and in Docket Nos. CI61–1343, CI61–1344, CI61–1345, and CI61–1346 on April 25, 1961 and in Docket No. CI61–1736 on July 21, 1961.

[22] *Hunt, et al.* v. *Federal Power Commission*, 306 F. 2d 334 (July 16, 1962). [Reversed, 376 U.S. 515.]

of 7 percent with regard to all monies to be refunded [2] and will also direct that permanent certificate authorization be granted at a 16-cent per Mcf level in Texas Railroad Commission District No. 3 in Docket Nos. G–19115, G–19116, G–19125, CI61–1221, CI61–1282, CI61–1283, CI61–1343, CI61–1344, CI61–1345 and CI61–1346 and at a 15 cents per Mcf level in Texas Railroad Commission Districts 2 and 4 covering Docket Nos. G–19119, CI61–1736, G–19117, G–19118, G–19123, and G–19124.

---

[2] The Commission's order of November 2, 1961, in these proceedings provided, among other things, that "* * * until such time as a final decision is rendered herein we shall condition the temporary authorizations issued herein by requiring the refund to Natural Gas Pipeline Company of America of any amounts collected after the date of the issuance of this order in excess of the amount computed at the rate determined to be required by the public convenience and necessity in such further proceedings as may be held in this matter". (Footnotes omitted.) This order does not contain any provision relating to interest on amounts to be refunded. There is, however, ample precedent for a ruling requiring applicants to pay interest on the amounts to be refunded. For example, in *Mitchell* v. *Riegel Textile, Inc.*, 259 F. 2d 954 (CADC), an obligation arose by virtue of an administrative order relating to the payment of minimum wages by certain cotton mills. That order was stayed by court injunction. Neither the administrative order nor the injunction mentioned interest, but when the injunction was reversed the mills were held liable, not only for the underpayment of wages, but for interest thereon. *Arkadelphia Milling Co.* v. *St. Louis Southwestern Ry. Co.*, 240 U.S. 134.

The principle that lies behind the granting of interest in such cases is that the person receiving or holding the money which is afterwards found to have been improperly received or held would be unjustly enriched if he did not pay interest on it during the time he had the use of it. This principle has been applied to matters arising under the Natural Gas Act as well as elsewhere, and entirely aside from the provision in Section 4(d) of the Act, 15 U.S. 717c(e), requiring interest on refunds resulting from a rate hearing.

Mississippi River Fuel Corp. v. *F.P.C.*, 281 F. 2d 919, 927 (CADC), decided June 30, 1960, is clearly in point. In that case, the Commission directed the payment of interest on amounts due from petitioner to its customers. These amounts became due under a settlement, approved by the Commission, whereby petitioner had agreed to make refunds, the amounts of which were dependent on the amounts which petitioner's supplier might be ordered to refund to it in proceedings then pending before the Commission. When these amounts were determined, the Commission ordered refunds, with interest. The Court said:

> Mississippi also questions the power of the Commission to order the refunds to intervenors at 6% interest. It is true that the Mississippi-Intervenor settlement decree did not provide for interest payments on amounts subject to refund. But it is also true that for an appreciable period the intervenors paid higher rates than were warranted, and Mississippi has had the use of the overpayments. The situation is a little different from what it would be if the Commission, after a Sec. 4(e) investigation, had determined that rates then in effect were too high and ordered refunds. The Natural Gas Act in that situation clearly allows a refund with interest. We hold the interest payments are allowable.

When the permanent certificates were granted applicants in July 1960, there was no guaranty that such certificates might not be set aside by reason of a decision by an appellate court and when the temporary certificates were granted to applicants it was apparent that the price in the temporaries might not turn out to comply with the public convenience and necessity prices determined after a formal hearing. The acceptance of a certificate by any applicant is always subject to the hazards of litigation, and every producer of consequence such as the applicants in these proceedings are well aware of the fact that decisions of the appellate courts often require administrative agencies to modify orders which such agencies have previously issued. Moreover, equitable principles are not confined by rigid formula. Accordingly, Natural becomes entitled to have the amounts paid by it restored to it insofar as they were excessive, together with interest involving any payments for gas delivered subsequent to November 2, 1961.

On March 1, 1960, the Commission issued its Order 215A amending Section 154.102(c) of the regulations to raise the rate of interest for refund purposes. This rule, in principle, is as applicable to the refunds ordered here as it would be in a Section 4 case and for that reason the rate of interest for the refunds to be made here is fixed at 7 percent per annum.

ADDITIONAL FINDINGS AND CONCLUSIONS

On consideration of all the evidence adduced, the briefs, and the arguments, as well as upon the preceding portion of this decision, it is further found and concluded that:

(1) Each of the applicants named in the caption of this decision is a natural gas company within the meaning of the Natural Gas Act as an independent producer of natural gas, as that term is defined in Section 154.91(a) of the Commission's Regulations, engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption and such sales together with the construction and operation of any facilities are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(2) Each of the applicants named in the caption is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(3) The sale of natural gas as proposed by each of the applicants, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor are required by the public convenience and necessity and a certificate authorizing the same should issue to each of them upon the terms and conditions of the order herein, which terms and conditions are required by the public convenience and necessity.

(4) The public convenience and necessity requires that the initial prices charged by the applicants in this proceeding be not greater than 16 cents per Mcf at 14.65 psia for the sales made by them of natural gas produced in Texas Railroad Commission District No. 3 and not greater than 15 cents per Mcf at 14.65 psia for sales made by them of natural gas produced in Texas Railroad Commission District Nos. 2 and 4.[24]

ORDER

WHEREFORE, *It is ordered*, subject to review by the Commission, that:

(A) Certificates of public convenience and necessity are hereby issued to the applicants for the sale of natural gas in interstate commerce for resale as proposed in the applications filed under the docket numbers set forth in the caption, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor upon the terms and conditions of this order.

(B) The certificates issued to the applicants in Docket Nos. G–19119, CI61–1736, G–19117, G–19118, G–19123, and G–19124 are hereby conditioned to prohibit any total initial price including all reimbursements and charges greater than 15 cents per Mcf at 14.65 psia from the date of the issuance of

[24] The sales of natural gas in Docket Nos. G–19119 and CI61–1736 relate to gas produced in Texas Railroad Commission District No. 2. The sales in Docket Nos. G–19115, G–19116, G–19125, CI61–1221, CI61–1282, CI61–1283, CI61–1343, CI61–1344, CI61–1345 and CI61–1346 relate to natural gas produced in Texas Railroad Commission District No. 3. The sales in Docket Nos. G–19117, G–19118, G–19123, G–19124 relate to natural gas produced in Texas Railroad Commission District No. 4.

this order until such prices may be lawfully changed in the manner provided for in the Natural Gas Act.

(C) The certificates issued to the applicants in Docket Nos. G–19115, G–19116, G–19125, CI61–1221, CI61–1282, CI61–1283, CI61–1343, CI61–1344, CI61–1345, and CI61–1346 are hereby conditioned to prohibit any total initial price including all reimbursements and charges greater than 16 cents per Mcf at 14.65 psia, respectively, from the date of the issuance of this order until such prices may be lawfully changed in the manner provided by the Natural Gas Act.

(D) In accordance with the conditions attached to the temporary authorizations granted on November 2, 1961, to the applicants in the "G" dockets referred to in the caption such applicants shall refund to Natural Gas Pipeline Company of America within 90 days of the issuance of this order any amounts collected from such pipeline after November 2, 1961, in excess of the amounts which would have been collected under the rates at which the "G" docket producers' sales are certificated in the instant proceeding with 7 percent interest on the amounts to be refunded from November 2, 1961 to the date of refund, and shall report to the Commission in writing the details of said refunds within 15 days after making them.

(E) The certificates of the producer applicants referred to above are conditioned so that the take-or-pay requirement in each contract is subject to the provisions of the Commission's final order in Docket No. R–199 as of the effective date of that order, provided, however, that the producers shall not be required to file take-or-pay provisions for less than 80 percent of the annual contract quantities.

(F) The certificates issued herein are conditioned upon their acceptance in writing by the respective producer applicants within 30 days of the issuance of this order.

(G) The certificates issued herein are not transferable and shall be effective only so long as each of said applicants continues the acts and operations herein authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(H) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 of the Commission's Regulations under said Act requiring the filing of rate schedules for the service herein authorized and is without prejudice to any findings or orders which may have been or hereafter may be made by the Commission in any proceeding now pending or hereinafter instituted by or against the applicants. Further, the action taken in these proceedings shall not foreclose nor prejudice any further proceeding or objection relating to the operation of any price or related provisions in the gas contracts here involved.

Samuel Binder,
Presiding Examiner.

APPENDIX A

SUMMARY OF COMPARABLE PRICES FOR NATURAL GAS SOLD IN TEXAS RAILROAD COMMISSION DISTRICT NO. 2

Docket No.	Rate schedule No.	Contract date	Total initial price (cents per Mcf at 14.65)	Estimated first month production (Mcf at 14.65)
G-13317	5	July 1, 1957	14.0	93,000
CI60-544	18	Mar. 29, 1960	14.0	90,000
CI60-555	287	Mar. 29, 1960	14.0	80,600
CI60-551	2	Mar. 29, 1960	14.0	7,500
CI60-552	10	Mar. 29, 1960	14.0	15,000
CI60-543	202	Apr. 11, 1960	14.0	37,500
CI60-556	1	Mar. 29, 1960	14.0	15,000
CI60-548	9	Mar. 29, 1960	14.0	15,000
CI60-554	22	Mar. 29, 1960	14.0	75,000
CI60-550	12	Mar. 29, 1960	14.0	6,000
CI60-546	5	Mar. 29, 1960	14.0	15,000
CI60-553	1	Mar. 29, 1960	14.0	15,000
CI60-549	1	Mar. 29, 1960	14.0	7,500
CI60-545	5	Mar. 29, 1960	14.0	60,000
CI60-426	214	Mar. 1, 1960	14.0	20,280
				619,880
CI60-120	6	Mar. 20, 1957	14.18	60,954
G-20504	3	Feb. 17, 1959	14.18	32,389
G-20333	136	Oct. 9, 1958	14.18	*117,000
G-20487	8	Apr. 1, 1958	14.18	*234,000
CI60-3	21	July 13, 1959	14.18	45,000
CI60-77	1	May 19, 1959	14.18	60,000
CI60-58	4	Jan. 23, 1959	14.18	*126,000
G-20499	1	May 25, 1959	14.18	30,000
CI61-633	2	Oct. 17, 1960	14.18	30,000
CI60-106	360	Oct. 10, 1958	14.18	43,181
G-20351	4	Sept. 23, 1957	14.18	*300,000
CI60-15	95	Mar. 24, 1958	14.18	52,815
G-20463	1	Aug. 7, 1959	14.18	30,000
CI61-1740	2	May 1, 1961	14.18	15,000
				1,176,339
G-15254	137	Jan. 1, 1958	14.5	100,000
CI61-99	1	June 29, 1960	14.5	30,000
				130,000
G-14329	8	Jan. 20, 1958	14.75	*600,000
				600,000
CI61-1371	1	Mar. 7, 1961	15.0	15,500
G-20331	3	Aug. 24, 1959	15.0	90,000
CI62-103	6	June 21, 1961	15.0	60,000
				165,500
G-18508	3	Feb. 12, 1959	15.19	60,000
G-20472	2	Dec. 2, 1959	15.19	80,000
CI60-299	4	Feb. 19, 1960	15.19	30,000
CI61-635	15	Oct. 11, 1960	15.19	60,000
				230,000
CI61-1306	272	Feb. 10, 1961	15.25	24,000
CI60-572	237	Apr. 6, 1960	15.33	45,000

* See footnote 18, *supra*.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

THE NORTHWEST PAPER COMPANY, DOCKET NO. E-7092

DECLARATORY ORDER

(Issued December 9, 1963)*

On April 25, 1963, The Northwest Paper Company (Petitioner), a Minnesota corporation with principal offices at Cloquet, Minnesota, filed a petition, including a statement of facts, pursuant to section 1.7(c) of the Commission's Rules of Practice and Procedure, for a declaratory order to remove any

*Opinion No. 421, denying rehearing, issued March 17, 1964, 31 FPC 593. Affirmed, *The Northwest Paper Co.* v. *F.P.C.*, 344 F. 2d 47 (CAS–1965)

uncertainty as to Petitioner's need under the Federal Power Act for a license to continue the maintenance and operation of its Brainerd hydroelectric project on the Mississippi River in Crow Wing County, at Brainerd, Minnesota.

Petitioner owns and operates the Brainerd project as a power source for its paper mill located beside the dam. Normally, the paper mill consumes all of the Brainerd project's energy and also larger amounts supplied by the Minnesota Power and Light Company, but when the paper mill is closed, Petitioner may dump its excess energy to the power company.

Congress in 1886 authorized the Mississippi Water-Power and Boom Company to build a dam and other project works for water power and other purposes, across the Mississippi River at Brainerd subject to certain conditions, including conditions in the interests of navigation (24 Stat. 12). The authorized work was completed by 1889 at the site of Petitioner's existing project. The property in 1890 passed after foreclosure sale to Andrew L. Fenessy, who in the same year conveyed it by quitclaim deed to the Brainerd Water-Power Company, the owner for the next three years. After another foreclosure sale, it was conveyed to Harry J. Jacquith, *et al.*, and then through mesne conveyances to the Northern Water Power Company (Northern Power), which was acquired by Petitioner in 1910; the subsidiary in 1936 conveyed the property to Petitioner.

When Petitioner erected a new paper mill near the dam site in 1916 and 1917, Northern Power rebuilt the dam and powerhouse and installed new generators. No other major work on the project works was performed until 1950, when a flood severely undercut part of the dam and virtually destroyed the gate sections. Petitioner submitted reconstruction plans to the Army Corps of Engineers and to the Division of Waters of the State of Minnesota Department of Conservation, both of which gave their approval. The reconstruction of the project, performed in 1950 and 1951, consisted principally of the following: (1) the west abutment, consisting of a 20-foot-wide tainter gate log sluiceway, was rebuilt by consolidating the rock-filled crib wall and crest structure with intruded concrete; (2) the wooden tainter gate was replaced without changing the dimension or elevation; (3) the top of east-west control spillway structure, consisting of thirteen twelve-foot-wide tainter gates, was replaced by two 85-foot long by seven-foot-high S. Morgan Smith Company Bascule gates; (4) the crest of the dam was set at an elevation of 1176 feet, and under the crest a six-foot-thick concrete cap was installed, and Prepakt concrete grout was pressure pumped to fill voids in the original rock-filled crib and pile caps; (5) a four-foot-thick concrete face and apron cap to an elevation of 1160 feet were installed, and Prepakt concrete was pressure pumped to consolidate the rock-filled crib and piling; (6) the top of the north-south spill structure was removed, and a four-foot-thick concrete crest cap (with top elevation of 1178 feet), dam face, and apron (with top elevation of 1160 feet) were rebuilt, and the existing rock-filled crib and pile structure were consolidated by pressure-pumped concrete to fill voids; and (7) five thirteen-foot, seven-inch stop log gates were constructed to maintain the reservoir at an elevation of 1182.2 feet.

The powerhouse and generating equipment were not changed in 1950 and 1951. Since then, however, two wood grinders driven by synchronous motors during low water periods have been removed and the motors converted to generators.

Under Section 23(b) of the Federal Power Act, it is unlawful for the Petitioner, as a nonlicensee, to maintain and operate hydroelectric project works upon a navigable water of the United States, unless it received a Federal permit for such works prior to passage of the Federal Power Act on June 10, 1920. Petitioner maintains and operates hydroelectric project works upon a navigable

water of the United States. It submits, however, that it does not need a license from the Commission because of the special act of Congress approved April 15, 1886 (24 Stat. 12), which authorized the Mississippi Water-Power and Boom Company to build a dam at Brainerd, Minnesota.

The project works authorized and constructed under the special act of 1886 (24 Stat. 12) no longer substantially exist. The project twice has been extensively rebuilt and modified. There are only a few vestiges of the original project works, notably certain oak pilings upon which some of the present structures rest. In our view, it may not be presumed that Congress by the special act of 1886 intended to authorize Mississippi Water-Power and Boom Company or Petitioner to replace the project works with new project works, or to increase or reduce the project's capacity, or otherwise replace or modify the authorized project works.

The first major reconstruction and modification was undertaken in 1916 or 1917 to bring the project's capacity up to the demands of Petitioner's new paper plant near the dam site. Apparently, Petitioner does not claim that Northern Power obtained the consent of Congress for this work, as required by sections 9 and 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401, 403). In any event, when Petitioner commenced its construction of project works in 1950, and the installation of new facilities, without having obtained a license pursuant to the provisions of the Federal Power Act, it clearly acted in violation of section 23(b) of that Act.

Upon consideration of the facts presented by Petitioner, we conclude that it will be necessary for Petitioner to file application and obtain a license, pursuant to the provisions of the Federal Power Act and the Commission's Rules and Regulations thereunder, for the continued maintenance and operation of its project works in and along the Mississippi River at Brainerd, Minnesota.

The Commission orders:

The Northwest Paper Company shall, within ninety (90) days from the date of issuance of this order, file application for license, pursuant to the provisions of the Federal Power Act and the Commission's Rules and Regulations thereunder, for the continued maintenance and operation of its project works in and along the Mississippi River at Bainerd, Minnesota.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

PENOBSCOT CHEMICAL FIBRE COMPANY, PROJECT NO. 2312

ORDER ISSUING LICENSE (MAJOR)

(Issued December 9, 1963)

Application was filed on April 30, 1962, and later supplemented, by Penobscot Chemical Fibre Company (Applicant) of Boston, Massachesetts, for a license under Section 4(e) of the Federal Power Act (Act) for constructed major Project No. 2312, located on Penobscot River, in Penobscot County, in the Great Works section of Old Town, Maine.

The major portion of the project dam is of rock-filled, log and plank construction. The dam is approximately 777 feet long. Portions of this section at either end were in existence prior to 1861. The complete section was built prior to 1900. The 250-foot wing at the west end of the main section is of concrete and stone-capped construction and was built around 1902. A 4-foot concrete cap was installed around 1914. The installed capacity of the project is

7,400 horsepower and the energy generated thereby is used by Applicant in its manufacturing business.

The Penobscot River and its East and West Branch have been used extensively in boating operations for the transportation of persons and property between various points on such streams. Extensive logging operations have been conducted between the mouth of the Penobscot River at Penobscot Bay and the international boundary on the West Branch and Chamberlain Lake on the East Branch.

The Secretary of the Army and the Chief of Engineers, in reporting on the application, have advised that special terms and conditions for inclusion in any license issued for the project are not necessary for purposes of navigation or flood control, and that the plans of the structures affecting navigation are satisfactory and have been approved in accordance with Section 4(e) of the Act insofar as the interests of navigation are concerned.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license issued for the project certain special conditions for the future improvement of anadromous fish migrations.

The Commission finds:

(1) The project is located upon a navigable waterway of the United States.

(2) Applicant is a corporation organized under the laws of the State of Maine and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effect the purposes of a license for the project.

(3) Public notice of the filing of the application has been given as required by the Act. Except for an informal protest filed by the State of Maine, Department of Health and Welfare on behalf of the Penobscot Indians, which was subsequently withdrawn, no protests have been received. There are no conflicting applications pending.

(4) The issuance of a license as hereinafter provided will not affect a Government dam or the development of any water resources for public purposes which should be undertaken by the United States.

(5) The project will be best adapted to a comprehensive plan for improving and developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes, upon compliance with the terms and conditions hereinafter imposed.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 7,400 horsepower.

(7) The amount of annual charges to be paid under the license, based upon such capacity, for the purpose of reimbursing the United States for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(8) The energy generated by the project is used by Applicant in its manufacturing business.

(9) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of the license for the project.

The Commission orders:

(A) This license is hereby issued to Penobscot Chemical Fibre Company (Licensee) under Section 4(e) of the Federal Power Act (Act) for a period effective as of April 1, 1962, and terminating on December 31, 1993, for the continued operation and maintenance of major Project No. 2312 located on the

Penobscot River, a navigable waterway of the United States, in the Great Works section of Old Town, Penobscot County, Maine, subject to the terms and conditions of the Act which is incorporated by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed.

(B) Project No. 2312 consists of:

(i) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interests in such lands necessary or appropriate for the purpose of the project, whether such lands or interests therein are owned or held by the applicant or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit J: (FPC No. 2312–1) Plan View of Project Area.

Exhibit K: (FPC No. 2312–3) Detail View of Project Area.

(ii) The project consists of a rock-filled log and plank dam approximately 20 feet high and 777 feet long with a 250-foot concrete and stone capped wing-section, creating river pondage extending upstream to the tailrace of the Milford Dam of the Bangor Hydro-Electric Company; fishway; log sluice; spillways; ten operating sluice gates leading to powerhouse containing ten water wheels connected to twelve generating units (two water wheels, each connected to two generators) having a total installed capacity of 3,380 kw of a.c. and 2,174 kw of d.c., and other appurtenant facilities; the location, nature and character of which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also formed part of the application for license and which are designated and described as follows:

Exhibit L: (FPC No. 2312–4) Elevation of Power House. (FPC No. 2312–5) Floor Plan of Power House. (FPC No. 2312–6) Section View of Station. (FPC No. 2312–7) Details of Dam. (FPC No. 2312–8) 4160-volt Electrical Feeders.

Exhibit M: Two typewritten sheets entitled, "General Description and General Specifications of Equipment."

(iii) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as a part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L–3, November 1, 1963, 30 FPC 1658, entitled "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States," which terms and conditions, designated as Articles 1 through 27, are attached hereto and made a part hereof; and subject to the following special conditions set forth as additional articles:

Article 28. The Licensee shall pay to the United States the following annual charges:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, one (1) cent per horsepower on the authorized installed capacity (7,400 horsepower) plus two and one-half (2½) cents per 1,000 kilowatt-hours of gross energy generated during the calendar year for which the charge is made; or such other amounts as may hereafter be determined as necessary to reimburse the United States for the costs of administration.

Article 29. The Licensee shall within one year from the date of issuance of

the license, file with the Commission for approval its proposed recreational use plan for the project. The plan shall be prepared after consultation with appropriate Federal, State and local agencies, and shall include recreational improvements which may be provided by others in addition to the improvements the Licensee plans to provide.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G-13221, ET AL.; NORTH CENTRAL OIL CORPORATION (OPERATOR), ET AL., DOCKET NOS. CI61-1570, CI61-1571 AND CI62-313

ORDER DENYING MOTIONS FOR SEVERANCE, FOR APPROVAL OF SETTLEMENT PROPOSALS AND FOR ISSUANCE OF CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 9, 1963)

On September 20, 1963, North Central Oil Corporation (Operator), *et al.* (North Central) filed a motion for severance of Docket No. CI62-313 from the consolidated proceeding Union Texas Petroleum, *et al.*, Docket No. G-13221, *et al.* (hereinafter referred to as the Union Texas proceeding), for approval of settlement proposal and for the issuance of a certificate of public convenience and necessity. On September 23, North Central filed a similar motion relating to Docket Nos. CI61-1570 and CI61-1571.

Consolidated Edison Company of New York, Inc. (Con-Edison), on September 27, 1963, filed a response in opposition to the motion filed on September 23, on the grounds that North Central had failed to provide for refunds in accordance with the temporary authorizations heretofore issued in Docket Nos. CI-61-1570 and CI61-1571.[1]

North Central, on October 1, filed an amendment to its offer of settlement in Docket Nos. CI61-1570 (RS-9) and CI61-1571 (RS-8). By this amendment North Central offers to make refunds of excesses collected under the rate schedules related to these certificate applications since January 1, 1962, the date on which North Central became the operator of the properties. Pioneer Oil and Gas Company had been the operator of the properties prior to that time and had been making sales since June, 1961, under refund conditioned temporary authorizations. As operator during the period June 1961 to January 1, 1962, Pioneer's filings covered the interests of North Central; since January 1, 1962, North Central's filings have covered the interests of Pioneer. The rate under both rate schedules is 23.25¢ per Mcf[2] and the proposed settlement rate is 20.625¢ per Mcf.

---

[1] On October 4, 1963 Public Service Electric and Gas Company filed a letter with the Secretary agreeing with the response of Con-Edison.

[2] All rates expressed inclusive of applicable tax reimbursement and all volumes at 15.025 psia.

Brooklyn Union Gas Company (Brooklyn Union), on October 11, 1963, filed a statement in opposition to the offer of settlement of North Central in Docket Nos. CI61–1570 and CI61–1571 noting the failure to provide for refunds as required by the temporary authorizations. Brooklyn Union states that it would not oppose the settlement if the producer would accept modification to provide for full refunds.

The failure to provide for full refunds under refund conditioned temporary authorizations is a substantial departure from the more recent settlements which have arisen from the Union Texas Proceeding and which we have approved.[3] North Central's offer also differs from the other Union Texas settlements by providing for rate increases during the moratorium period for ¾ of any additional tax which may be levied in the future. All other Union Texas settlements which we have approved have provided for rate increases for reimbursement of up to ½ of such tax increases.

In view of the foregoing, the Commission finds that both settlement proposals of North Central should be rejected and both motions for severance should be denied. Insofar as Docket Nos. CI61–1570 and CI61–1571 are concerned, there is no "settlement", but even if parties had not opposed the offer, we should reject it. A possible avoidance of refunds should not be allowed to result from a mere change in operator of gas property.

Further, to allow the provision for rate increases for ¾ of any future tax increases would be to allow North Central an advantage, for no good reason, over other producers which have settled in the Union Texas proceeding.

Although the objections described above do not apply to Docket No. CI62–313, we are of the view that a settlement in a proceeding should include all of the applications of a producer consolidated therein unless unusual circumstances do not so permit. We find no such unusual circumstances here and consequently, we shall deny both motions of North Central and reject both settlement proposals.

The Commission orders:

The Motions for severance, for approval of settlement proposals and for issuance of certificates of public convenience and necessity filed by North Central Oil Corporation (Operator), *et al.* in the above-captioned proceedings on September 20, and 23, 1963, as amended on October 1, 1963, are hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP63–348

FINDINGS AND ORDER AFTER STATUTORY HEARING AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 10, 1963)

On September 26, 1963, and on October 18, 1963, Transcontinental Gas Pipe Line Corporation (Applicant) filed in Docket No. CP63–348 applications pursuant to Section 7(c) of the Natural Gas Act to amend the certificate of public convenience and necessity issued in the above docket on September 20, 1963, 30 FPC 825, as hereinafter described and as more fully described in the application.

---

[3] See orders issued August 7, 1963 (Humble Oil & Refining Company) and October 9, 1963 (Gulf Oil Corporation and Socony Mobil Oil Company) in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, 30 FPC 456 and 979 respectively.

The application filed on September 26, 1963 proposes to amend ordering paragraph (B) of the said certificate which reads as follows:

"Issuance of a certificate in this docket is conditioned on issuance of a certificate in Docket No. CP63–222."

Applicant does not now require the unit proposed in Docket No. CP63–222 in order to render the service certificated in the instant application during the 1963–64 winter. Gas presently allocated to certain customers has not been contracted for, thereby freeing it for service in the instant docket. Applicant states that it will file, in the near future an application providing for sufficient facilities to render the instant service in the following years.

Applicant therefore has petitioned the Commission to amend the certificate issued September 20, 1963 in the instant docket, by removing the condition contained in Ordering Paragraph (B) of said order.

In the application to amend filed on October 18, 1963, Applicant further requests authority to sell an additional volume of 1300 Mcf per day of firm gas (at 14.73 psia) to an existing customer, Alexander City, Alabama, for resale. No additional facilities are required to render the increased service. Minor volumes of Applicant's gas now allocated to certain customers which will not be required for service during the coming winter season will be used to serve Alexander City. Applicant intends to file an application to construct facilities sufficient for serving all customers in the years to follow.

The service to Alexander City will be rendered under Applicant's Rate Schedule OG–1.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 4, 1963, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that:

(a) the condition contained in Ordering Paragraph (B) of the order issued September 20, 1963 in Docket No. CP63–348 be removed;

(b) that Applicant, Transcontinental Gas Pipe Line Corporation, be authorized to sell an additional 1300 Mcf of natural gas per day to the City of Alexander City, Alabama, as hereinbefore described.

The Commission orders:

(A) The condition contained in Ordering Paragraph (B) of the order issued on September 20, 1963, in Docket No. CP63–348 be and the same is hereby removed.

(B) The order of the Commission issued September 20, 1963 in Docket No. CP63–348 be and the same is hereby amended by authorizing Applicant, Transcontinental Gas Pipe Line Corporation to sell an additional volume of 1300 Mcf per day on firm basis, as hereinbefore described, to the City of Alexander City, Alabama.

(C) In all other respects, the aforesaid order issued September 20, 1963 in Docket No. CP63–348 shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black

IDAHO POWER COMPANY, PROJECT NO. 1971

ORDER AMENDING AND SUPPLEMENTING ORDERS PRESCRIBING FISH FACILITIES, AND DIRECTING PRESIDING EXAMINER TO PROCEED FURTHER

(Issued December 11, 1963)*

On February 12, 1958, the Commission issued an order (19 FPC 237), pursuant to Article 35 of the license, prescribing facilities for anadromous fish for Project No. 1971, generally as shown on certain plans submitted for a forebay net barrier with skimming and trapping devices at the Brownlee development, upstream facilities at the powerhouse and spillway of the Oxbow development, and facilities for the transfer of runs from the Wildhorse River.[1] It was also provided that the Brownlee reservoir should not be filled until authorized by further Commission order.

On April 10, 1958, the Commission issued an order authorizing the filling of the Brownlee reservoir, subject to certain conditions (19 FPC 512). This order was amended by an order issued August 26, 1958, which permitted the operation of the first turbine subject to certain conditions (20 FPC 232). By telegraphic orders dated September 15 and 18, 1958, the period of turbine operation was conditionally extended, pending completion of the forebay barrier.

The Commission issued an order on September 23, 1960, which terminated the operation of the Wildhorse River facilities (24 FPC 517).

On November 17, 1960, the Commission issued an order which further modified the order of February 12, 1958, by the staying of the provision for upstream facilities at the powerhouse of the Oxbow development, and provided for: (a) the operation of the upstream facilities at the spillway of the Oxbow development, including requirements for water releases,[2] (b) artificial propagation of fall chinook salmon near the Oxbow dam, and (c) evaluation studies of fish facilities at the Brownlee and Oxbow developments (24 FPC 962).

By an order issued March 22, 1963, the Commission instituted an investigation (a) to review and evaluate the studies made pursuant to Article 34 of the license and the order issued November 17, 1960; (b) to review and evaluate the fish facilities installed at the Brownlee and Oxbow developments and determine what modifications, if any, should be made in such facilities; and (c) to determine what fish facilities should be installed at the Hells Canyon development. Prehearing conferences and hearings have been held pursuant to the order issued March 22, 1963. At these hearings the U.S. Fish and Wildlife Service, the fish and game agencies of the States of Idaho and Oregon, and the Licensee presented evidence primarily in respect to what has occurred at the Oxbow and Brownlee developments since commencement of construction. The Commission Staff also presented evidence concerning field inspections.

*Order denying rehearing and stay printed at 31 FPC 394.

[1] Article 35 of the license issued to Idaho Power Company for Project No. 1971 (14 FPC 55, 80), provides as follows:

> The Licensee shall construct, maintain and operate or shall arrange for the construction, maintenance and operation of such fish ladders, fish traps or other fish handling facilities or fish protective devices and provide fish hatchery facilities for the purpose of conserving the fishery resources and comply with such reasonable modifications of the project structures and operation in the interest of fish life as may be prescribed hereafter by the Commission upon its own motion or upon the recommendations of the Secretary of the Interior and the conservation agencies of the States of Idaho and Oregon.

[2] By order issued May 27, 1963, the Commission authorized changes in water releases at the Oxbow spillway facilities.

Pursuant to a motion made on June 10, 1963, on behalf of the state fish and game agencies and granted by the Presiding Examiner, cross-examination of the fishery agencies' witnesses on all matters was deferred until completion of the evaluation studies and the presentation of evidence on the results of such studies. The final report on the evaluation studies was in preparation on October 15, 1963, and it should be completed before the end of this year.

On October 15, 1963, representatives of the Licensee, U.S. Fish and Wildlife Service of the Department of the Interior, and the fish and game agencies of the States of Idaho, Oregon and Washington proposed and entered into a stipulation which is contained in the transcript of the proceeding for that day at pages 1085–1089. The stipulation proposed and recommended that the Commission issue at an early date an order to amend and supplement previous orders prescribing fish facilities, pursuant to Article 35 of the license.

By motion filed October 18, 1963, the Licensee requested that the aforesaid stipulation be made effective; that the order issued May 27, 1963, with respect to water releases be made final; and that further hearings provided for by the Commission's order of March 22, 1963, instituting an investigation be terminated. The Presiding Examiner, in his Report, filed November 7, 1963, referred the matters involved to us for determination and further instructions.

By our order herein we are amending and supplementing prior orders substantially as requested and recommended in the stipulation. As recognized by the stipulation, these orders are interim in nature and are subject to such further changes as may be necessary. Therefore the water releases as specified in the order of May 27, 1963, will be continued pending further order of the Commission.

The stipulation, designed to meet the exigencies of the situation, does not fully cover the purposes of the investigation instituted by the order of March 22, 1963. Therefore, the Presiding Examiner should reconvene the hearings, receive further evidence on the results of the evaluation studies and on any other relevant matters that may be presented at that time, and, following cross-examination and such briefing as may be appropriate, submit his findings and conclusions, and a program for future proceedings.

The Commission finds:

It is consistent with the public interest that an order be issued amending and supplementing previous orders prescribing fish facilities for Project No. 1971, pursuant to Article 35 of the license, and to direct the Presiding Examiner to proceed further in the investigation instituted by the order issued March 22, 1963, as hereinafter provided.

The Commission orders:

(A) Idaho Power Company (Licensee) shall abandon, so far as its use for the originally intended purposes, the Brownlee net installation, including the downstream migrant barge traps, and shall remove or otherwise make nonoperative the barrier, pumping and loading system prior to the beginning of the 1964 downstream migrant season to assure free downstream migrant passage; except that the barge traps shall be operated until June 30, 1964, at the expense of the Licensee, for the benefit of the Bureau of Commercial Fisheries' Fish Passage Research Program as directed by the Program Director.

(B) The Licensee shall purchase the necessary land at a location on lower Rapid River, a tributary of the Little Salmon River near Riggins, Idaho, where a supply of gravity fed water is readily available, and shall obtain necessary water rights and construct holding facilities for approximately 300 adult spring chinook salmon or steelhead trout, and operation of the holding facilities shall commence on or before May 1, 1964. The Licensee shall provide a hatchery building with suitable trays and construct necessary raceways for rearing approximately 600,000

spring chinook salmon, or steelhead, to the age of one year plus, or until ready for seaward migration. The design and ultimate location of these experimental facilities shall be acceptable to the fishery agencies and shall be such that the facilities can be economically expanded if experience indicates the desirability thereof. The operation shall be conducted at the expense of the Licensee and shall be under the supervision of one of the fishery agencies of the States of Idaho or Oregon.

(C) The Licensee shall, on an experimental basis, as determined by the fishery agency personnel, transport to the Rapid River installation for purposes of artificial propagation approximately 300 adult spring chinook salmon and steelhead trout, or their eggs; provided, that not more than 15% of the adult steelhead trapped at Oxbow, or their eggs, shall be so transported.

(D) In operating the fish facilities at Project No. 1971, the Licensee shall:

(i) Trap and place in the Oxbow holding pond all fall chinook salmon and continue the present program of artificial propagation in the present facilities near the Oxbow dam until such time as an alternate plan is ordered by the Commission, it being provided that such facilities shall be enlarged if necessary to accommodate all fall chinook salmon trapped;

(ii) Continue to trap at Oxbow all adult spring chinook salmon and steelhead and, except as provided in Paragraphs (B) and (C) above, transport them over Oxbow and Brownlee dams;

(iii) Provide transportation (truck and drivers) to a point below the Oxbow unit for any downstream migrants captured by the facilities of the Fish Passage Research Program near Weiser and near the mouth of the Powder River or at such other comparable facility that may be installed, for such period as the program is in effect and migrants are captured; and

(iv) Provide in the annual plan of operation of the Brownlee reservoir that during the period of expected downstream anadromous fish migration, water will be spilled in the manner most advantageous for fish travel as determined by the designated representatives of the fishery agencies, consistent with the primary purposes of Project No. 1971 and the requirements of the license therefor; provided, if there is disagreement between the Licensee and the fishery agencies, the Commission, upon its own motion or upon request of either the Licensee or any of the fishery agencies, shall determine the amount and time of spill.

(E) The Licensee shall construct, operate and maintain temporary fish facilities for the Hells Canyon development generally as shown on the drawing field with the Commission on April 24, 1963, specifically designated "Hells Canyon H. E. Development, Temporary Fish Facilities" and being sheet 6 of 6 drawings filed at that time, said facilities generally consisting of a fish trap of standard type located at the mouth of the diversion tunnel and an aerial cableway which will transport the captured fish in a container over the whole construction area and deposit them in the river above the construction site. On or before January 1, 1966, a determination of what fish facilities should be installed at the Hells Canyon development will be made by stipulation of the parties, as approved by the Commission, or by the order of the Commission on its own motion or upon application of any interested party after opportunity for hearing.

(F) The Licensee shall consult and cooperate with the fishery agencies in determining upon a mutually satisfactory program to be financed by the Licensee for the purpose of evaluating and recording the degree of success achieved, in terms of maintenance of the fishery resource, by the artificial propagation facilities heretofore prescribed and as supplemented by this order. Should the Licensee and the fishery agencies be unable to agree upon the terms of the program, the Commission reserves the right to determine the same after notice

and opportunity for hearing. The Licensee shall furnish to the Commission on a timely basis reports on evaluation studies financed by the Licensee.

(G) The term "fishery agencies" as used herein shall mean the U.S. Fish and Wildlife Service, the Idaho Department of Fish and Game, the Oregon Fish Commission, the Oregon Game Commission, the Washington Department of Fisheries and the Washington Department of Game.

(H) Nothing herein shall be construed as full compliance with the provisions of Article 35 of the license for Project No. 1971.

(I) The hearings in the investigation instituted by the Commission's order issued March 22, 1963, shall be reconvened at a time and place to be announced by notice of the Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP64-47

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 11, 1963)

On August 26, 1963, Northern Natural Gas Company (Applicant) filed in Docket No. CP64-47 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the installation of "uprating kits" on existing gas turbine compressor units, as more fully set forth in the application.

Applicant proposes to install and operate such "uprating kits" on 8 gas turbine units in the Tescott and Macksville compressor stations located in Kansas. It appears that high-temperature operation produces gradual deterioration of certain gas turbine units and these components must be replaced or reconditioned at intervals of 50,000 to 60,000 hours in order to maintain the rated horsepower capacity. The installation of the proposed new parts will permit approximately 100,000 hours of operation before replacement or reconditioning become necessary, thereby decreasing future maintenance costs. The improved metalurgy of the new parts will enable the units to operate at higher temperatures, thereby increasing the horsepower of each unit by an estimated 500 horsepower or an overall gain of 2,000 horsepower at each of the two stations.

Applicant proposes to install the metallurgically improved "uprating kits" at an estimated unit cost of $77,000 per unit and a total estimated cost of $613,200, which cost will be financed from cash on hand or cash generated from operations. The installation will be made during the summers of 1964 and 1965.

The proposed expenditures will enable better operation of the Applicant's transmission system and will reduce future maintenance costs.

Pursuant to due notice, a public hearing was held in Washington, D.C., on November 5, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act as hereto found by the Commission in its order of April 6, 1943, in Docket No. G-280 (3 FPC 967).

(2) The facilities hereinbefore described are to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission and the installation and operation thereof by Applicant are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The installation and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter order and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Northern Natural Gas Company, to install and operate the proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in operation not later than September 21, of the year in which commenced, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations aforesaid.

[LETTER REQUIRING FILING OF RATE SCHEDULES]

DECEMBER 11, 1963

PUBLIC SERVICE COMPANY OF INDIANA, INC.
1000 East Main Street
Plainfield, Indiana
Attention: Mr. H. A. Barker, Financial Vice President

GENTLEMEN: Commission staff analysis of available office data indicates that your company currently transmits or interchanges and sells electric energy in interstate commerce at wholesale for resale to a number of purchasers for whom there are no established rate schedules on file with this Commission.

Utility operating data set forth in your 1962 Form No. 1 and in the 1962 FPC Form No. 12, Power System Statement, covering your company, indicates that energy transmitted and sold on your system is generated outside of the state in which it is consumed.

As reported in your company's 1962 FPC Form No. 1. Annual Report, you provided wholesale electric service to seventy-nine purchasers for resale, and interchanged energy with four other utilities. However, a review of the Commission's

rate schedule file indicates that no rate schedules are on file for sixty-nine of these customers. The 1962 wholesale customers for which no rate schedules are on file are listed in the attachment to this letter.

During years 1942 to 1947, your company filed rate schedules providing service to the municipalities of Bainbridge, Covington, Ladoga, Middletown, Montezuma, Paragon, Pendleton, Rockville, Tipton, Veedersburg and Etna Green. Information available to the Commission indicates that the municipality of Etna Green now receives its electric service from another electric utility. Your company has made no submittals of rate schedules that superseded, supplemented, cancelled or otherwise changed any provisions of the rate schedules applicable to service to the eleven municipalities.

Your prompt attention to the above matter will be appreciated. It is suggested that your company complete all appropriate rate schedule filings within a period of thirty days from the date of this letter in the manner provided in Part 35 of the Commission's Regulations under the Federal Power Act.

JOSEPH H. GUTRIDE,
Secretary.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

CITY OF MONTEZUMA, GEORGIA, DOCKET NO. CP64-57

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued December 12, 1963)

On September 5, 1963, as supplemented on September 9, 1963, the City of Montezuma, Georgia (Applicant), filed in Docket No. CP64-57 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing South Georgia Natural Gas Company (South Georgia) to establish physical connection of its transmission facilities with the proposed facilities of and to sell natural gas to Applicant for resale and distribution in Montezuma and environs, all as more fully set forth in the application, as supplemented.

Applicant proposes to construct and operate a distribution system in Montezuma and approximately 11 miles of transmission line connecting said system with a proposed transmission line to be constructed by South Georgia. Applicant will also distribute gas to customers located along its proposed transmission line.

Applicant's estimated third year peak day and annual natural gas requirements are 1,098 Mcf and 180,730 Mcf, respectively.

The total estimated cost of transmission and distribution facilities for the proposed project is $696,000. Said cost will be financed by the issuance of revenue bonds in the amount of $367,000 and by a grant of $329,000 under the Accelerated Public Works Program of the Housing and Home Finance Administration.

On September 9, 1963, South Georgia filed an answer to the subject application stating that it is willing to render natural gas service to Applicant. South Georgia will construct and operate approximately 10 miles of 4½-inch pipeline connecting its 4½-inch line, located south of Americus, Georgia, with the proposed transmission line of Applicant. The total cost of South Georgia's proposed facilities is estimated to be $115,000.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on November 28, 1963

(28 F.R. 12675). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

(1) South Georgia Natural Gas Company, a Georgia corporation having its principal place of business in Thomasville, Georgia, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of August 3, 1954, in Docket No. G–1915 (13 FPC 666).

(2) Applicant, City of Montezuma, Georgia, is a municipal corporation incorporated under the laws of the State of Georgia and is legally empowered to construct and operate natural gas facilities and to sell and distribute natural gas in said city.

(3) It is necessary and desirable in the public interest that South Georgia be directed to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant and to render natural gas service to Applicant, as set forth in the application, as supplemented, and as hereinafter ordered and conditioned.

(4) This order should be conditioned upon Applicant being prepared to receive gas from South Georgia, as proposed, within one year from the date on which this order issues.

(5) The requirements that South Georgia serve Applicant, as proposed, will not place any undue burden upon South Georgia nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) South Georgia Natural Gas Company be and it is hereby directed to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant and to render natural gas service to Applicant, all as hereinbefore described and as set forth in the application, as supplemented.

(B) South Georgia shall report to the Commission in writing the date of commencement of service to Applicant.

(C) This order is conditioned upon Applicant being prepared to receive natural gas from South Georgia, as proposed, within one year from the date on which this order issues.

OPINION NO. 413

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP61–106; PAN AMERICAN PETROLEUM CORPORATION, DOCKET NO. CI62–1034

OPINION AND ORDER DETERMINING JURISDICTION AND REQUIRING COMPLIANCE WITH THE NATURAL GAS ACT

(Issued December 12, 1963)*

Syllabus

1. Tennessee's budget-type certificate did not cover construction and operation of facilities to connect its own Bastian Bay reserves. P. 1481.
2. Commission *rejects* contention that issuance of certificate marks end of proceeding and that certificate cannot be modified or amended thereafter without consent of parties. P. 1481.
3. Distinguishing *Panhandle* and citing *Ship Shoal* and *Rayne Field*, Commission *holds* Producer's transfer of leasehold interests constitutes sale of gas within

*Initial decision appears on P. 1488. Stay granted; rehearing denied on February 4, 1964, 31 FPC 241. Syllabus No. 1 affirmed, 340 F. 2d 100; Reversed as to Syllabus No. 3, 339 F. 2d 694 (CA10–1964); cert. granted and latter judgment reversed, 381 U.S. 762(1965)

meaning of Section 1(b) of the Act and is without authority absent certification. P. 1482.

4. Character of an instrument is governed by its substance and effect, not by what parties choose to label it. P. 1482.
5. Pipeline connecting Bastian Bay reserves to interstate system is a jurisdictional facility constructed without Commission authorization. P. 1484.
6. In proceeding arising under Sections 7 and 5 of the Natural Gas Act, Commission *determines* jurisdiction and *requires* applicable filings in compliance therewith. PP. 1484–1485.

Commissioner Woodward *dissenting.*

W. C. Braden, Jr., B. J. Williamson, Robert E. Shaw, Stanley M. Morley and *Harry S. Littman* for Tennessee Gas Transmission Company.

J. P. Hammond, Karl R. Goldsmith, William J. Grove and *Carroll L. Gilliam* for Pan American Petroleum Corporation.

Barbara M. Suchow, Kent H. Brown, Martin L. Barr, and *Charles J. Cox* for Public Service Commission of the State of New York.

Joseph I. Lewis, Herbert E. Squires and *Allan R. Squires* for Pennsylvania Public Utility Commission.

David K. Kadane, Edward M. Barret and *Bernard Hulkower* for Long Island Lighting Company.

John E. Holtzinger, Jr., J. David Mann, Jr., Frederick Moring and *William W. Ross* for The United Gas Improvement Company.

C. William Cooper, Norman A. Flaningam and *Thomas G. Roderick, Jr.,* for Consolidated Natural Gas System Companies.

George C. Williams for The East Ohio Gas Company and Lake Shore Pipeline.

G. Kirby Herrington for New York State Natural Gas Corporation.

James B. Sayers for The Peoples Natural Gas Company.

Thomas A. White for Hope Natural Gas Company.

J. Harry Mulhern, Edward S. Kirby and *William R. Duff* for Public Service Electric and Gas Company.

Edwin F. Russell and *Harry G. Hill* for Brooklyn Union Gas Company.

David Stahl, Charles S. Rhyne, Herzel H. E. Plaine and *Edward D. Means, Jr.* for City of Pittsburgh.

G. Kirby Herrington for New York State Natural Gas Corporation.

James O'Malley, Jr., Halcyon G. Skinner and *John A. Lodge* for Consolidated Edison Company of New York, Inc.

John A. McGrath, Jerome J. McGrath and *James A. Gammon* for Fuels Research Council, Inc.

John A. McGrath, Jerome J. McGrath, James A. Gammon and *Robert E. Lee Hall* for National Coal Association.

John A. McGrath, Jerome J. McGrath, James A. Gammon and *Welly K. Hopkins* for United Mine Workers of America.

David J. Bardin for The Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

BLACK, *Commissioner*:

This case involves the use by Tennessee Gas Transmission Company (Tennessee) of a budget-type certificate issued for minor and routine construction as justification for the connection and transportation in interstate commerce of gas reserves purchased at a price in excess of $159,000,000. Also present is an attempt by Pan American Petroleum Corporation (Pan American) to avoid the requirement of obtaining a certificate of public convenience and

necessity for the sale of this gas to Tennessee by utilization of a transfer of leases.

The pertinent facts are not in issue. From 1954 through 1959, Pan American, in nonjurisdictional transactions, acquired twelve oil, gas and mineral leases, or interests therein, of undeveloped acreage in the Bastian Bay Field in Louisiana. Subsequently, six wells were drilled on these leases. Thereafter, on December 1, 1960, Pan American assigned to Tennessee all its rights and interests in the 12 leases, as well as its wells, equipment and related personal property on the lands affected, for a purchase price, subject to later redetermination, of $159,463,500. Prior to the assignment Pan American's wells were not connected to an interstate pipeline. Subsequently, Tennessee installed 2.63 miles of 12-inch line connecting these Bastian Bay Field reserves with its existing system, and gas from the Bastian Bay Field has flowed into Tennessee's system since February 3, 1961.

By order of April 6, 1961, the Commission reopened *Tennessee Gas Transmission Company*, Docket No. CP61–106, to determine (1) whether the budget-type certificate therein issued to Tennessee in January, 1961, covered the construction and operation of the 2.63 miles of pipeline connecting the Bastian Bay reserves with its interstate system and (2) the cost to Tennessee of the reserves so acquired. Thereafter, on March 12, 1962, in Docket No. CI62–1034, the Commission directed Pan American to show cause why it should not be found to be engaged in the jurisdictional sale of natural gas produced at Bastian Bay to Tennessee without having secured authorization or filed the necessary schedules therefor as required by the Natural Gas Act. The order of March 12, 1962, consolidated the show cause proceeding with the Tennessee proceeding in Docket No. CP61–106.

Following hearings held in May and June of 1962, the presiding examiner, on April 1, 1963, issued his initial decision in these consolidated proceedings. In his decision, the presiding examiner found that:

(1) Tennessee's facilities connecting the Bastian Bay Field reserves to its system were not covered by the budget-type certificate issued in 1961, and are without authorization under Section 7 of the Act.[1]

(2) Pan American's assignment of its Bastian Bay leasehold interests to Tennessee constituted an in-place sale of gas to Tennessee subject to the Commission's jurisdiction, for which no certificate of authorization has been issued under Section 7.

(3) The estimated cost to Tennessee of the Bastian Bay reserves over the life of the field is $267,657,700, assuming a rate of production of 165,000 Mcf of raw gas per day; and the weighted average cost per Mcf (including 2.3 cents Louisiana severance tax) is 31.33 cents.

(4) Pan American's original investment in the Bastian Bay leases was $16,488,673.50, and the remaining investment (deducting depreciation, depletion, and amortization up to the time of the transfer to Tennessee) when assigned to Tennessee was $14,976,872.17.

Exceptions to the examiner's decision were filed by Tennessee, by Pan American, by Pennsylvania Public Utility Commission, and by staff.[2] Tennessee

[1] The examiner also found that certain facilities in the Bastian Bay Field, which were acquired by Tennessee from Pan American, are facilities for the transportation and sale of gas in interstate commerce, subject to the jurisdiction of the Commission, and were acquired without proper authorization.

[2] Interveners in these proceedings are: New York Public Service Commission, Pennsylvania Public Utility Commission, The United Gas Improvement Co., Long Island Lighting Co., Consolidated Natural Gas Co., City of Pittsburgh, Pa., the Brooklyn Union Gas Co., Consolidated Edison Co. of New York, Inc., and (jointly) Fuels Research Council, Inc., National Coal Association and United Mine Workers of America.

and Pan American requested oral argument, which was held before the Commission on September 24, 1963.

Tennessee—Docket No. CP61–106

Tennessee contends that the construction of its 2.63-mile line connecting the Bastian Bay Field was authorized by the budget-type certificate issued on January 6, 1961, in Docket No. CP61–106, 25 FPC 129. Tennessee's argument to support this position is not persuasive. To be sure, the cost limitation of the facilities prescribed under the budget proceedings were not exceeded. (Rules of Practice and Procedure, § 2.58.) But, Order No. 185, 15 FPC 793, by which the Commission established the budget-type proceedings, provides:

> The whole problem of possible changes in the Commission's regulations permitting greater flexibility in its procedures with respect to rate filings and certification of natural-gas facilities subject to the Natural Gas Act is and will continue to be a prime concern. One recommendation, among others, was to the effect that the Commission define "facilities" requiring certificates under the Act so as to exclude *minor* installations or changes in connection with the rendition of service to existing customers or markets. The Commission recognizes the desirability of dealing with *minor* installations on a practical basis but doubts that the Natural Gas Act authorizes it to further expand its rule excluding certain facilities from the certification requirements (18 C.F.R. 2.55). . . .
>
> In the meantime and as a substitute, the Commission advises any interested natural-gas company subject to the Natural Gas Act that it may file under Section 157.6 of the Rules a single certificate application covering in general outline along the lines of a budget estimate the proposed *routine* construction intended to be undertaken by it during the current or ensuing fiscal year. . . . [15 FPC 793–794; emphasis supplied.]

Tennessee's application in this proceeding recites its purpose as relieving the applicant, as well as the Commission and its staff, of the burden and exepnse of preparing and processing numerous relatively minor and routine applications. The order of January 6, 1961, issuing the certificate states that the purpose of the application was to augment Tennessee's ability to act with reasonable dispatch in contracting for and connecting new supplies of gas to its system; and it specifically points out that the order was issued under the shortened procedures in reliance upon the fact that no petition to intervene or protest to the granting of the application had been received. Such a certificate may not reasonably be construed as authority for construction of facilities attaching an estimated 759,350,000 Mcf of reserves acquired at a cost of $159,463,500 and acquired in a transaction not previously approved by the Commission.

The very size and cost of these reserves will necessarily have a material effect on Tennessee's rates. This Commission, under the doctrine of the *CATCO* case,[3] has an obligation to scrutinize with great care the initial cost of a new gas supply before permitting it to be attached to an interstate pipeline for transportation and sale under the Act.[4] Issuance of a budget-type certificate as authority for connecting the Bastian Bay reserves, without meaningful notice to interested parties and a thorough examination by the Commission on a public record, would be inconsistent with the concept of the *CATCO* case. That this transaction presents issues of the greatest public interest is evidenced by the immediate intervention in these reopened proceedings of a number of parties, including the regulatory commissions of New York and Pennsylvania, and by the contest

[3] *Atlantic Refining Co.* v. *P.S.C. of N.Y.*, 360 U.S. 378.

[4] See also *P.S.C. of N.Y.* v. *F.P.C.*, 287 F. 2d 143, decided December 8, 1960.

of issues which has ensued. In our judgment there is no justification for Tennessee's treatment of the construction of the 2.63-mile line to attach these reserves as a routine construction authorized by the budget-type certificate. Therefore, we agree with and adopt the examiner's findings to this effect, and his reasons for so finding.

An additional reason must be noted in support of our conclusion here. The budget-type certificate issued to Tennessee in Docket No. CP61–106, did not authorize the construction of facilities for the attachment of its own gas reserves. Tennessee in its application agreed and by the order of January 6, 1961, we directed it, to submit a statement of the names of the independent producers involved, together with the dates of the gas sales contracts and the docket numbers of the related producer certificate applications involved. It is clear that the term "producer" as used in the order did not include Tennessee as a producer of its own gas reserves. Thus, the very terms of the order itself negate the argument that authority was therein conferred on Tennessee for the construction of the 2.63-mile pipeline to connect its own reserves in the Bastian Bay Field.

Tennessee excepts to the examiner's finding that part of the field facilities in Bastian Bay, transferred from Pan American to Tennessee, are jurisdictional. In our judgment, it is unnecessary at this time to pass upon the jurisdictional status of the facilities acquired by Tennessee from Pan American as part of the lease-sale transaction. It is sufficient for the purpose of this reopened proceeding to determine that the budget-type certificate issued to Tennessee in Docket No. CP61–106 did not cover the construction and operation of the facilities built by Tennessee to connect the Bastian Bay reserves.

Tennessee's exceptions renew the Company's objection to the procedure of reopening Docket No. CP61–106 after the certificate issued therein had become final. Tennessee argues, under the principles of *U.S.* v. *Seatrain Lines*, 329 U.S. 424, and *Civil Aeronautics Board* v. *Delta Airlines*, 367 U.S. 316, that the issuance of a certificate marks the end of a proceeding and that the certificate may not thereafter be modified or amended without the consent of the parties. Tennessee further contends that the present procedure puts the burden of proof on Tennessee rather than the staff, and is without authority in the Natural Gas Act. We concur with the examiner that these arguments, in these circumstances, are without merit. These proceedings do not purport to alter or amend Tennessee's certificate; they merely seek to explore the validity of Tennessee's claim as to the extent of authority therein contained. We see little difference in end effect to Tennessee if this Commission had, in the alternative, issued a show cause order in a new separate docket. In either event Tennessee's burden of proof would have been the same. The budget certificate issued in this proceeding required Tennessee to advise the Commission of the facilities which it constructed pursuant to that authorization. In response to inquiries concerning reports that Tennessee had purchased Pan American's holdings in the Bastian Bay Field, Tennessee informed the Commission that the Bastian Bay gas was being delivered via facilities constructed by Tennessee under the authority of the budget-type certificate issued in this docket. Thus the normal jurisdictional facts which the Commission's staff would have been required to prove in a show cause proceeding were not, in this instance, in issue. In our opinion Tennessee has made no showing that it has been misled or prejudiced by the proceedings followed. Therefore, we concur with the examiner that Tennessee's argument is without merit.

Pan American takes exception to the examiner's finding of the estimated cost to Tennessee of making the Bastian Bay reserves available to Tennessee's pipeline

system, contending that the cost data presented is uncertain and conjectural, and requesting that the Commission delete this from the examiner's decision. The examiner's cost figures are adopted from Tennessee's cost of service exhibit, and Tennessee did not file exception to them. While these figures are of necessity estimates based on certain assumed conditions of production and operation, they meet the requirements of our order reopening Docket No. CP61–106, and constitute a sufficient showing of Tennessee's costs for the purpose of this proceeding. Accordingly, we adopt the examiner's findings with respect to such costs. This finding, however, is made for the purposes of this proceeding only, and it is not our intention that it be binding on the parties in any future proceedings.

Pan American—Docket No. C162–103

The presiding examiner, after examining both the form and substance of the transactions between Pan American and Tennessee transferring the Bastian Bay reserves, concluded that these transactions in fact constitute a gas sales contract. Pan American has filed voluminous exceptions to the examiner's decision on this point, arguing that the Commission has no jurisdiction over the disposition or assignment of gas as a commodity prior to production. The doctrine of *F.P.C.* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498, relied on by Pan American, is not applicable on the facts of this case. The present transaction is readily distinguishable from the *Panhandle* case. Unlike the *Panhandle* case, where the leases sold were undeveloped, the leases here had been developed prior to the lease-sale transaction. Moreover, the reserves transferred here are to move in interstate commerce, and are not to supply an intrastate market as in *Panhandle*. Also, Pan American here retains specific rights in the leases transferred, as enumerated below; whereas Panhandle parted with all control of the leases and rights in the reserves transferred except for a future option to purchase gas.

The present case is similar in its essential aspects to the *Rayne Field*[8] and *Ship Shoal*[9] cases recently decided by this Commission. Our opinions in those cases are, in our judgment, dispositive of the issues in the present case. Therefore, we agree with and adopt the examiner's finding that the transfer of these leasehold interests, on the facts of this case, constitutes a sale of gas within the meaning of Section 1(b) of the Act, and is without authority in the absence of a certificate of public convenience and necessity issued in accordance with the provisions of Section 7 of the Natural Gas Act.

The examiner correctly found that the character of an instrument is governed by its substance and effect, and not by what the parties choose to label it. Thus, to establish the true nature of this transaction, we must look to the substance of the instruments, and to the circumstances surrounding the negotiation and execution of the instruments. The record established that, on July 15, 1960, Pan American and Tennessee entered into a "Lease Sale Agreement" which was consummated on December 1, 1960, by the execution of an "Assignment and Conveyance" and the delivery of cash and notes as specified in the agreement. Except as noted below, Pan American assigned to Tennessee all its rights and interests in the twelve leases, as well as its wells, equipment, and related personal property on the lands affected. Pan American reserved to itself the following:

(a) Rights in minerals other than natural gas, oil and other petroleum liquids;

[8] *Texas Eastern Transmission Corp.*, Docket No. G–12446, *et al.*, Opinion No. 378, issued February 6, 1963, and Opinion No. 378–A, issued July 12, 1963, 29 FPC 249 and 30 FPC 153, respectively.

[9] *Tennessee Gas Transmission Co.*, Docket No. G–16842, *et al.*, Opinion No. 403, issued September 19, 1963, 30 FPC 759.

(b) Rights in the leases below the bottom of the deepest presently known productive horizons;

(c) As a "production payment," all of the proceeds received by Tennessee from the sale of oil production attributable to the net interests assigned, until 85 percent of the recoverable reserves of oil has been produced;

(d) As a "production payment," all of the proceeds received by Tennessee from the sale of separator liquids attributable to the net interests assigned, after deduction by Tennessee of "all development, operating, gathering, producing, separating, treating, marketing, and other costs and expenses of every kind whatsoever" incurred by Tennessee "in the operation and development of the leasehold interests assigned"; provided, however, that the maximum amount which Tennessee may deduct for costs and expenses is $32,965,405, and that the production payment shall stop when 85 percent of the recoverable reserves of gas has been produced;

(e) The right to process all gas produced for the recovery of liquids, subject to a payment of 21 cents per Mcf to Tennessee for plant losses and gas used as fuel.

The purchase price, subject to later redetermination, was $159,463,500, of which $9,427,104 was payable in cash on December 30, 1960, and the balance in 17 annual installments, evidenced by promissory notes due on or before the anniversary date of each year. The purchase price was based upon the parties' agreement that the recoverable gas reserves attributable to the net leasehold interests assigned (the interests assigned less royalties) were 759,350,000 Mcf. The agreement provides for a redetermination of the reserves upon the request of either party between 1969 and 1973, and for adjustment of the purchased price on the basis of such redetermination. The pricing formula used equates to 21 cents per Mcf for the reserves attributable to the net interests assigned. Tennessee agreed to develop and produce the leases, and negotiated contracts with the royalty owners for the payment of royalties and the reimbursement of Louisiana severance taxes. Tennessee estimates that the reserves will be produced over a 29-year period.

Our review of the record in this case convinces us that the effect of this transaction is to transfer gas from Pan American to Tennessee for resale in interstate commerce subject to terms and conditions which in their result are similar to those found in contracts for the sale of gas. We therefore conclude that the transaction constitutes a sale of gas for the purpose of regulation under the Natural Gas Act. As we said in the *Rayne Field* case: "Any other result would exalt form over substance, would give greater weight to the technicalities of contract draftmanship than to the achievement of the purposes of the Natural Gas Act, and would impair our ability to control the price received for gas sold to the pipelines in interstate commerce to the detriment of the ultimate consumer."

The examiner found that this transaction was a bulk sale of gas in place, while the staff in its exceptions urges that the transaction be recognized as a continuing sale of gas in interstate commerce, with the result that the annual payments by Tennessee to Pan American would be subject to continuing regulatory supervision under Section 4 of the Act. It is not necessary that we decide this question now since we have no application for a certificate before us at this time. If and when an application for a certificate is filed, we will pass upon the transaction proposed and determine the nature of the sale for which authority is sought.

Pan American takes exception to the examiner's findings with respect to its investment in the Bastian Bay Field prior to the transfer to Tennessee. The data relied upon, says Pan American, is fragmentary and irrelevant to the deter-

mination of jurisdiction. The examiner's own discussion points out the incompleteness of the data presented, and in making his findings he has simply endeavored to give to the Commission as much data as was available to satisfy the Commission's desire for such information as expressed in its order of March 12, 1962. The data presented was sought for comparative purposes. It is not necessary to our determination of jurisdiction, and we do not rely upon it in the disposition of this proceeding.

Pan American also excepts to the examiner's findings that certain field facilities transferred to Tennessee are jurisdictional. However, as explained above in our discussion of Docket No. CP61–106, we are not now passing upon the jurisdictional status of these field facilities.

The Pennsylvania Commission, in its exceptions, urges that we not only issue an order directing compliance with the Act, but that we also take steps to protect the public interest by requiring Tennessee to keep separate accounts of its costs relating to the Bastian Bay transaction from its inception. We required the keeping of such accounts in the *Ship Shoal* case, *supra*, and we shall require the same here. The separate statement of such costs will assist the Commission in any future Tennessee rate case to take such action with respect thereto as may be necessary to protect the public interest. We shall require Tennessee to maintain such separate and accurate accounts of its Bastian Bay costs until further order of the Commission.

Conclusion

The 2.63-mile pipeline connecting the Bastian Bay reserves to Tennessee's interstate system is a jurisdictional facility constructed without authorization of this Commission. In addition, the lease-sale transaction by which Pan American transferred these reserves to Tennessee is a sale of natural gas in interstate commerce for resale, similarly without authorization of this Commission as required by the Act. Accordingly the Commission must take such action as may be necessary to protect the public interest.

The Commission finds:

1. The 2.63-mile pipeline connecting the Tennessee reserves in the Bastian Bay Field to Tennessee's interstate pipeline is a facility for the transportation and sale of gas in interstate commerce for resale, subject to the jurisdiction of this Commission.

2. The construction and operation of the 2.63-mile pipeline was not authorized by the order of January 6, 1961, in this docket, nor has other lawful authorization for the construction of this line been sought or obtained as required by Section 7 of the Act.

3. The lease-sale transaction by which Tennessee acquired the Bastian Bay reserves is a sale of natural gas in interstate commerce for resale, subject to the jurisdiction of the Commission.

4. Pan American has neither sought, nor received, a certificate of public convenience and necessity for this sale as required by Section 7 of the Act.

5. Tennessee and Pan American should be required to make such filings as may be necessary to bring them into compliance with the Act, within six months of the date of our order herein, and, in the interim, should be required to initiate such accounting procedures as are necessary to protect the public interest.

The Commission orders:

(A) Within six months of the date of issuance of this order, Tennessee shall make such filings and take such steps as are necessary to bring it into compliance with the provisions of the Natural Gas Act, and more particularly with the provisions of Sections 7(c) and 7(d) of the Act, in respect to its 2.63 miles of pipe-

line connecting the reserves in the Bastian Bay Field to its interstate pipeline system.

(B) Within six months of the date of issuance of this order, Pan American shall make such filings and take such steps as are necessary to bring it into compliance with the provisions of the Natural Gas Act, and more particularly with the provisions of Sections 7(c) and 7(d) of the Act, in respect to the sale of its reserves in the Bastian Bay Field to Tennessee.

(C) Until further order of the Commission, Tennessee shall accurately maintain separate accounts of all costs relating to the Bastian Bay transaction with Pan American and to the operation and development of the Bastian Bay Field and the reserves acquired therein from Pan American. Tennessee shall maintain such accounts for all such costs incurred from the inception of the Bastian Bay transaction.

(D) Exceptions to the examiner's decision of April 1, 1963, not hereinabove granted, are hereby denied.

Commissioner Woodward *dissenting.*

WOODWARD, Commissioner, *dissenting:*

The critical question involved in this proceeding is whether the Federal Power Commission has jurisdiction under the Natural Gas Act over Pan American's assignment and conveyance of leasehold interests in the Bastian Bay Field to Tennessee Gas Transmission Corporation.

The majority has confused the scope of commission power with the extent of Federal Constitutional power. Admittedly Congress, through the legislative process, has the power to control the leasehold transaction here involved, but the majority has failed to meet the impossible task of showing that Congress, in the Natural Gas Act, has vested such power in the Federal Power Commission.

The Commission's jurisdiction under Section 1(b) of the Act is not so broad as the scope of Federal power under Article I, Section 8, Cl. 3 of the Constitution. In *F.P.C.* vs. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 502–503, the Supreme Court stated "* * * suffice it to say that the Natural Gas Act did not envisage Federal regulation of the entire natural gas field to the limit of Constitutional power. Rather it contemplates the exercise of Federal power as specified in the Act * * *"

In *Panhandle Eastern Pipe Line Co.*, v. *Public Service Commission of Indiana*, 332 U.S. 507, 516, the Court declared:

> Three things and three only Congress drew within its own regulatory power, delegated by the Act to its agent, the Federal Power Commission. These were: (1) the transportation of natural gas in interstate commerce; (2) its sale in interstate commerce for resale; and (3) natural gas companies engaged in such transportation or sale.

A statutory term which is crucial here is the term "sale"; the basic issue involves proper application of that term. Our primary duty is limited to giving vent to the intent of Congress as expressed in the statute; we do not possess power to construct statutes. The issue thus is one of fundamentals under the statute, and assignment and conveyance of leasehold interests is not a "sale" which can be considered to be within our statutory grant of regulatory power (see *F.P.C.* v. *Panhandle, supra*).

For the Commission to have jurisdiction over a sale of gas within the meaning of Section 1(b) of the Act, it must be a "sale in Interstate Commerce for resale." Clearly the Bastian Bay transaction was not a sale of natural gas for resale but was an outright assignment and conveyance of leasehold interests. The explicit terms of the statute exclude such a transaction from Commission jurisdiction and

serves to further emphasize that the majority's finding is totally without adequate basis in law.

In the *CATCO* case, the Supreme Court held that even after issuance of a certificate of public convenience and necessity for a jurisdictional sale under Section 7, a producer remained free to "withdraw" if deliveries had not commenced. In short, the Commission jurisdiction over a "sale", a "producer", or over his "properties" thus could not attach until such an initiation of physical delivery of gas, as there is no "dedication" until that initiation of deliveries.[1]

In *Sunray Mid-Continent Oil Co.*, v. *Federal Power Commission*, 270 F. 2d 404 (10th Cir. 1959), that court held (270 F. 2d at 409):

> By filing an application with the Commission, the applicant does not submit irrevocably to the jurisdiction of the Commission. *Atlantic Refining Co.*, v. *P.S.C. of N.Y. supra.* It is by the initiation of public service that the applicant's property becomes dedicated to that public service and the jurisdiction of the Commission's regulatory control within the statutory limits of the Act. The Act contemplates that the Commission need not accept the conditions contained in the application, *Sunray Mid-Continent Oil Co.*, v. *FPC, Supra;* it likewise contemplates that the applicant need not accept conditions imposed by the Commission in its initial acceptance. Where conditions are imposed by the Commission the applicant has the free choice to accept or reject; to dedicate his property to public service or to refuse so to do; to submit to the jurisdiction of the Commission or to remain beyond the bounds of interstate commerce.

Since such irrevocable "dedication" occurs only upon a commencement of deliveries and sale of produced natural gas, then, without question the transfer of leaseholds—even leases immediately capable of production—prior to connection or to delivery, is beyond the reach of Section 7.

The implications as to the jurisdictional facts required under Section 1(b) are obvious: until there is a sale of gas after production, there is nothing to which the Act can apply. Until there is such a sale, all properties remain outside the scope of the act.

In *Panhandle, supra*, the court pointed out that construction of other Sections so as to permit Commission control of the sale of leasehold interests "would invite expansion of power into other phases of the forbidden area" (337 U.S. at 509), and concluded: "If the Commission is of the opinion that it should have power to control the disposition of leases by natural gas companies, it is authorized to call the attention of Congress to that fact." (337 U.S. at 515–516.)

This construction of Section 1(b) has not been altered. To the contrary, judicial construction of the Act has continuously reaffirmed the clear distinction between the existence of jurisdiction over a wholesale sale of natural gas in interstate commerce for resale, and the absence of Commission jurisdiction over sales of leasehold interests. The continued validity of the *Panhandle* distinction has only recently been questioned by this Commission. Prior to February 6, 1963, this Commission consistently recognized its unqualified lack of jurisdiction over the sale, purchase or acquisition of leasehold interests by natural gas companies.

Indeed, at the time Tennessee entered into the Bastian Bay agreement in July, 1960 and December, 1960, the Commission had stated in its Panhandle opinion and also in its first *Rayne Field* decision, that it looked favorably upon such acquisition so that pipeline companies would own at least part of their own gas supply. As stated by the Commission:

> Finally, as we see it, the interest of the public definitely lies in the direction of natural gas production by pipeline systems themselves, as distin-

[1] *Atlantic Refining Co.* v. *Public Service Commission of New York*, 360 U.S. 378, 387–388 (1959).

guished from their complete dependence for gas supply upon purchases from other producers * * * such production strengthens their bargaining position in negotiating gas-purchase contracts with independent producers * * * This advantage must ultimately redound to the benefit of their customers through lower gas purchase prices and cost of service than would otherwise obtain.[2]

In *Texas Eastern Transmission Corp.*, 21 FPC 867 the Commission found:

The public will otherwise benefit from Texas Eastern's acquiring these leases instead of purchasing the gas under the producer sales contracts. For example, Texas Eastern will acquire control over the rate of production, and the minimum take or pay for provisions of the gas purchase contracts will be eliminated, thereby increasing the flexibility of the company's overall pipeline operations. Further, *since the purchase of the leases is not a contract to purchase gas*, the price paid for the leases cannot have a disruptive effect on area prices by triggering favored nation or price redetermination clauses in Texas Eastern's or any other pipeline company's contracts. Other benefits also exist. [Emphasis supplied.]

These Commission pronouncements could not help but influence the decision of any pipeline company to purchase gas leases. Certainly the benefits and advantages of company-owned production stated by the Commission are equally applicable to the instant proceeding. Now the majority has concluded that it is free to drastically reverse its prior decisions to reach a totally opposite result; that it must look to the intent and knowledge of the parties "to establish the true nature of this transaction." Consequently, this open invitation to purchase leases is suddenly withdrawn without warning and the companies, after relying on the judgment of the Commission, are summarily told they were wrong to do what the Commission had entreated them to do. This action is not only unjust; it amounts to a breach of faith. This is the identical situation which led the majority to commit grave error in the *Rayne Field* and the *Ship Shoal* cases;[3] the error they now perpetuate in the instant proceeding.

Completely apart from the fact that this exact issue has been resolved by the Commission and the courts with findings opposite to those reached by the majority here, consideration of the merits *de novo* reveals that this transaction under the statute is beyond Commission jurisdiction.

My dissenting opinions in the *Rayne Field* and *Ship Shoal* cases *supra* (statements which are equally applicable to this case) made it pointedly clear that despite the Commission's repeated attempts to secure an amendment to Section 7 of the Act which would vest it with jurisdiction over transfer of leaseholds by natural gas companies, Congress has never conferred such jurisdiction on the Commission. "An unsuccessful attempt by an administrative body to secure an express grant from Congress is significant in determining whether the power so requested was conferred by the statute sought to be amended or supplemented," *Federal Trade Commission* v. *Bunte Bros., Inc.*, 312 U.S. 349, 351, 352.

"Great weight" must be given to an agency's consistent interpretation of the law it administers, especially where the agency has sought to have the

---

[2] *Panhandle Eastern Pipeline Co.*, 13 FPC 53, 74–75 (1954).

[3] *Texas Eastern Transmission Corp.*, Docket No. G–12446, *et al.*, Opinion No. 378, issued February 6, 1963, 29 FPC 249 and Opinion 378–A, issued July 12, 1963, 30 FPC 153. *Tennessee Gas Transmission Co.*, Docket No. G–16842, *et al.*, Opinion No. 403, issued September 19, 1963, 30 FPC 759.

law amended, but Congress declined to do so and has thereby acquiesced in the agency's historical interpretation." [4]

Acts and physical results control on jurisdictional questions, not mere knowledge or even intent of parties to an agreement. See *J. M. Huber Corp.*, v. *F.P.C.*, 236 F. 2d 550, 558 (3rd Cir. 1956); *Shell Oil Co.*, v. *F.P.C.*, 247 F. 2d 900, 903 (5th Cir. 1957). The Courts have made clear that jurisdiction attaches by virtue of a physical "commitment", "dedication", "connection" and delivery in the sale of gas as produced, establishing the jurisdictional facts upon which Commission powers under Sections 1, 4 or 7 must rest. On questions of jurisdiction, desires or knowledge never control.

Decisions involving jurisdictional facts turn upon the presence or absence of those facts and the applicable statutory provisions only. Here, Section 1 controls, and decision can rest only upon the fact that an assignment and conveyance of leasehold interests has occurred, and the law that such a transaction is outside the scope of Section 1. The majority has completely failed to distinguish between the sale of a commodity in production and a property interest. Their error, I submit, is fatal.

The legislative history of the Natural Gas Act and the precedents established in judicial decisions, including decisions affirming orders of this Commission, should be followed at least until Congress sees fit to extend the scope of jurisdiction of this Commission by amendment of the Act. Any action purporting to regulate an assignment and conveyance of leasehold interests amounts to an obvious attempt to do exactly what the Supreme Court and the Courts of Appeals have emphatically told the Commission it has no power to do.

For these reasons, I respectfully dissent.

INITIAL DECISION
OF THE PRESIDING EXAMINER UPON INVESTIGATION AND ORDER TO SHOW CAUSE

(Issued April 1, 1963)

PURDUE, *Presiding Examiner:* On April 6, 1961, the Commission reopened *Tennessee Gas Transmission Co.*, Docket No. CP61–106, for the purpose of determining (1) whether a budget-type certificate issued early in 1961 in such proceeding "covered the construction and operation of . . . facilities necessary to connect" certain gas reserves in the Bastian Bay Field, Plaquemines Parish, Louisiana, "to Tennessee's system, and (2) the cost of making such reserves available to the Tennessee system." (Orders issued April 6, 1961 and March 12, 1962.) Sessions of the reopened hearing in Docket No. CP61–106 were held on July 5, 1961 and September 21 and 22, 1961.

Thereafter, by order issued March 12, 1962, the Commission instituted a proceeding against Pan American Petroleum Corp., Docket No. CI62–1034, and consolidated such proceeding with Docket No. CP61–106. The order recited, *inter alia*, ". . . we wish the record to show, as a basis for comparison, Pan American's investment in the Bastian Bay Field prior to Tennessee's acquisition." Such order directed Pan American "to show cause, if any there be, . . . why it should not be found to be engaged in the sale of natural gas produced at the Bastian Bay Field, . . . subject to the jurisdiction of the Commission to [Tennessee] without having secured the authorization or having filed the schedules therefor required by subsection 7(c) and 4(c) of the Natural Gas Act."

---

[4] *United States* v. *Bergh*, 352 U.S. 40, 47 (1956); *Gas Service Co.* v. *Federal Power Commission*, 282 F. 2d 496, 499 (D.C. Cir. 1960); *Mississippi Valley Co.* v. *Federal Power Commission*, 294 F. 2d 588, 592 (5th Cir. 1961).

On April 11, 1962, Pan American filed a motion to terminate the show cause proceeding on the ground that the Commission had no jurisdiction over it. The Commission denied the motion "without prejudice to renewing the jurisdictional argument upon completion of the hearing."

Sessions of the hearing in Docket No. CP61–106, and a hearing in Docket No. CI62–1034, as consolidated proceedings, were held on May 3 and 7, 1962, and June 26, 1962, concluding on the last mentioned date.

The following state commissions intervened in the proceedings: New York Public Service Commission and Pennsylvania Public Utility Commission. The following companies and municipalities were permitted to intervene: The United Gas Improvement Co., Long Island Lighting Co., Consolidated Natural Gas System Companies (the Consolidated Companies), Public Service Electric and Gas Co., United Fuel Gas Co., City of Pittsburgh, Pa., The Brooklyn Union Gas Co., Consolidated Edison Co. of New York, Inc., and (jointly) Fuels Research Council, Inc., National Coal Association and United Mine Workers of America (the coal interests).

At the hearings, evidence both oral and documentary, was introduced by Tennessee, Pan American, the Consolidated Companies, and the Commission Staff. Cross-examination of witnesses was conducted by the Consolidated Companies, Long Island Lighting Co., the coal interests, New York Public Service Commission, Pan American, and the Commission Staff. The Pennsylvania Public Utility Commission and The United Gas Improvement Co. participated otherwise in the hearing. After all the evidence had been introduced, Pan American renewed its motion to terminate, making the motion to the Examiner. Tennessee, Pan American, New York Public Service Commission, the Pennsylvania Public Utility Commission, The United Gas Improvement Co., Long Island Lighting Co., the Consolidated Companies, Public Service Electric and Gas Co., and the Commission Staff filed briefs after the conclusion of the hearing; and the proceedings were submitted for consideration and decision.

PRELIMINARY STATEMENT OF FACTS

The following facts are shown by the evidence:

During the period 1954 to 1959, inclusive, Pan American acquired 12 oil, gas and mineral leases, or interests therein, here in issue, on undeveloped acreage in the Bastian Bay Field, Louisiana. The field is in the Mississippi River delta, its terrain being low-lying marsh traversed by numerous bayous. Pan American became the outright owner of some of the leases, and a joint owner of the remainder together with Tidewater Oil Co. and Gulf Oil Corp. In 1955, Pan American drilled an exploratory well on one of the leases to a depth of 15,448 feet, and thereby discovered a number of productive sand zones. Between the time of completion of the well and December 1, 1960, Pan American, either as sole owner or as operator of the joint interest leases, engaged in further drilling on such lease and five other leases. In all, Pan American drilled 32 wells on the six leases, of which wells five were dry holes. There were 21 oil completions and 20 gas completions. As a result of the drilling, all of the acreage covered by the leases became proved gas properties.

On July 15, 1960, Pan American, as seller, and Tennessee, as purchaser, entered into a so-called "Lease Sale Agreement," which the parties consummated as of December 1, 1960 by their execution of a so-called "Assignment and Conveyance," and by Tennessee delivering to Pan American cash and notes as specified in the agreement.

By the "Lease Sale Agreement," Pan American purportedly agreed to convey to Tennessee, and Tennessee purportedly agreed to purchase, Pan American's

rights in the twelve leases; also Pan American's wells, equipment and related personal property on the premises. The purchase price, subject to a later redetermination, was $159,463,500, of which sum $9,427,104 was payable in cash at the closing date of the transaction (December 30, 1960); and the remainder, by eight promissory notes in the amount of $9,427,104 each, and nine promissory notes in the amount of $8,291,060 each. The first note was due and payable on or before the first anniversary of the closing date; and each of the other notes, on or before the anniversary of the closing date in each of the subsequent years. Tennessee was required to negotiate satisfactory agreements for the purchase of existing royalty interests in the leases.

The parties further agreed that the recoverable gas reserves attributable to the "net leasehold interests" to be assigned (*i.e.*, the leasehold interests less royalties to which they were subject) were 759,350,000 Mcf,[1] and recoverable oil reserves attributable to such interests, 7,650,000 barrels. The agreement provides for a redetermination of the gas reserves at the request of either party between 1969 and 1973; a formula for adjusting the purchase price upward or downward on the basis of such redetermination; and a substitution, for outstanding promissory notes, of new promissory notes having amounts in accordance with the adjusted purchased price. Both before and after the redetermination, the purchase price divided by the recoverable reserves of gas attributable to the net interests assigned by Pan American equals 21 cents per Mcf.

The agreement also provides for a redetermination of the oil reserves underlying the premises within the aforementioned period, 1969–73.

By the "Assignment and Conveyance," Pan American purportedly assigned to Tennessee its interests in the twelve leases, and in the wells and other property on the lands affected by the leases, for the purchase price specified in the "Lease Sale Agreement," payable in the manner prescribed in such agreement. The assignment was subject to reservations contained in the "Assignment and Conveyance" in essence as follows:

(a) Pan American did not convey its rights in minerals other than natural gas, oil and other petroleum liquids.

(b) Pan American did not convey its rights in the leases below the bottom of the deepest presently-known productive horizons.

(c) Pan American reserved, as a "production payment," all of the proceeds received by Tennessee from the sale of oil produced attributable to the net interest conveyed; the production payment to terminate when 85% of the recoverable reserves of oil have been produced.

(d) Pan American reserved, as a "production payment," all proceeds received by Tennessee from the sale of separator liquids, produced from the assigned leases, attributable to the net interest in production of separator liquids; after the deduction by Tennessee from such proceeds of "all development, operating, gathering, producing, separating, treating, marketing, and other costs and expenses of every kind whatsoever" incurred by Tennessee "in the operation and development of the leasehold interests assigned"; with a proviso that the maximum amount of the costs and expenses which Tennessee may deduct from such proceeds is $32,965,405 (subject to adjustment in terms of the Wholesale Price Index); and with a further proviso that the production payment shall be in effect until 85% of the total estimated recoverable reserves of gas attributable to the net leasehold interests assigned shall have been produced. The reimbursement of Tennessee's costs and expenses up to $32,965,405 is insured by a reserve of $1,000,000, the residue of which is payable to Pan American upon termination of the production payment.

[1] Unless otherwise specified, all volumes of natural gas referred to herein are at a pressure base of 15.025 psia.

(e) Pan American retained the right to process all gas produced from the leaseholds assigned, including gas attributable to royalty interests, for recovery of natural-gas liquids; agreeing to pay Tennessee 21 cents per Mcf for plant losses and use of gas as fuel.

Tennessee agreed that it would develop and produce and otherwise comply with the obligations of the leases as a prudent operator, pursuant to a specified plan to complete the development of the field.

The royalty portion of the gas is more than 25% of the total volume which Tennessee will receive from the leases. Tennessee negotiated contracts with the owners of the royalty interests whereby it agreed to pay royalties from 1960 to January 1, 1962, at 22.5¢ per Mcf, and at 25¢ per Mcf thereafter; and to make reimbursement for the Louisiana severance tax of 2.3¢ per Mcf.

Tidewater Oil Co. and Gulf Oil Corp. are the owners of still other interests in the Bastian Bay Field. In late 1959, these two companies arranged to sell their Bastian Bay gas as produced to United Gas Pipe Line Co., under a contract which provided that the gas would be consumed in Louisiana. Tidewater and Gulf commenced deliveries under this contract about July 1, 1960, into a line of United that runs from the field to New Orleans, where the gas is consumed.

As a prerequisite to Tidewater and Gulf making the deliveries to United, it was necessary that facilities be installed leading from individual wells to a central collection point in the field; and from such point to United's line. In the spring of 1960, Tidewater, Gulf and Pan American jointly installed a collection system in the field; Pan American installed certain other facilities hereinafter more particularly referred to; and United installed facilities connecting therewith. Pan American bore a proportionate part of the costs of these facilities, because all of the then owners of interests recognized that most of the operators in the field would own an interest in the majority of permanent producing units which eventually stood to be established for the field by the Louisiana Department of Conservation. Normally under such circumstances in Louisiana, a jointly-owned gas collection system is installed by all working interest owners.

The wells tied into the collection system prior to December 1, 1960, consisted of five in which Tidewater, Gulf and Pan American all owned working interests. Between July 1, 1960, and December 1, 1960, the collection system was used solely to collect gas produced and owned by Tidewater and Gulf from the connected wells. Pan American owned no interest in the gas that was then produced or delivered into the system, nor did Pan American operate either the connected wells or any of the gas collection facilities.

Pan American's wells were not connected to an interstate pipeline system prior to the execution of the "Assignment and Conveyance."

Immediately after the "Assignment and Conveyance" was executed, Tennessee installed 2.63 miles of 12" line connecting the Bastian Bay Field with existing pipeline facilities of Tennessee. It arranged for Tenneco Oil Co., a subsidiary of a subsidiary of Tennessee, to operate the leases on its behalf. On February 3, 1961, Tennessee, through its agent Tenneco, commenced, and has since continued, to take gas from the Bastian Bay leases by virtue of the "Lease Sale Agreement" and the "Assignment and Conveyance."

Tennessee introduced evidence to the effect that it cannot determine at this time the rates at which it will produce the Bastian Bay properties; but on the basis of certain assumptions, it submitted an estimated operation schedule whereby the reserves will be produced over a 29-year period. The evidence shows that the minimum period during which the reserves can be produced safely is from 22 to 24 years.

Position of Parties and Staff

Tennessee either asserts, contends, or asks the Commission to find, as follows: (1) that all of the Bastian Bay facilities which it acquired from Pan American, and the 2.63-mile line, are gathering facilities; (2) that even if some of these facilities are transmission facilities, the budget-type certificate which the Commission issued in Docket No. CP61-106 covered the construction and operation thereof; (3) that the Commission had no jurisdiction to reopen the proceedings in Docket No. CP61-106; and (4) that the Commission has no jurisdiction over Tennessee's "acquisition of the Bastian Bay leases" for the reason that the "acquisition" is exempt from the provisions of the Natural Gas Act by Section 1(b) thereof.

Pan American contends that the Commission has no jurisdiction over it as to the transaction in question, and that it did not, and does not, engage in the sale of natural gas, except that prior to the transaction with Tennessee it made some minor sales for rig fuel in the field.

Position of Intervenors and Staff as to Budget-Type Authorization

Intervenors The United Gas Improvement Co. and Pennsylvania Public Utility Commission, and the Staff, take the position that Tennessee's budget-type authorization did not cover the construction, acquisition or operation of facilities, subject to this Commission's jurisdiction, necessary to connect the Bastian Bay reserves to Tennessee's system.

Intervenor Long Island Lighting Co. regards the budget-type certificate as covering jurisdictional facilities of Tennessee, but argues that the certificate should be revoked because of the asserted failure of Tennessee to make a full disclosure of the facts.

The New York Public Service Commission takes the position that "jurisdictional issues . . . are peculiarly within the compass of the expertise of the Commission and its Examiners," and directs its brief to the "cost aspects of the case."

Intervenors Consolidated Companies and Public Service Electric and Gas Co. do not treat the question whether the budget-type authorization covered jurisdictional facilities.

Position of Intervenors and Staff on Question of Pan American-Tennessee Transaction Being a Sale of Gas

The United Gas Improvement Co. takes the position that the Bastian Bay transaction between Tennessee and Pan American was a sale for resale in interstate commerce of natural gas in place, and should be held to be a sale of natural gas within the jurisdiction of the Commission.

Long Island Lighting Co. is of the view that the transaction is a "purchase of gas in place form of transaction"; and that "it appears to be possible for the Commission to control the price" either (a) by holding that the transaction constituted a sale by Pan American of gas in place, or (b) by its jurisdiction over the construction of pipeline facilities to connect the reserves.

The Staff take the position that the transaction is a long-term, continuing sale of gas in which Pan American is now engaged.

The Pennsylvania Public Utility Commission agrees with the Staff.

The New York Commission declines to take a position, for the same reason it did not take a position on the question of the budget-type authorization.

The Consolidated Companies do not treat the question of the Commission's jurisdiction over Pan American.

Public Service Electric and Gas Co. "takes no position on the question of jurisdiction, but urges that the Commission decide this important issue in these proceedings."

Requirements Requested by Intervenors

Most of the intervenors request the Commission to impose certain requirements on Tennessee, or to condition the sale by Pan American. One intervenor requests the making of a certain finding. These requests are specified and treated of, *infra*, page 1513.

Improper Arguments

Counsel for Pan American and the Staff go outside the record by referring to or quoting portions of the record and briefs in a case upon which Pan American and Tennessee rely, *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498. Some counsel also predicate arguments upon material in the Commission's files not received in evidence. The Examiner is confident that there was no intentional dereliction, but laxity of counsel in not basing their arguments on the record should cease. The Examiner reiterates what he said in *St. Lawrence Gas Co.*, 26 FPC 265, 278–79 (adopted as part of the Commission's opinion therein):

> . . . counsel for both applicants have gone outside the record and quoted from briefs in certain other proceedings before the Commission. The Examiner has disregarded these extraneous quotations. Counsel should remember that their argument should be based on the evidence in the case.

Again, in *El Paso Natural Gas Co.*, Docket No. G–16235 (decision issued Dec. 18, 1962), 30 FPC 77 at page 111, the Examiner made the same point concerning arguments based on material which had not been received in evidence.

Making reference to the briefs and record in the *Panhandle* case, *supra*, is doubly futile. Counsel employ the references as a premise for arguing what the United States Supreme Court meant by an expression in its opinion, and by its holding; and had the material been offered the Examiner would have rejected it on the ground of incompetency, irrelevancy and immateriality. A litigant in construing an opinion cannot go "behind the facts stated in the opinion as the basis upon which it rests and resorting to the record . . . ." *Coons* v. *Journeyman Barbers, etc.* (Minn.), 23 N.W. 2d 345, 346. ". . . the controlling effect of a decision must relate to the factual condition as stated in the opinion." *Madison County* v. *School District No. 2* (Neb.), 27 N.W. 2d 172, 175.

DISCUSSION

Tennessee Has Failed to Procure Necessary Commission Authorization for Construction and Operation of Facilities Connecting Bastian Bay Gas Reserves to Its System

Facilities and Operations in Bastian Bay Field

The uncontradicted evidence establishes, and the Examiner finds the existence of, the facts set out in the ensuing paragraph, relative to facilities and operations in the Bastian Bay field:

There are 15 gas wells and 5 oil and gas wells, either wholly or partially subject to the leases in question, which are connected to the collection system. There is a low-temperature separation unit at each well site, through which the well stream is produced, and a meter immediately downstream therefrom. A line 2½" in diameter runs from each of the separation units, through the meter, to the collection lines. These lines are from 6" to 12" in diameter and extend to the central collection point in the field, where the gas is assembled into a single commingled stream.

The evidence is conflicting as to what the situation is at and downstream from the central collection point.

A map, Exhibit 18, entitled "Gas Collection System, Bastian Bay Area, Dec. 1, 1960," was introduced in evidence. A small portion of the map, referred to as

a "cross-hatched area," purports to depict this situation. But it is not clear from the record whether the cross-hatched area is drawn to scale or is merely schematic. The recitals in the ensuing paragraph are based on the map, and are made on the assumption that the drawing of the area is according to scale.

The "central point" to which the collection system converges is approximately 180' in length. More particularly, three collection lines converge and enter a 12'' line at near-by points, the distance between the two farthest apart of the three collection lines at the points of entry being about 180'. The 12'' line runs in a general northerly-southerly direction. About 100' downstream from the southernmost point of entry of a collection line, a line takes off from the 12''-line and extends about 400' to a platform in the field designated "United Gas." The 12''-line continues, from the point of take-off, about 350' to a platform designated "Tennessee Gas Transmission." The distance between the two platforms is about 125'.

A Tenneco employee testified in substance as follows:

That the way the gas is collected at the present time, it is collected from each completion into these gas gathering lines, transported to a central point, where part of it is diverted into the United system and part of the Tennessee system. [Tr. 615.]

You ask me to describe the exact physical facilities which are located in that central point in the field. As I recall, all of the gas comes to a central point and goes through a small separator; then it goes through a pipeline to a Tennessee-owned platform, at which point Tennessee takes gas into their system; there is a pressure regulator on Tennessee's platform which diverts gas into the line owned by United, which goes to a United-owned platform some 100 or 150 feet away from the Tennessee-owned platform. [Tr. 619–20.]

There is a line leading from the central point where all this gas is assembled to the commencement of the 2.6 miles of 12-inch line; there is several hundred feet; I believe that is a single line; as to the diameter of that line, I believe it is 30-inch pipe; I am not sure; understand, it handles the gas that goes to United and the gas that goes to Tennessee; all of the gas that goes to Tennessee enters the 2.6 miles of 12-inch line. [Tr. 648–49.]

You inquire if the 30-inch line is between the platform and the 12-inch line. What I intended to say was that there is a line of large diameter pipe, which I think is something in the neighborhood of 30-inch, extending from the platform back to the junction of all the field gathering lines; the division of the gas stream between Tennessee and United Gas take place on Tennessee's platform. [Tr. 655–56.]

It will be seen that, according to the witness' description, there is no line (as depicted on Exhibit 18) diverging 100' downstream from the central collection point and extending to the platform of United Gas; that, instead, a single line continues from the central point to Tennessee's platform; and at such platform the division of the gas stream between Tennessee and United Gas takes place, and United Gas' portion enters a line extending thence to United Gas' platform. It will be further seen that according to this witness, the line between the central collection point and Tennessee's platform is not a 12'' line but a line "in the neighborhood of" 30'' in diameter.

A Pan American employee testified in substance as follows, referring to Exhibit 18:

That [on December 1, 1960,] the only facilities that existed in that shaded area, cross-hatched area, were the pipelines as so indicated, the collection lines and a manifold which is located on the surface of the ground at the approximate location of the No. 12 inch as appears in the shaded area. [Tr. 811.]

The manifold is a large piece of pipe of which several collection lines terminate

in, which has valves that control gas entering into this manifold and leaving the manifold on this chamber and is diverted to, in this instance, separate outlets. [Tr. 811–12.]

If you will notice there is a line that goes to the TGT platform and one that goes to the United Gas platform; those lines originate at the gas manifold; that manifold to that point, to the point to the manifold, Pan American, Tidewater and Gulf shared in the cost; the manifold is approximately 15 feet long. [Tr. 812.]

In the testimony of the Pan American employee, there is for the first time a reference to a manifold. No such facility is depicted on Exhibit 18. It will be noted that this witness first said that the location of the manifold is "at the approximate location of the No. 12 inch as appears in the shaded area." This statement is ambiguous, but if what the witness meant is the approximate location in the shaded area of the figure and symbol "12", then the manifold is some 100' downstream from the terminus of the central collection point. His subsequent statement that the lines of the TGT platform and the United Gas platform "originate at the gas manifold," from which there are "separate outlets," accords with this interpretation of the testimony. But the witness elsewhere indicates that the collection lines terminate in the manifold.

The evidence shows, and the Examiner finds, that the recitals in the following six paragraphs are correct:

Tennessee, through its agent Tenneco, operates and controls the 20 wells and all of the other facilities above described; except whatever line leads to the United Gas platform, and such platform; and except Tennessee's 2.63-mile line.

Either the line going to the United Gas platform commences at a point on the line between the central collection point and the Tennessee platform, or else it commences at the Tennessee platform. In either event, the division of the gas stream between Tennessee and United Gas takes place where such line begins, and all of the gas flowing through such line goes to United Gas.

A meter station, consisting of a meter house and two meter runs, is located on the Tennessee platform. The 2.63 miles of 12" line that Tennessee constructed commences at the meter station, and extends in a southwesterly direction to, and makes a connection with, a pipeline of said company called the Muskrat line. Tennessee, itself, operates the 2.63-mile line.

Throughout the length of the pipeline between the central collection point and the Tennessee platform, and throughout the length of the 2.63-mile pipeline leading from the platform to the Muskrat line, at no point (except at the ends of the lines as described below) does natural gas enter into or leave such lines.

No matter where the line to the United Gas platform commences, all of the Bastian Bay gas going to Tennessee flows continuously (except for about five percent of the time when the wells are shut in) from the wells on the leases, at reduced well pressures of from 950 to 1000 pounds psig, through the separation units and adjacent meters, the collection system including the central collection point, and through the line between the central collection point and the Tennessee platform, the Tennessee meter station, and the 2.63 miles of 12" line, into the Muskrat line.

Pan American built the line between the central collection point and the Tennessee platform, and constructed the Tennessee platform and the meter house thereon. (The record does not disclose whether Pan American or Tennessee installed the meter equipment.)

As hereinafter found (p. 1500), the Muskrat line is a transportation facility, and there is a continuous flow of the Bastian Bay gas through such line and through other transmission lines of Tennessee to areas of ultimate consumption in other states.

Facilities Subject to Commission Jurisdiction

The Staff ask the Examiner to find that the manifold, the pipe acquired by Tennessee from Pan American beyond the point of assemblage, "related facilities," and Tennessee's 2.63-mile line extending from Tennessee's platform to the Muskrat line, are transmission facilities.

Additional evidence should be adduced before a finding is made with reference to the manifold. The Examiner is unable to determine where the manifold is located—whether at the central point of assemblage or 100' downstream therefrom. The Pan American witness in one place says, in effect, if the Examiner understands his testimony, that the location of the manifold is about 100' downstream from the terminus of the point of assemblage of the gas; and in another place says, in effect, that the collection lines terminate in the manifold. If the latter situation be correct, how can the manifold be 100' downstream from the central collection point?

Indeed, the Examiner is not satisfied that there is a manifold. No manifold is shown on the map, and only one of the two witnesses said that there is such a facility.

There is particular doubt that a manifold exists downstream from the central collection point. If, between the terminus of the central collection point and Tennessee's platform, no line takes off leading to the United Gas platform, what is the need for a manifold between such points? It has been seen that the witness whose company, Tenneco, is operating the facilities says he believes that a single line lies between the central point and Tennessee's platform. Additional evidence that no line takes off between the central point and the Tennessee platform is the testimony of this witness that the pipeline connecting these points is about 30'' in diameter. Such testimony, if true, would seem to indicate that this line transports both Tennessee's gas and United's gas to the Tennessee platform. Because why have a 30'' line to move, by well pressure, Tennessee's gas only—a volume that can be transported from the Tennessee platform onward in a 12'' line?

The nature and extent of the additional evidence which should be adduced respecting the manifold is a decision for counsel to make primarily, but such matters as the following occur to the Examiner: (1) more persuasive evidence that there is, in fact, a manifold; (2) a diagram of the manifold and related facilities; (3) additional and more specific evidence respecting the manifold, particularly its location in relationship to the collection lines; (4) testimony as to the operation of the manifold and as to the flows of gas into and out of the manifold; (5) additional and more specific testimony as to the function or functions, and the purpose or purposes, of the manifold.

It is deemed unnecessary, however, to call for further evidence respecting the manifold and to open the record for the purpose of receiving the same, in view of the conclusion hereinafter reached that other facilities constructed by Pan American are subject to the Commission's jurisdiction.

At the central point in the field where all the gas going to Tennessee and United Gas has been assembled in a pipeline as a commingled mass, gathering has been accomplished. From that point on, the large volume of gas going to Tennessee is directed as a single commingled stream, on its way to ultimate markets, through the line extending from the central collection point to the Tennessee platform, through the Tennessee meter station, and through Tennes-

see's 2.63-mile line. The sole function of (a) the line between the terminus of the collection point and the Tennessee platform, and (b) the 2.63-mile line, is to transport natural gas, from a definite, established point where gathering has been completed, on its way to ultimate markets. When the gas enters the line extending from the point of central assemblage to the Tennessee platform, it has been definitely committed to its interstate journey to markets in states other than Louisiana. Clearly, such line and the 2.63-mile line are facilities for the transmission and ultimate sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission under Section 7 of the Act. *J. M. Huber Corp.*, 14 FPC 340, 347–48; *Barnes Transportation Co.*, 18 FPC 369, 372.

Likewise, the Tennessee meter station (consisting of the meter house and the meter runs therein), and the platform on which the station rests, are all facilities for the transmission and sale of natural gas in interstate commerce. According to the evidence, the meter runs are devices to measure the volume of gas flowing through the pipeline. Obviously, the runs, the platform built to support them, and the house built to protect them, are facilities incident to, and in furtherance of, the transportation and ultimate sale of the gas in interstate commerce.

Facilities Not Covered by Budget-Type Certificate

It has been noted that Tennessee next takes the position that the budget-type certificate issued to it in Docket No. CP61–106 covers the construction and operation of any transmission facilities required to connect the Bastian Bay gas to its system. This position is without merit; the budget-type certificate has no application to Tennessee's Bastian Bay acts and operations.

Tennessee filed its application in Docket No. CP61–106 on October 4, 1960. The pleading expressly stated that it was an "application * * * consistent with the policy declaration of the Commission contained in its Order No. 185."

Order No. 185, issued February 8, 1956, adopted amendments to the Regulations under the Natural Gas Act developed in cooperation with representatives of industry and the Utility Committee of the Hoover Commission Task Force on Paperwork. The order recites that,

> One recommendation . . . was to the effect that the Commission define "facilities" requiring certificates under the Act so as to exclude minor installations or changes in connection with the rendition of service to existing customers or markets. [15 FPC 793, 794.]

The order goes on to say that the Commission has recommended to Congress that it be given authority to exclude certain facilities from certification requirements, and then proceeds as follows:

> In the meantime and as a substitute, the Commission advises any interested natural-gas company subject to the Natural Gas Act that it may file . . . a single certificate application covering in general outline along the lines of a budget estimate the proposed routine construction intended to be undertaken by it during the current or ensuing fiscal year, listing the facilities proposed, the estimated cost of each item, the capacity, purpose, and time of intended construction, customers affected by each facility proposed, effect of proposals upon gas supply and deliverability, rates, service, and other pertinent information. A hearing could then be held on such a proposal and a certificate issued in accordance with the general application. [*Id.*]

The application in Docket No. CP61–106 sought a certificate "authorizing the construction and operation of 'gathering' facilities as proposed herein." (Quotation marks around "gathering" added.) The application recited, *inter alia*, that,

> Applicant seeks "budget-type" authorization . . . to construct and operate such facilities as are necessary to enable it to receive deliveries of natural gas into its pipeline system during the calendar year 1961.

And further:

> During the present calendar year Applicant has substantially improved its over-all system gas supply. This has been made possible in part by the ability of Applicant to attach new reserves pursuant to its "budget-type" authorization [for 1960] to construct the necessary facilities without the time consuming requirement of obtaining specific authorization. . . .
>
> When granted, the authorization requested herein will relieve Applicant of the time and expense of preparing numerous relatively minor certificate applications, and the Commission and its Staff of the burden of processing such routine applications . . . .
>
> Upon the granting of the authorization herein applied for, Applicant agrees to submit, on or before March 1, 1962, a statement showing: (a) the names of fields connected, (b) an estimate of the gas reserves attached, (c) a general description of the facilities constructed, (d) the location of said facilities, (e) the cost of the facilities so constructed, and (f) the names of the independent producers involved, together with the respective dates of the gas sales contracts and the docket number of the producer applications.

By order of January 6, 1961, in the proceeding, the Commission issued a certificate authorizing Tennessee

> to construct and operate the proposed facilities to take natural gas from producers thereof during the calendar year 1961, all as more fully described in the application . . . .

With the above quoted facts and recitals before us, the conclusion plainly follows that the facilities necessary to attach to Tennessee's system the Bastian Bay reserves covered by the leases in question are not encompassed by such budget-type order. Facilities to attach the vast estimated volume of gas reserves, 759,350,000 Mcf, the right to which reserves Tennessee had just obtained at a cost to it (more or less) of $159,463,500, are not "minor installations" or "minor changes" in connection with the rendition of service, or "routine construction." Nor would an application seeking a certificate authorizing the construction and operation of such facilities be a "relatively minor certificate application," or a "routine application." Nor would the processing by the Staff of such an application be a "routine" matter—as witness (1) the action of the Commission in issuing its order of April 6, 1961, after the Commission, as set out in the order, was "informed that Tennessee has purchased oil and gas reserves developed by Pan American Petroleum Corporation in the Bastian Bay Field . . . for approximately $150,000,000, and that gas from these reserves is being delivered into the interstate transmission system of Tennessee by means of facilities which Tennessee states were constructed and are being operated" under the authorization of Docket No. CP61–106; (2) the hearing thereafter had and briefs filed herein; and (3) the instant decision. Substantially the same principal questions involved in this reopened proceeding would have been among the major questions presented if Tennessee had filed an application for authorization for the construction and operation of the facilities needed to attach the Bastian Bay reserves.

Moreover, the proposal stands to have a material effect upon Tennessee's rates. This proposition is established by an estimate of Tennessee (hereinafter considered) that at an assumed average daily production of 165,000 Mcf, the average cost to Tennessee of the Bastian Bay gas, over a 29-year period commencing in 1961, will range from 25.57¢ per Mcf to 40.59¢ per Mcf.

Furthermore, the January 6, 1961 order simply authorized Tennessee "to construct and operate" facilities; it did not authorize Tennessee to acquire any facilities for the transportation or sale of natural gas. And we have already seen that some of the facilities which Tennessee acquired from Pan American are facilities for the transportation and sale of natural gas in interstate commerce for resale.

Finally, such order authorized Tennessee to construct and operate facilities "to take natural gas from producers thereof." As hereinafter shown, upon the consummation of the Pan American-Tennessee transaction, Tennessee became the owner of the Bastian Bay gas reserves in question. Therefore, it has not, and is not, "taking" the natural gas "from producers thereof."

For these reasons, Tennessee cannot be heard to say that the budget-type order authorized its jurisdictional acts and operations related to the Bastian Bay field.

The Examiner concludes that Tennessee constructed and acquired, and is now operating, facilities subject to the Commission's jurisdiction, in violation of Section 7(c) of the Natural Gas Act.

Commission Order of April 6, 1961

Tennessee next objects to the Commission order of April 6, 1961, in Docket No. CP61–106. It avers that the Commission had no authority to reopen the proceeding for the reason that the certificate issued therein had become final and cannot be modified or altered.

Tennessee closes its eyes to the plain object and purpose of the April 6, 1961 order, which is entitled, "Order Reopening Proceedings and Fixing Date of Hearing." By the order, the Commission obviously did not intend to vacate or modify its earlier order of January 6, 1961, issuing the budget-type certificate to Tennessee, or to grant a rehearing. It has already been seen that what the Commission undertakes to do by the order of April 6, 1961, is to provide for a hearing in order to determine whether the January 6 budget-type authorization "covered the construction and operation of the facilities necessary to connect the Bastian Bay field reserves to Tennessee's system, and [t]he cost of making natural gas from such reserves available to the Tennessee system." As stated in the Commission's later orders of June 29, 1961, and March 12, 1962, in Docket No. CP61–106:

> By letter dated March 1, 1961, Tennessee asserted that the authority [to construct and operate Bastian Bay facilities] had been granted by the certificate issued in this docket. It is proper to give Tennessee an opportunity to demonstrate as much and it is simpler to do so by reopening this record than by establishing a new one.
>
> The basic purpose of these proceedings in Docket No. CP61–106 is to determine whether Tennessee has and is engaged in acts subject to our jurisdiction, in connection with the Bastian Bay Field, without having obtained such authorization as the Natural Gas Act requires.

If Tennessee, in its actions relating to the Bastian Bay Field, constructed or acquired facilities for the transportation or sale of natural gas in interstate commerce for resale, or is engaged in the transportation or sale of natural gas in interstate commerce for resale, then Tennessee was or is violating the Natural Gas Act—unless the acts and operations in question be within the authorization of the budget-type certificate. Manifestly, by its order of April 6, 1961, the Commission instituted an investigation to determine these questions. Section 14(a) expressly empowers the Commission to conduct such an investigation:

> The Commission may investigate any facts, conditions, practices, or matters, which it may find necessary or proper in order to determine whether any person has violated or is about to violate any provision of this act . . . .

The Commission could have assigned a new docket number to the investigative proceeding. The fact that it did not do so, but chose to conduct its investigation by employing the same docket number as that in the budget-type proceeding, and by reopening that proceeding, is inconsequential.

The method that the Commission adopted of instituting the investigation was within the broad ambit of its authority in procedural matters. In the order of April 6, 1961, the Commission found that the reopening of the Docket No. CP61–106 proceeding for the purpose of holding a hearing to make the determinations above stated, is "in the public interest." Section 16 of the Natural Gas Act confers upon the Commission "power . . . to perform any and all acts, and to . . . issue . . . such orders . . . as it may find necessary or appropriate to carry out the provisions of this act."

Tennessee has not been misled or prejudiced by the Commission's method of instituting the investigation, and has no cause for complaint.

United States v. *Seatrain Lines*, 329 U.S. 424, and *Civil Aeronautics Board* v. *Delta Airlines, Inc.*, 367 U.S. 316, cited by Tennessee, are not relevant. The former case simply held that under the circumstances there presented a certificate could not be revoked; and the latter case, that a certificate could not be changed in a manner not authorized by statute. Here, as already seen, the Commission, by its order of April 6, 1961, did not attempt to revoke or change the budget-type certificate; nor did it bring into question the validity or finality of such certificate.

Commission Jurisdiction over Tennessee's "Acquisition"

Lastly, Tennessee urges that the Commission has no jurisdiction over the "acquisition of the leases," claiming that Section 1(b) exempts the "lease transaction." It will be hereinafter shown that the transaction was in fact a sale of gas in place. So Tennessee's argument about a "lease transaction" is based upon a false premise, and is invalid.

Pan American Sold Bastian Bay Gas to Tennessee in Interstate Commerce for Resale without Having Secured Authorization, and without Having Filed Schedules, Required by Natural Gas Act

Tennessee is Engaged in Transportation and Sale of Bastian Bay Gas in Interstate Commerce for resale

It has been shown that Tennessee's claim is erroneous that certain facilities constructed by Pan American, and the 2.63-mile line which Tennessee constructed, are facilities for gathering; and that such facilities are in fact transportation facilities. Pan American asserts that Tennessee's Muskrat line, more particularly referred to below, and through which Tennessee's Bastian Bay gas moves, is a gathering line.

Except as to the foregoing facilities, Tennessee and Pan American do not claim in their briefs that Tennessee is not engaged in the transportation and sale of the Bastian Bay gas in interstate commerce. At the hearing, however, Tennessee was not willing to say that it is transporting and selling Bastian Bay gas in interstate commerce.

Findings should be made on these points.

It has already been seen that Bastian Bay gas flows continuously from the field, in the 2.63-mile line, into the Muskrat line.

The evidence shows that the latter facility is a combined 20- and 24"-line, "several hundred miles" in length, that runs at the edge of and parallel to the Gulf of Mexico. Its function is to transport natural gas destined for markets. The reasons above given, and authorities cited, which led to the conclusion that the line from the terminus of the central collection point to the Tennessee plat-

form, and the 2.63-mile line, are not gathering lines, but transportation lines make manifest the fact that the several-hundred-mile-long-20- and 24''-Muskrat line, likewise is not a gathering line but a transportation line. In its brief, Tennessee, itself, says that it has "major gas transportation facilities in the immediate vicinity of Bastian Bay," which description apparently refers to the Muskrat line, *inter alia*.

The evidence establishes the facts recited in the ensuing two paragraphs, *viz:*

Some 5 or 6 miles west of the connection of the 2.63-mile line with the Muskrat line, a 30'' Delta-Portland line of the Tennessee Company commences at a connection with the Muskrat line and extends northward through Louisiana, Mississippi and a corner of Alabama, to Centerville, Tennessee; thence a continuation of the Delta-Portland line ties into the main transmission system of the Tennessee Company at a point in Tennessee near the Kentucky border. Tennessee's main transmission system extends thence to the Kentucky border, and thence through Kentucky, West Virginia, Ohio, Pennsylvania, New York, New Jersey, Massachusetts, New Hampshire, Rhode Island and Connecticut; in all of which states Tennessee sells natural gas, transported in its system, to other companies for resale.

When the Bastian Bay gas enters the Muskrat line, it becomes commingled with other volumes of gas in such line; and the continuous flow keeps up on into the Delta-Portland line, where the Bastian Bay gas become commingled with still additional volumes of gas; and Bastian Bay gas is carried northward in such line, as part of a commingled, homogeneous mass. There is a continuous movement of the stream of gas in the Muskrat and Detla-Portland line, and the continuation of the latter line, on into the main system of the Tennessee Company; where the stream becomes commingled with still other volumes of gas.

The Examiner takes notice, as a matter of specialized knowledge of the operation of natural-gas transmission pipelines, or else as a matter of general knowledge (see *e.g.*, *Deep South Oil Co. of Texas* v. *Federal Power Commission*, 247 F. 2d 882, 887–88), that there is a continuous movement of the volumes of gas in the main system of the Tennessee Company, through Tennessee, Kentucky, West Virginia, Ohio, Pennsylvania, New York, New Jersey, Massachusetts, New Hampshire, Rhode Island and Connecticut, to areas of ultimate consumption in those states. Tennessee sells the gas transported northeastwardly from the point in Tennessee where the volumes of gas in the extension of the Delta-Portland line enter its main transmission system, to numerous customers of Tennessee in the states above mentioned.

Tennessee produced as a witness a senior planning engineer in its employ, experienced in pipeline and compressor station construction, and in the design of pipeline facilities. This witness, on cross-examination, averred that the gas form his comany's Bastian Bay leases went as far as the first sales point on the Delta-Portland line, but that from there, "I have no way of knowing where the Bastian Bay goes." The witness further testified as follows:

> PRESIDING EXAMINER: Aren't you willing to say that that gas, except for such—Bastian Bay gas I am talking about—except for such minor portions thereof which may be used for fuel, continues on to points of ultimate consumption in the states other than Louisiana which I specified in my previous question to you [Tennessee, Kentucky, West Virginia, Ohio, Pennsylvania, New York, New Jersey, Massachusetts, New Hampshire, Rhode Island and Connecticut] or in some of those states? The WITNESS: Possibly.

PRESIDING EXAMINER: Well, as a practical matter you know that to be a fact, don't you, sir? The WITNESS: If it says [stays] homogeneous, yes, sir, and it is not pulled out as such I would assume that would happen.

The witness also testified that after a methane molecule of Bastian Bay gas is commingled with other methane molecules, there is no way of tracing the molecules to find out just where each one goes.

The molecules of Bastian Bay gas having become commingled with the molecules of gas from other sources in Tennessee's system, the inference seems to be justified, and the Examiner finds, that Bastian Bay gas is a part of the particular volume of gas which Tennessee delivers at each point of distribution on its main system, from the point where the extension of the Delta-Portland line ties into the main transmission system, northeastward to the terminus of the system. *Cf., Deep South Oil Co. of Texas*, 14 FPC 83, 85–86. There the Commission held that natural gas from a particular source was sold in interstate commerce, where such gas was commingled with natural gas from other sources, and the commingled gas, in whole or in part, was sold to interstate pipeline companies which transported the commingled mass purchased by them across state lines for ultimate public consumption.

Moreover, the Tennessee Company witness, on cross-examination, in attempting to cast doubt upon the proposition that Bastian Bay gas enters the main system of his company in the State of Tennessee, made concessions the effect of which is to establish that said company sells Bastian Bay gas in interstate commerce. The witness testified that Bastian Bay gas might not reach the main system because all of it might be disposed of (1) to customers to whom the Tennessee Company sells gas at points on the Delta-Portland line and on the line extending therefrom that connects with the main system, and (2) for fuel usage in the compressors on such two lines. In impliedly accepting the proposition that Bastian Bay gas either goes to the customers who take gas from these two lines, or else enters the main system, the witness conceded facts which show that the Tennessee Company sells gas in interstate commerce. For the Tennessee Company's sales from the Delta-Portland line and the extension thereof, just as are the sales from the main system, are all sales in interstate commerce for resale. The sales are to four companies at points on the two lines as follows: to Transcontinental Gas Pipeline Corp., at a point in Mississippi; to Alabama-Tennessee Natural Gas Co., at a point in Alabama; and to East Tennessee Natural Gas Co. and Tennessee Natural Gas Lines, Inc., at points in Tennessee.

It apparently occurring to the witness that the sales to these companies are made in interstate commerce, he said, ". . . by some odd chance it could be that all your fuel would be Bastian Bay gas." This speculation is of no avail. There are nine compressors on the Delta-Portland line and the extension thereof. Although at the time of the hearing, the production from the Tennessee Company's Bastian Bay reserves had only been from 40,000 Mcf per day to 55,000 Mcf per day, it would seem that even these volumes are way over the quantity of gas that would be consumed as compressor fuel. The witness did not say, nor did the Tennessee Company attempt to prove, that the compressor fuel usage would be anywhere near as much as such volumes. Also, the Examiner disregards the fanciful hypothesis that all the Bastian Bay gas becomes compressor fuel, as being of no probative value.

The Examiner finds and concludes that in addition to the sale of volumes from its main system which are in part Bastian Bay gas, Tennessee, at the aforementioned points on the Delta-Portland line and the extension thereof, sells a commingled, homogeneous mass of gas, made up in part of gas from the

Bastian Bay field, to Transcontinental, Alabama-Tennessee, East Tennessee, and Tennessee Natural.

The Examiner further finds and concludes that by reason of the foregoing operations and acts, Tennessee is engaged in the transportation and sale for resale of Bastian Bay gas in interstate commerce.

Pan American Sold the Gas in Bulk to Tennessee in Interstate Commerce

The oil, gas and mineral leases which Pan American purportedly assigned to Tennessee are not in evidence. But manifestly, the leases at least gave Pan American the right, to the extent of its leasehold interests, to produce all the oil and the gas "from the surface of the earth to the depths of the deepest presently known productive horizons." For the "Assignment and Conveyance" "assigned" to Tennessee, Pan American's oil and gas leasehold interests to such depths; and said instrument defines the "Leasehold Interests Assigned" as "The leasehold interests . . . in and to the oil, gas, separator liquids and natural gas liquids in and produced from all formations under the lands [to the depths of the deepest presently known productive horizons]." Also, the "Lease Sale Agreement" between Pan American and Tennessee treats Tennessee as thereby becoming entitled to all known recoverable reserves of gas attributable to the net leasehold interests "assigned."

The record is clear that Tennessee, as "assignee" of the leases, has the exclusive right to produce all of the known recoverable reserves in the lands covered by the leases attributable to the net leasehold interests "assigned." In the "Assignment and Conveyance," Pan American warrants the title to the leasehold interests assigned. In the "Lease Sale Agreement," the parties stipulated "that the quantity of recoverable reserves of gas attributable to the net leasehold interests assigned . . . is 759,350,000,000 cubic feet, . . ." Tennessee agreed to purchase such "net leasehold interests" for $159,463,500. At the stipulated total volume of recoverable reserves of 759,350,000 Mcf, this sum equates to 21¢ per Mcf. In the negotiations which finally resulted in the execution of the "Lease Sale Agreement" and the "Assignment and Conveyance," Tennessee was at first acting as agent for Southern California Edison Co., which was considering the purchase from Pan American of the Bastian Bay gas. Pan American made an offer to sell the leases at such sum as would result in a purchase price of 21¢ per Mcf for the gas; and Tennessee's representatives stated that if Edison did not enter into a contract with Pan American, Tennessee would like to purchase the gas upon the same basis. Clearly, the parties intended that the price of $159,463,500 would give Tennessee the right to produce the entire 759,350,000 Mcf.

Also, the parties further agreed that some years hence a redetermination of the quantity of recoverable reserves could be made; and that such adjustment in the purchase price of $159,463,500 for the "leases" would be made as to retain a price for the gas of 21¢. Obviously, this agreed-upon arrangement contemplated the production by Tennessee of all of the recoverable gas reserves attributable to the net leasehold interests, to the depths above specified.

It is also to be noted in this connection that the "Assignment and Conveyance" provides that when a leasehold interest assigned is "no longer productive," Tennessee shall either reassign the leasehold interest to Pan American, or join with Pan American in releasing the leasehold interest to the lessor.

By the terms of the agreements, Tennessee is to pay Pan American a stipulated consideration; and Tennessee is obligated to develop the properties.

Moreover, it is plain from the evidence that in entering into the "Lease Sale Agreement," the purpose of Pan American was to sell gas, and the purpose of Tennessee was to purchase gas. The senior vice president of Tennessee

in charge of gas supply, who participated in the negotiations between Tennessee and Pan American, himself, substantially admits as much (italics added):

> From the very outset of our negotiations, Pan American made it clear that the only type of agreement in which it had any interest was for a sale of leases. Pan American was not interested in a gas sales contract. Thus to obtain this gas, any prospective purchaser had to agree to a purchase of the leases. So far as Tennessee was concerned, an acquisition of leases was desirable . . . . [Tr. 204.]
>
> Our original negotiations *for the Bastian Bay gas* were prosecuted as agent for Southern California Edison Company of Los Angeles. At that time Edison was attempting *to purchase the Bastian Bay gas* which could be produced into the Tennessee pipeline system, and Tennessee was to deliver from its South Texas system to a pipeline serving Edison an equal daily volume of gas . . . . [Tr. 205.]
>
> As I recall, in this meeting representatives of Pan American . . . stated that 21 cents was the lowest price that they would consider *for the purchase of this gas* in the manner in which it has been bought . . . .
>
> We, Tennessee, told Pan American at that time, in the event Edison did not *buy the Bastian gas* at that price, and under the conditions which were discussed at that meeting, that we would like to *puchase such gas* upon the same basis for Tennessee Gas.
>
> As events changed, we turned out to be the buyer. [Tr 207.]

In addition, as pointed out by the Staff and The United Gas Improvement Co., the "Lease Sale Agreement" includes the essential provisions of a gas sales contract. It has been seen that the amount which Tennessee agreed, subject to redetermination, to pay Pan American, $159,463,500, was arrived at on the basis of the estimated gas reserves priced at 21¢ per Mcf. This sum was not a flat purchase price. The amount which Tennessee will actually pay is geared to 21¢ times the volume, in Mcf, of gas reserves as estimated upon a redetermination to be made years hence, when that volume can be arrived at within close limits of accuracy.

It is true that the gas will be produced over a minimum period of from 22 to 24 years, and that Tennessee's estimated operation schedule calls for production over a 29-year period; whereas Tennessee will have paid the entire purchase price, in annual installments, by the end of 17 years. But this situation is analogous to that which stands to result from the take-or-pay, or prepayment, provisions commonly found in present-day gas-purchase sales agreements, where there is, in the words of The United Gas Improvement Co., "the sale on a per Mcf basis over an extended period of time of natural-gas reserves to be produced from a specific area, with payments being made periodically," even though a proportionate volume of reserves has not been taken.

It is also true that in the ordinary gas-purchase sales agreement, the seller operates and develops the field; whereas by the instant agreements, Tennessee operates, and is to complete the development of, the field. This factor is immaterial, since Tennessee is to be reimbursed for the great burden, and perhaps all, of its costs and expenses of development and operation. (See *supra*, page 1490, for summarization of the pertinent provisions of the "Lease Sale Agreement.") An expert witness for Tennessee prepared an estimate over a 29-year period of (1) the investment that Tennessee would incur in completing the development of the property; (2) the operation and maintenance expenses that Tennessee would incur; (3) the separator liquids, or condensate, revenues; (4) the portion of the condensate revenues that would be due to Pan American under the "Lease Sale Agreement;" and (5) the portion of such revenues that would be retained

by Tennessee under the agreement. The Tennessee witness came up with the following figures for the 29-year period:

Net capital investment, representing Tennessee's contribution in developing the field ($12,115,200 minus $4,713,000)	$7,402,200
Operating and maintenance expenses	28,251,700
Total outlay by Tennessee	35,653,900
Estimated condensate revenues	40,209,000
Portion of condensate revenues to be due to Pan American	6,426,000
Portion of condensate revenues to be retained by Tennessee	33,783,000

Assuming that the results of the actual operations will accord with the estimates, Tennessee will fail, by $1,870,900, to receive reimbursement for its total outlay of $35,653,900:

Total outlay by Tennessee	$35,653,900
Portion of condensate revenues to be retained by Tennessee	33,783,000
Unreimbursed amount	1,870,900

But no one can predict with exactness what sum Tennessee will receive from the condensate revenues. A principal feature of the uncertainty is the question of the division of such revenues between Tennessee and Pan American. To the extent that the portion of the condensate revenues to become due to Pan American is greater or less than that set out in Tennessee's projection, the portion to be retained by Tennessee will be less or greater. According to the projection, Pan American would receive its portion of the condensate revenues from the sixth through the twelfth years of the 29-year period. A projection over a 29-year period cannot be precise; nor can that portion thereof be precise covering the sixth to the twelfth years. Tennessee's expert witness who prepared the projection readily said that if an increase in condensate revenues in the earlier years was due to larger production than that employed in making the exhibit, and everything else remained the same, then Pan American would receive more of the condensate revenues than shown in the estimate, and Tennessee would retain less; that "Of course, the opposite is true, too. My guess would be the opposite would be more likely to prevail, . . ." It would not take much difference in the rate of production, during the sixth-to-twelfth-year period, from that employed in the exhibit to wipe out entirely the unreimbursed portion of Tennessee's outlay for production and gathering.

Apparently in entering into the "Lease Sale Agreement" the parties came as close as they could by their estimations to achieve the result of Tennessee having the Bastian Bay gas at 21¢ per Mcf free and clear of production and gathering costs and expenses.

The foregoing facts establish that the "Lease Sale Agreement" and the "Assignment and Conveyance" constitute a sale to Tennessee of the gas in place. "The character of an instrument depends upon its effect, since courts look to the real nature of an agreement, and not at all upon what the parties call it . . . not only the terms of an instrument, but the surrounding circumstances and the situation of the parties will be examined. 'Conduct and purpose have a quality imprinted on them by the law,' *Shapiro* v. *Wilgus*, 287 U.S. 348, 357." *Cook* v. *Ball* (C.C.A. 7), 144 F. 2d 423, 431, certiorari denied 323 U.S. 761. Where a "lease" gives an exclusive right in the "lessee" to mine all the minerals, and the "lessee" must pay either a stipulated consideration or is compelled to extract all of the minerals, the transaction is a sale of the minerals in place. *Hummel* v. *McFadden* (Pa.), 150 A. 2d 856, 860, and cases cited note 7; *National Coal Co.* v. *Overholt* (W. Va.), 94 S.E. 735, 737–38; *Kennedy* v. *Hicks* (Ky.), 203 S.W. 318;

cf., Texas Eastern Transmission Corp., F.P.C. Opinion No. 378, 29 FPC 249. If a so-called "lease" of such character be a sale of gas in place, then manifestly a so-called "assignment of lease" vesting such right in and imposing such obligations on the assignee, is a sale of gas in place to the assignee.

Even if in Louisiana or some other jurisdiction, the law be different from that laid down in the foregoing cases, in our opinion the rule of such cases should prevail in the instant proceedings for three reasons. First, the rule, it seems to us, is sound; especially where, as here, it is apparent that the parties intended to consummate a transaction, under the guise of an "assignment of leases," that would, in effect, be a sale of the gas.

Second, the transaction is indisputably, in practical effect, a sale of gas in interstate commerce for resale; and regulation of the sale is necessary in order to carry out "the overriding congressional purpose" of Congress in the adoption of the Natural Gas Act. Such purpose, and the necessity for regulation of the sale in order to achieve the purpose is made clear by decisions of the United States Supreme Court. In *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, 682–84, the Court said:

> . . . we believe that the legislative history indicates a congressional intent to give the Commission jurisdiction over the rates of all wholesales of natural gas in interstate commerce, ... There can be no dispute that the overriding congressional purpose was to plug the "gap" in regulation of natural-gas companies resulting from judicial decisions prohibiting, on federal constitutional grounds, state regulation of many of the interstate commerce aspects of the natural-gas business. A significant part of this gap was created by cases holding that "the regulation of wholesale rates of gas and electrical energy moving in interstate commerce is beyond the constitutional power of the states." . . . The committee reports on the bill that became the Natural Gas Act specifically referred to two of these cases and to the necessity of federal regulation to occupy the hiatus created by them. Thus, we are satisfied that Congress sought to regulate wholesales of natural gas occurring at both ends of the interstate transmission systems.

And in *Federal Power Commission* v. *Transcontinental Gas Pipe Line Corp.*, 365 U.S. 1, 19, speaking of regulation of natural-gas companies, the Court said: ". . . it is . . . clear that Congress did not desire that an important aspect of this field be left unregulated."

Third, the transaction should be considered to be a sale of gas and not a mere assignment of leases in order to give a uniform application to the nation-wide regulation that the Natural Gas Act effects. Since "the paramount interest" in sales for resale in interstate commerce is "national," there should be uniformity in their regulation. One of the cases that led to the enactment of the Natural Gas Act was *Missouri* v. *Kansas Gas Co.*, 265 U.S. 298. Treating of a wholesale sale in interstate commerce, the Supreme Court there said, at pages 309–310, "The paramount interest is not local but national, admitting of and requiring uniformity of regulation." See also the *Phillips* case, *supra*, 347 U.S. at page 680. And note the following language, at page 681 of the *Phillips* decision: ". . . the jurisdiction of the Federal Power Commission was not intended to vary from state to state, ..."

In *Petroleum Exploration* v. *Commissioner of Internal Revenue* (C.C.A. 4), 193 F. 2d 59, the lessees in an oil and gas lease, covering certain acreage in Illinois, assigned the instrument to an oil company, and the assignee company, through drilling operations, discovered oil on the premises and thereafter the lessees and the assignee sold their interest in the property to another oil company. The Court of Appeals noted that "the decisions of the state courts in oil-producing states are somewhat at variance;" and held that under what in

its opinion was the correct rule to be applied, the lease, when executed, merely gave the lessees an option to explore the premises and vested no estate in them to any oil underlying the lands (p. 63); but that when oil was discovered, "a new property was brought into being, consisting of the oil in place beneath the surface of the premises" (p. 62); that the lessees thereupon "acquired a new term for as long as the oil should be produced, for a new consideration, the one-eighth royalty thereof;" and that what they "actually and really sold was their interest in the oil in place" (p. 63). In so holding, the court made use of the following language at page 62 (quoted with approval in *Texas Eastern Transmission Corp.*, Opinion No. 378, *supra*):

> The Supreme Court has made it clear that, regardless of the form of a transaction and the recondite niceties of the local art of property and conveyancing, it will, to give a uniform application to a nation-wide scheme of taxation, appraise the transaction according to its economic and practical consequences [citing cases].

So here, in order "to give a uniform application to" the "nationwide scheme of" regulation under the Natural Gas Act, the transaction in question should be held to be a sale of gas.

Pan American correctly points out that in Louisiana the execution of an oil and gas lease does not convey title to any oil and gas that may be found beneath the surface of the land, but merely clothes the lessee with the right to extract oil and gas. In this respect the law of Louisiana differs from that of Texas, New Mexico and some other oil-producing states, where the courts have repeatedly held that an oil and gas lease is a present conveyance of the oil and gas under the premises. See, *e.g.*, *Gulf Production Co.* v. *Warren* (Tex. Civ. App.) 99 S.W. 2d 616, certiorari denied 302 U.S. 707; *Staplin* v. *Vesely* (N.M.), 72 P. 2d 7, 8.

Relying upon the law in Louisiana, Pan American contends that it could not make a sale of the gas by the execution of the instruments in question because it had no title to convey. This contention is without merit. After Pan American acquired the leases it proceeded to discover the gas and oil reserves involved in the "Lease Sale Agreement" and "Assignment and Conveyance." Upon the authority of the *Petroleum Exploration* case, *supra*, and in order to achieve uniformity of regulation under the Natural Gas Act, the Examiner holds that since Pan American had discovered the gas before it entered into the "Lease Sale Agreement" and "Assignment and Conveyance," it could, and did, by said instruments, sell to Tennessee the gas reserves attributable to its "net leasehold interests."

Next, Pan American argues that it cannot be held to have made a sale of natural gas to Tennessee in interstate commerce for the reason that its transaction with Tennessee was consummated before the wells were connected to Tennessee's system and before the gas started moving in interstate commerce. This claim is likewise without merit.

The evidence establishes, and the Examiner finds that Tennessee sought and obtained the Bastian Bay gas for its interstate markets; and that when Pan American and Tennessee conducted the negotiations, respecting the Bastian Bay reserves, which were consummated in the execution of the "Lease Sale Agreement" and "Assignment and Conveyance," Pan American was well aware of Tennessee's object and purpose in wanting the gas. The senior vice president of Tennessee in charge of gas supply, who, as has been stated, participated in the negotiations between Pan American and Tennessee, testified that Tennessee acquired the Bastian Bay leases in furtherance of Tennessee's efforts to meet requirements respecting its gas supplies that the Federal Power Commission had

imposed on said company. Such requirements could only pertain to the transportation and sale by Tennessee of natural gas in interstate commerce. The witness further said that Tennessee also acquired the reserves in order to augment its overall gas supply; that "for Tennessee to maintain its position as a major supplier of natural gas to the market area it serves, it had no alternative but to maintain a continuous program of gas acquisition."

It has been seen that Pan American made it clear in the negotiations that the only type of agreement in which it had any interest was for a sale of leases. Manifestly, Pan American's purpose in taking this position was to endeavor to avoid Federal Power Commission jurisdiction over the transaction as a sale of gas in interstate commerce for resale. These considerations establish that Pan American knew that if Tennessee acquired the Bastian Bay gas, the latter company would transmit and sell such gas in interstate commerce for resale.

Still additional evidence compels the same conclusion. It has been shown that a segment of Tennessee's interstate transmission system was but two and a half miles from the central point of the Bastian Bay field collection system.

Moreover, the record shows that at the time the negotiations between Pan American and Tennessee were conducted, there was, and now is, no market in Louisiana for the gas which Tennessee sought and obtained; and consequently that there was, and is, no place for the gas to go except out of the state. The estimate of the gas reserves, as agreed upon between Pan American and Tennessee (subject to redetermination), is the immense volume of 759,350,000 Mcf; and the evidence shows that Pan American was of the view at the time the transaction was entered into, that the volume might be as much as 938,000,000 Mcf. The evidence shows that the intrastate market which United serves has absorbed only 12,000 Mcf per day of Bastian Bay gas; and that at the time of the Pan American-Tennessee negotiations, United proposed, and still proposes, to sell the bulk of its Bastian Bay gas in interstate commerce. Further, a Tennessee witness, himself, said that at the time of such negotiations, Tennessee had, and now has, no market in Louisiana for any of the Bastian Bay gas. Tennessee is even flaring casinghead gas produced from the properties affected by the leases, pending the installation of a compressor to discharge such gas into its interstate transmission system.

Lastly, it has been noted that immediately after the contracts with Pan American were consummated, Tennessee proceeded to connect the Bastian Bay reserves to its interstate transmission system; and since February 3, 1961, has in fact been taking the Bastian Bay gas into such system.

Clearly, at the time the contracts were consummated, the gas, to the knowledge of Pan American, was destined for movement in interstate commerce for resale.

The law is settled that the sale of an article or commodity destined at the time of sale for movement in interstate commerce is an inseparable part of interstate commerce, and is a sale in interstate commerce. *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U.S. 282, 290–91; *Lemke* v. *Farmers Grain Co.*, 258 U.S. 50, 54–55; *Currin* v. *Wallace*, 306 U.S. 1, 10. (These three cases are cited approvingly in the jurisdictional case, *Interstate Natural Gas Co.* v. *Federal Power Commission*, 331 U.S. 682, 688, note 10.)

Pan American also argues, upon the authority of *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.*, *supra*, 337 U.S. 498, that the transaction between Pan American and Tennessee is beyond the coverage of the Natural Gas Act. This argument must be rejected, for the reason that the case is not applicable. It merely held that the sale by a natural-gas company of undeveloped gas leases is not subject to the Commission's jurisdiction under the Act.

The Court was not there faced with a situation, as here, where, under the guise of a sale of leases, a company has effected a sale of gas in place, in interstate commerce. In the *Panhandle* case the question was not even raised whether the transfer of gas leases was in fact a sale of gas. Even if the Court had considered such question and had ruled that the transfer was a sale of gas, the transaction there involved would not have been jurisdictional for such reason; because the gas was to be moved only in intrastate commerce. "Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents." *Webster* v. *Fall*, 266 U.S. 252, 256. Also see the treatment of the *Panhandle* case in *Texas Eastern Transmission Corp., supra*, pp. 254–255; and in an Examiner's decision in *Tennessee Gas Transmission Co.*, Docket No. G–14562 (issued January 8, 1962), pp. 17–19, [not reported; see 29 FPC 4].

The Examiner has considered the many other cases that Pan American and Tennessee cite on the foregoing questions. The cases either are inapplicable or else militate against the position of said parties, except as they serve to refute the contention of staff counsel that Pan American is engaged in a continuing sale of gas. Mention should perhaps be made of *Public Service Commission of New York* v. *Federal Power Commission*, 287 F. 2d 143. There, the Staff did not contend that the "acquisition of leases" involved in that case were in fact jurisdictional sales (287 F. 2d at p. 145), nor was such question otherwise raised. Nor did the court rule upon the question. Hence the holding in the *Public Service Commission* case does not contravene the conclusion here arrived at that the Pan American-Tennessee transaction was a jurisdictional sale of gas. *Webster* v. *Fall, supra.*

There is nothing in the legislative history of the Natural Gas Act which Pan American cites that contravenes the Examiner's finding and conclusion that Pan American has made an in-place sale of natural gas to Tennessee in interstate commerce for resale.

Pan American Has Not Procured Necessary Authorization

Concededly, Pan American has procured no authorization for the sale of Bastian Bay natural gas to Tennessee, or filed any schedule therefor, pursuant to the Natural Gas Act.

Contention of Staff and Pennsylvania Public Utility Commission

As above indicated, the Staff and the Pennsylvania Public Utility Commission contend that, subsequent to the consummation of the Pan American-Tennessee transaction, Pan American has been and is today selling the Bastian Bay gas in interstate commerce to Tennessee. The Examiner is of the opinion that this position is not valid. The claim is refuted by the Examiner's conclusion that Pan American made a sale of gas in interstate commerce to Tennessee in place, and by the facts and law which support such conclusion.

Cost of Making Reserves Available to Tennessee System

Uncertainty exists as to what the cost will be of making the Bastian Bay reserves available to the Tennessee system. The evidence shows that the costs will vary substantially depending upon the rate of production, and that the future rate of production is an unknown quantity. The maximum sustained rate consistent with sound engineering practice is 240,000 Mcf per day, as long as well pressures permit; but more flexibility can be obtained if the gas is produced at a lesser rate and also deliverability can be maintained for a longer period. According to the evidence, Tennessee desires for the Bastian Bay reserves to be a flexible source of supply. One of its officers testified that flexibility is an

advantage of the Bastian Bay supply because by such supply Tennessee can meet fluctuations in needs for gas caused by operating conditions and the "take-or-pay" requirements of gas purchase contracts. This testimony is offset in measure by evidence introduced by the Consolidated Companies that allowables fixed by the Louisiana Department of Conservation limit the extent to which flexibility in the production of the Bastian Bay reserves can be achieved.

The Staff, in their initial brief, have set out clearly the estimated cost, and bases therefor, of making the Bastian Bay reserves available to the Tennessee system as reflected in Tennessee's cost-of-service study, Exhibit 12; also Tennessee's estimated costs at certain different rates of production than the rate assumed in Exhibit 12. The Staff make certain comments with reference to the estimates, with which the Examiner generally agrees. Tennessee, in its reply brief, takes no exception to the analysis and comments of the Staff. The Examiner quotes from, and adopts, most of such portion of the Staff's brief, with modifications contained in the words and figures in parentheses:

> Tennessee presented one cost of service study (and the results of four others) estimating unit costs of Bastian Bay at various assumed rates of production. We think such estimates meet the requirements of the Commission's orders and furnish a background for understanding the workings of the Bastian Bay transaction. The basic cost of service study (Ex. 12) assumes sustained average daily production of 165,000 Mcf of raw gas per day so long as the field can produce at that rate. At that production rate Tennessee estimates the weighted average cost over the life of the field would be 31⅓ cents per Mcf (. . . including severance tax at 2.3 cents per Mcf), and the average cost in each year would be:

Year	*¢/Mcf*	*Year*	*¢/Mcf*	*Year*	*¢/Mcf*
1961	34.09	1971	30.64	1981	37.83
1962	29.97	1972	30.23	1982	39.64
1963	25.57	1973	30.36	1983	39.90
1964	26.56	1974	31.05	1984	39.43
1965	27.40	1975	32.14	1985	36.10
1966	31.18	1976	32.82	1986	35.74
1967	31.33	1977	35.28	1987	36.08
1968	31.42	1978	37.12	1988	37.97
1969	31.39	1979	37.25	1989	40.59
1970	31.25	1980	37.41		

> Tennessee estimates the weighted average cost over the life of the field at the various assumed rates and sustained average daily production are:

Daily Raw Gas Production Mcf/day at 14.73 psia	*Weighted Avg. Cost ¢/Mcf/at 15.025 psia*
240,000	26.13
200,000	27.74
165,000	31.33
100,000	39.39
40,000	79.13

> Tennessee's cost figures are necessarily estimates. Definitive conclusions regarding the estimated cost of service (Ex. 12) are neither necessary nor appropriate here since this is not a rate or accounting case. But the methods used in deriving Tennessee's cost estimates do help elucidate how the Bastian Bay arrangement works.

Tennessee's gas reserves estimate is somewhat lower than the 759,350 MMcf . . . agreed upon in . . . the Lease Sale Agreement as the recoverable reserves of gas attributable to the net leasehold interests assigned. Assuming that a gas reserves redetermination under . . . the Lease Sale Agreement would arrive at the current Tennessee estimate, Tennessee adjusted the $159,463,500 purchase price in accordance with the provisions . . . of the Lease Sale Agreement as follows:

$$\$159,463,500 \times \frac{692,981 \text{ MMcf}}{759,350 \text{ MMcf}} = \$145,526,000.$$

The 759,350 MMcf is the figure agreed upon in the Lease Sale Agreement; and 692,981 MMcf is the redetermined reserve estimate, ...

In its [exhibit,] Tennessee capitalized the recomputed amounts for down payment and note payments to Pan American in the year when [, according to the exhibit,] cash payments would actually be made.

Tennessee's [exhibit] also capitalized [$12,115,200, rounded to] $12,115,000 [, which on the face of the exhibit might be interpreted to represent] estimated costs of additional development. [The $12,115,000, however, should be reduced by $4,713,000; for the witness who prepared Exhibit 12 testified, in explaining the exhibit, that, "The amounts of depreciable property include $4,713,000 of property already installed in the field" by Pan American. Necessarily, Tennessee will not be obligated to expend the $4,713,000, which is part of the $12,115,000.] Under the Lease Sale Agreement and Tennessee's estimates [all or nearly all of the difference, $7,402,000, is to be], borne . . . by deductions from Pan American's liquid revenues. [See pages 1504–1505, *supra*.] Nonetheless, Tennessee treated [the items making up the $12-115,000] as rate base items and included amortization of such costs in its estimated cost of service. Tennessee treated the anticipated reimbursements (or income) out of separator liquids revenue as credits to its estimated cost of service.

Combining the down payment with the [$12,115,000] and payments on the notes (after allowing for redetermination of gas reserves) Tennessee arrived at a gross investment of [$157,641,000] over the life of the field. Items for depreciation, depletion and amortization of such investment enter the cost of service, as does a ['pre-tax'] return . . . calculated at 11% [on net investment]. Tennessee is claiming such return on well-mouth properties in current rate cases in lieu of the more usual allowance for return plus federal income taxes. Tennessee says the results under either method are fairly similar. (However, under the 'pre-tax' return we lose sight of the intangible development cost tax deductions which will be generated for Tennessee in Bastian Bay.)

Tennessee has also estimated its operation and maintenance expense over the life of the field and its royalty expense, based on 25 cents per Mcf . . . for 26.2539% of the gas. (This average royalty burden is more than double the usual ⅛ royalty.)

Tennessee treated as credits to its cost of service the deductions to meet operating and development costs which it subtracts from Pan American's retained condensate revenues; the condensate revenues anticipated after Pan American's production payments expire; and the estimated reimbursement for plant fuel. (Estimated revenues if any for crude oil, after Pan American's oil payment expires, do not appear in the cost of service.)

Tennessee's total estimated cost over the life of the Bastian Bay Field breaks down as follows:

Item	Amount
1. Depletion and depreciation of down payment and notes	$145,526,000
2. Royalty expense	60,299,000
3. Pre-tax return	59,653,000
4. Operation and maintenance	28,251,700
5. Depreciation and amortization of further development costs	12,115,000
6. Condensate revenues retained by Tennessee—Credit	(33,783,000)
7. Reimbursement for plant fuel—Credit	(4,404,000)
Total net cost of service	267,657,700

The basic reasons for Tennessee's high estimated costs at Bastian Bay are (a) the high payments to Pan American amounting to 21 cents per Mcf of net interest gas, (b) the high royalty payments agreed to by Tennessee amounting to 25 cents per Mcf as produced, and (c) the return and tax allowance which may be claimed on the large prepayments accumulated as a result of paying Pan American much more quickly than the gas is produced. Items (a) and (b) represent, for each Mcf . . .:

21¢ for .737461 Mcf=15.486681¢
25¢ for .262539 Mcf= 6.563475¢
1.0 Mcf for 22.050156¢

When we add the Louisiana severance tax of 2.3 cents per Mcf (which is payable by Tennessee on all volumes produced) we arrive at a cost in excess of 24.35 cents per Mcf—before allowing for the added cost of prepayments.

Pan American's Investment in Bastian Bay Field

The Examiner finds that Pan American's total original investment applicable to the Bastian Bay leases, as recorded in its books and records, amounts to $16,448,673.50 broken down as follows:

Leasehold	$3,947,519.05
Well Tangibles	3,411,615.35
Well Intangibles	7,785,680.39
Lease Equipment	658,717.84
Related Field Facilities	645,140.87
	16,488,673.50

These amounts represent direct expenditures which are capitalized under Pan American's accounting system, and consist of the following: leasehold (capitalized costs of lease acquisitions, including bonus payments to lessors, charged directly to, and recorded in, leasehold accounts, together with capitalized geological and geophysical expenditures), well tangibles, well intangibles, lease equipment, and related field facilities.

The investment figure of $16,488,673.50 does not include allocated portions of expenditures capitalized but recorded in other accounts that may be deemed related thereto, for exploration department investment, district office investment, division office investment, and general office investment. Nor does such investment figure include restated or allocated portions of the following types of expenditures incurred in exploration and development operations which, under Pan American's accounting system, are recorded as operating expenses: development and exploratory dry hole costs; rentals, including delay, gas-well and minimum royalty payments; geological and geophysical expenditures not capital-

ized; cancelled and surrendered acreage; tangible and intangible costs applicable to cancelled well locations; general and division office operating expenses; district office exploration department operating expense; option expense; contributions to development; and taxes (other than income taxes). (The Examiner expresses no opinion as to whether a restatement of these items of operating expense as capital items would be justified or proper; he is here merely summarizing the evidence as to what the $16,488,673.50 does and does not comprise.) Nor does the $16,488,673.50 encompass an allocated portion of company working capital, including materials and supplies.

The Examiner further finds that the related reserves for depreciation, depletion and amortization for the investment of $16,488,673.50, as of the time that the Pan American-Tennessee transaction was consummated, amounted to $1,511,801.33; so that the remaining investment as recorded was $14,976,872.17.

Additional Requests of Certain Intervenors

The Consolidated Companies, the New York Public Service Commission, Public Service Electric and Gas Co., and Long Island Lighting Co., urge that Tennessee be directed to maintain supplemental accounts identifying all costs (and physical units) related to Bastian Bay operations.

The Consolidated Companies also request the issuance of an order herein providing that Tennessee be required, in all future rate proceedings, to submit a separate cost of service for the Bastian Bay gas, and that the allowance to Tennessee in rate proceedings be limited to an amount which may be fixed in the pending area rate proceedings, Docket No. AR1–2.

The New York Commission also requests the making of a finding that no evidence has been presented which would justify Tennessee's inclusion, for the Bastian Bay gas, of more than the "in-line" price for southern Louisiana gas acquisitions in its cost of service for rate purposes.

The United Gas Improvement Co. and Long Island request that the Commission condition the instant sale in accordance with the price line established in the *CATCO* case (360 U.S. 378).

Imposition of any such requirements, limitation, or condition, and the making of such finding, are beyond the scope of the instant proceedings, as delineated in the Commission's orders.

Motion to Terminate Show Cause Proceeding

For the reasons stated at pages 1500 to 1510, *supra*, Pan American's motion to terminate the show cause proceeding is hereby denied.

HOWELL PURDUE,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

SIERRA PACIFIC POWER COMPANY, DOCKET NO. E-7134

ORDER AUTHORIZING ISSUANCE OF PROMISSORY NOTES

(Issued December 13, 1963)

Sierra Pacific Power Company (Applicant), a corporation organized under the laws of the State of Maine and doing business in the States of Nevada and California, with its principal place of business in Reno, Nevada, filed an application on October 29, 1963, as amended on November 13, 1963 and November 26, 1963 for authorization, pursuant to Section 204 of the Federal Power Act, to issue un-

secured, short-term Promissory Notes in a principal amount not to exceed $12,000,000 outstanding at any one time.

The proposed notes, payable to such bank or banks from which Applicant may borrow funds, will be issued for periods not exceeding twelve months from the date of original issue or renewal thereof, and will have maturity dates not later than December 31, 1964. Said notes will bear interest at a rate per annum not in excess of ¼th of 1% over the prime rate in effect in New York City at the time of the borrowing or renewal of the loans. The application indicates that none of the notes proposed to be issued will be resold to the general public, and that no finder's fee or other negotiation fee, commission, or remuneration will be paid in connection therewith to any third person.

By order issued August 16, 1962 (Docket No. E–7042), Applicant was authorized to issue up to $12,000,000 short-term notes for periods not exceeding twelve months from the date of original issue or renewal thereof, as the case may be, such notes to have maturity dates not later than December 31, 1963.

The proposed application would extend this period to December 31, 1964, and would include extension or renewal of notes outstanding under present authorization. Such notes totaled $3,475,000 as of October 28, 1963 according to the application.

The Applicant proposes to apply and use the net proceeds to be obtained from the unsecured Promissory Notes, pending permanent financing to reimburse Applicant for construction expenditures and, together with cash from operations, to carry out Applicant's construction programs contemplated and now in progress for 1963 and 1964. These programs jointly will require approximately $27,886,300 and provide for the expenditure of approximately $22,641,800 for electric facilities, $3,493,700 for water facilities and $1,750,800 for gas facilities. Principal items in Applicant's electric program are $4,042,500 in 1963 for the completion of Tracy Steam Unit #1; $1,120,000 in 1964 for the Geothermal Plant near Battle Mountain; $190,000 in 1963 and $4,100,000 in 1964 for Tracy Steam Unit #2; $315,000 in 1964 for the Tahoe Valley Distribution Substation and Feeders; $255,000 in 1963 for the Spanish Springs Distribution Substation (2 miles north of Sparks); $136,000 in 1963 for Mount Rose-Steamboat 120 kv line; $440,000 for Tracy Substation-Brunswick 120 kv line; $290,000 in 1963 for Buckeye-Tahoe Valley 120 kv line; $184,000 for the Brunswick 120/60 kv Transmission Substation; $192,000 in 1963 for improvement to Reno 23 kv Underground System; and $145,000 for Battle Mountain-Beowawe Electric Extension; $150,000 in 1964 for Steamboat-Tracy 120 kv Transmission Line (636 MCM); $1,080,000 in 1964 for the Lovelock-Winemucca 120 kv line (75 miles H-Frame 397.5 MCM); $180,000 in 1964 for the Buckeye 120/60 kv Substation (40,000 kva).

Written notice of the application has been given to the Public Service Commission of Nevada and the Public Utilities Commission of California, and to the Governor of each of those States. Notice has also been given by publication in the Federal Register on November 8, 1963 (28 F.R. 11943), stating that any person desiring to be heard or to make any protest with reference to the application should file a petition or protest on or before November 20, 1963 with the Federal Power Commission, Washington, D.C., 20426. No protest, petition, or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission, as heretofore described and set forth in the Commission's order issued May 14,

1959, *In the Matter of Sierra Pacific Power Company*, Docket No. E-6873 (21 FPC 684).

(2) The proposed issuance of Promissory Notes in the aggregate principal amount of $12,000,000 all as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) The proposed issuance of Promissory Notes in the aggregate principal amount of $12,000,000, all as described above, will be in excess of 5% of the par value of the other securities of Applicant, and, therefore, will not be exempt by virtue of Section 204(e) from the requirements of Section 204(a) of the Act.

(4) Applicant is not organized and operating in a State, under the laws of which the security issue here involved is regulated by a State Commission within the meaning of Section 204(f) of the Act, and the proposed issuance is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(5) The proposed issuance of Promissory Notes will be exempt from the competitive bidding requirements of Section 34.1a of the Commission's Regulations under the Federal Power Act by reason of Paragraph 34.1a(a)(2) thereof.

(6) The proposed issuance of securities, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility, and which will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purposes.

The Commission orders:

(A) The proposed issuance of Promissory Notes in the aggregate principal amount of $12,000,000 outstanding at any one time, whether an original issue or a renewal note, upon the terms and conditions and for the purposes set forth in the application, all as described above, is hereby authorized, subject to the provisions of this order.

(B) This authorization is expressly conditioned upon the final maturity of all notes to be issued pursuant thereto, being not later than December 31, 1964.

(C) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost or any other matter whatsoever now pending or which may come before this Commission.

(D) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect to any security to which this order relates.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

CHANDELEUR PIPE LINE COMPANY, DOCKET NO. CP64-37

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 16, 1963)

On August 8, 1963, Chandeleur Pipe Line Company (Applicant) with its principal place of business in Louisville, Kentucky, filed in Docket No. CP64-37 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a pipe line to transport natural gas produced by California Company (Calco),

from the Main Pass Block 41 Area Field located on the Outer Continental Shelf in the Gulf of Mexico to a delivery point onshore for Standard Oil Company, incorporated in Kentucky—(Kyso), (Calco and Kyso are wholly-owned subsidiaries of the Standard Oil Company of California), for use in its refinery and related facilities located near Pascagoula, Mississippi, as hereinafter described, all as more fully described in the application herein.

Applicant requests authority to construct and operate approximately 72 miles of 12-inch outside diameter pipe line, together with related measuring and regulating facilities. The estimated cost of such facilities is $5,850,000 including interest and overhead.

Applicant states that it is a wholly-owned subsidiary of Kyso and that the natural gas to be transported will be owned by Kyso and will be used by it in the operation of its Pascagoula refinery and related facilities which are now under construction. It is anticipated that Applicant's proposed pipe line will be used to transport approximately 50,000 Mcf of natural gas on a maximum day and approximately 30,000 Mcf on an average day for use in refinery operations.

Applicant further states that Kyso has entered into a 20-year contract to buy natural gas from Calco which owns leases and presently unproduced gas reserves in the Main Pass Block 41 Area Field. The gas purchased by Kyso under this contract will be delivered to Applicant at a central point in the Main Pass Block 41 Area Field for transportation and redelivery onshore to Kyso.

The application states that the cost of constructing the proposed facilities will be financed with funds made available to Applicant by its parent company, Kyso.

After due notice, the Public Service Commission of the State of New York, on November 22, 1963, filed a notice of intervention in this proceeding. However, said notice was withdrawn by letter received December 4, 1963. No other notice or petition to intervene or protest to the granting of the application has been filed.

At a hearing held on December 13, 1963, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, a Delaware corporation with its principal place of business in Louisville, Kentucky, is a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity required that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Chandeleur Pipe Line Company, to construct and operate facilities and to transport natural gas in interstate commerce for use in Kyso's refinery located at Pascagoula, Mississippi, as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission Regulations, within one year from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

CHICAGO DISTRICT PIPELINE COMPANY, DOCKET NO. RP64-5

ORDER ESTABLISHING HEARING AND PROCEDURE ON PETITION TO INTERVENE AND MODIFYING ORDER

(Issued December 16, 1963)

On October 7, 1963, the Coal Interests[1] filed a joint petition seeking leave to intervene in the above-designated proceeding. In their joint petition, the Coal Interests alleged, *inter alia*, that they, or their members, are competitors of Chicago District Pipeline Company (CDP) and that CDP's proposal to change its form of rate is a device to shift costs to underprice coal in the boiler fuel market, which proposal would give gas in the Northern Illinois-Indiana area an unfair price advantage over its competitors, including Coal Interests, thereby resulting in a greater loss of market for coal. Therefore, Coal Interests allege that they "have a direct and substantial interest at stake in this proceeding which is not adequately protected by any party thereto" and that "they will be seriously aggrieved by any Commission order allowing the change in rate form."

On October 16, 1963, CDP filed an answer to the Coal Interests' joint petition, a motion to strike certain allegations contained therein, and applications for subpoenas directed to the Coal Interests. In its answer, CDP alleges, among other things, that the Coal Interests' intervention herein is not necessary or appropriate to the administration of the Natural Gas Act and is not in the public interest, and, further, that the Coal Interests in their joint petition have not shown that they have "any interest that may be directly affected in these proceedings and which is not adequately represented by existing parties." In addition to its answer, CDP moves to strike certain allegations contained in the joint petition on the grounds, among others, that they are "frivolous", "irrelevant", and "consist of unfounded legal conclusions". CDP, also, requests the issuance of a subpoena directed to the Coal Interests for the production of witnesses and documentary evidence, in the event that the joint petition to intervene is granted, "in order that CDP and this Commission may be apprised of the information by

---

[1] Consisting of Fuels Research Council, Inc.; National Coal Association; United Mine Workers of America; and Mid-West Coal Producers Institute, Inc.

which to test the truth or falsity of certain allegations contained in said Joint Petition."

On October 28, 1963, Coal Interests filed an answer to CDP's motion to strike and applications for subpoenas. In its answer, Coal Interests request the Commission to deny CDP's motion to strike and applications for subpoenas on the grounds, among others, that the allegations contained in their joint petition are neither "frivolous" nor "irrelevant" and that CDP's applications for subpoenas do not name specific individuals or documents and that compliance with CDP's request would be "burdensome" and would constitute "an unreasonable search and seizure."

On November 8, 1963, CDP filed amended applications for subpoenas and its reply to the answer filed by Coal Interests on October 28, 1963. In its amended applications for subpoenas, CDP renewed its request for denial of Coal Interests' joint petition to intervene and for applications for subpoenas directed alternatively to either the Coal Interests or to certain individuals named by CDP. In its amended applications, CDP states, among other things, that it has requested documents and testimony from which it can derive the price and volumes of sales of coal made in the Chicago area during the year 1962 and, that in view of the Coal Interests objection to the issuance of subpoenas to produce "unnamed witnesses", it has attached a list of persons to be subpoenaed, which persons are presidents of coal producers who are members of Coal Interests.

On November 21, 1963, Coal Interests filed their answer to CDP's amended applications for subpoenas requesting the Commission to reject the aforementioned amended applications as "a blatant attempt to circumvent the Commission's rules so that it might file an answer to the Answer of Petitioners in reply to the Applications for Subpoena."

Based on the foregoing documents, the standing of the Coal Interests to intervene in this proceeding has been placed in issue. In *National Coal Ass'n* v. *F.P.C.*, 191 F. 2d 462 (CADC, 1951), the Court accepted the allegations of the petition for review and, therefore, found that Coal Interests were "aggrieved" parties within the meaning of Section 19(b) of the Natural Gas Act. In making its finding, the Court stated (191 F. 2d at 466):

> The Commission cannot now shift to petitioners the responsibility for its own failure to contest petitioner's allegations. The corollary of its authority to allow intervention is the duty to explore all pertinent aspects of an intervener's relationship to the matter under consideration, including the authority of an association or labor union to represent its affected members. The Commission would now rely upon its own failure to make a record on these points to deprive petitioners of standing to seek judicial review, even though petitioners are otherwise within a class entitled to review. * * *

Under these circumstances, it is appropriate "to make a record on these points" and require Coal Interests to substantiate the allegations contained in their joint petition through direct testimony and exhibits. This, we believe, should be done as a preliminary matter, prior to consideration of the merits of the CDP proposed increase.

Our usual procedure on petitions to intervene has been to grant or deny those petitions based on the documents filed with this Commission. However, in the instant case, we are reluctant to decide the issues joined by these documents without the benefit of a record as contemplated by the *National Coal Ass'n* case. The trial of this matter at a preliminary hearing may result in a possible delay of the decision on CDP's increased rate proposal, which will permit CDP to place its rate proposal in effect at an earlier stage of this proceeding to the possible detriment of the consumers. However, CDP has written staff counsel that it will agree to defer the effectiveness of its increased rate proposal until,

at least, August 1, 1964, so that it may have an opportunity to explore the allegations in the Coal Interests' joint petition without undue detriment to the consuming public. Based on CDP's willingness to defer the effectiveness of its proposed rates, we are willing to convene such a hearing.

In order to permit the determination of the Coal Interests' joint petition to intervene prior to commencing the hearing on CDP's proposed rate change, it will be necessary to modify our order issued herein on October 31, 1963. In addition, in order to permit an orderly determination of CDP's rate change proposal, we are amending the hearing order to specify that the staff and those who have been permitted to intervene (and the Coal Interests who may file any presentation they desire, subject to being stricken if it is subsequently determined that their proposed intervention should be rejected) may file a limited presentation, if they so desire, limited to their position on the cost of service filed by CDP. The filing of evidence with respect to cost is not intended to limit the position of any party on the issues of cost allocation, rate form and rate design. The filing of evidence by any party to this proceeding on the issues of cost allocation, rate form, and rate design will be deferred to a date to be hereinafter set by the Presiding Examiner.

The Commission finds:

It is necessary and proper in the public interest and to aid in the enforcement of the Natural Gas Act that the issues joined in the aforementioned documents be decided on a record as quickly as practicable and that our order issued herein on October 13, 1963, be modified as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly Sections 4 and 15 thereof, the Commission's Rules of Practice and Procedure, and the Regulations under the Natural Gas Act [18 CFR, Chapter I], a public hearing shall be held on a date fixed by notice by the Presiding Examiner heretofore designated to preside at this proceeding concerning the issues joined in the aforementioned documents.

(B) On or before January 6, 1964, Coal Interests shall serve upon the Presiding Examiner and all parties their direct testimony and exhibits in support of their joint petition to intervene filed on October 7, 1963, in this proceeding and the allegations contained therein.

(C) The order issued herein on October 31, 1963, is hereby modified in the following respect: The testimony and exhibits to be served by the staff and the Interveners in accordance with ordering paragraph (C), may initially be limited solely to evidence pertaining to CDP's cost of service. Evidence on cost allocation, rate form, and rate design shall be served on a date to be fixed by the Presiding Examiner. In keeping with our intent that this proceeding be expedited to the fullest extent possible, the Presiding Examiner shall establish an early date for service of evidence on those remaining issues immediately following the Commission's decision on the issues as to the proposed intervention of the Coal Interests herein set for preliminary hearing.

(D) In all other respects, the order issued herein on October 31, 1963, shall remain in full force and effect.

(E) Immediately upon completion of the prehearing conference set for January 15, 1964, in paragraph (D) of the October 31, 1963 order, a prehearing conference shall be convened on the issues referred to in paragraph (A) above for the purpose of establishing such procedures that will result in the most expeditious determination of this matter, including setting of dates of filing testimony and exhibits by any other party. The Presiding Examiner is directed to proceed to issue an initial decision together with his proposed findings on the

intervention issues directly upon completion of the testimony and the filing of any briefs that he may deem necessary.

(F) The Presiding Examiner may convene other prehearing conferences that will assist him in expediting this proceeding to its final determination.

Commissioner Ross *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP63-296 (PHASE I), CP63-296 (PHASE II); TRANSWESTERN PIPELINE COMPANY, DOCKET NO. CP64-34

ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND SEVERING PROCEEDINGS

(Issued December 16, 1963)

On May 6, 1963, as supplemented on May 28, 1963, and October 4, 1963, El Paso Natural Gas Company (El Paso) filed, in Docket No. CP63-296, an application for a certificate of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act (Act) authorizing the sale, in interstate commerce, of natural gas to Southern California Gas Company and Southern Counties Gas Company of California (jointly referred to as Southern) and the construction and operation of certain compression facilities. On August 2, 1963, Transwestern Pipeline Company (Transwestern) filed, in Docket No. CP64-34, an application for a certificate of public convenience and necessity pursuant to Section 7(c) of the Act authorizing the sale, in interstate commerce, of natural gas to Pacific Lighting Gas Supply Company (Pacific Lighting).

In its application in Docket No. CP63-296, El Paso proposed to sell and deliver to Southern at its existing points of delivery near Blythe, California, and near Topcock, Arizona, up to 100,000 Mcf per day[1] of natural gas, on a firm basis, for a limited term ending November 1, 1965, or upon commencement of the receipt of gas by Southern at the Arizona-California boundary under either the Rock Springs project[2] or some other permanent arrangement, whichever is the earlier. The proposed daily deliveries of 100,000 Mcf which will be sold under a new rate schedule, Rate Schedule G-1, were to be in addition to daily deliveries by El Paso to Southern of its current maximum contracted daily demand of 1,130,000 Mcf under El Paso's Rate Schedule G. The rate proposed for the new service was to be the commodity rate (currently 22.48 cents per Mcf) in effect from time to time under El Paso's Rate Schedule G. The proposal carried an obligation on the part of Southern to take or pay for an annual average quantity of 40,000 Mcf per day during 1964 and 65,000 Mcf per day during 1965. Of the volumes proposed to be delivered, 60,000 Mcf per day could be delivered through previously authorized El Paso facilities, without the construction of additional facilities.

In order to deliver the additional 40,000 Mcf per day of natural gas, El Paso proposed to construct and operate, at an estimated cost of $3,481,000, certain additional compressor stations and appurtenant facilities on its San Juan mainline in New Mexico and Arizona. These facilities would add 13,690 compressor

---

[1] In El Paso's proposal, all volumes are at 14.9 psia at a temperature of 60° F. In Transwestern's proposal all volumes are at 14.73 psia at a temperature of 60° F.

[2] The applications behind that project were denied in *El Paso Natural Gas Co., et al.*, Opinion No. 393, 30 FPC 77, issued July 12, 1963.

horsepower to El Paso's system. Upon termination of the interim sales for which authorization was sought, El Paso stated that it would use the facilities to sell and deliver natural gas to its customers located east of California.

In its application in Docket No. CP64–34, Transwestern proposed to sell and deliver to Pacific Lighting at its existing delivery point near Needles, California, up to 410,000 Mcf per day of natural gas on an annual average basis. Of these volumes, 350,000 Mcf per day would be at a rate of 39.6 cents per Mcf under Transwestern's Rate Schedule CDQ–1 and 60,000 Mcf per day would be at a rate of 21 cents per Mcf under Rate Schedule LX. Transwestern is presently authorized to sell and deliver to Pacific Lighting up to 345,000 Mcf per day of natural gas on an annual average basis, of which 300,000 Mcf per day are sold under Rate Schedule CDQ–1 at 42 cents per Mcf and additional volumes are sold under Rate Schedule LX at 21 cents per Mcf. The deliveries proposed in the application in Docket No. CP64–34 can be made without the construction of additional facilities by Transwestern's reducing its delivery pressure from 800 psig to 690 psig.

By order issued October 21, 1963, the Commission consolidated the applications in the above-named dockets for the purpose of hearing. Hearing was commenced on November 18, 1963, and on December 4, 1963, two separate proposed stipulations and agreements entered into by the parties to the proceeding were received into evidence without objection. On December 6, 1963, the presiding examiner certified these two stipulations and agreements to the Commission.

In brief, the stipulation and agreement relating to El Paso's application filed in Docket No. CP63–296 provides that:

(1) That docket shall be divided into two phases. Phase I shall relate to the sale and delivery of up to 60,000 Mcf per day for which no additional facilities are required and Phase II shall relate to the sale of up to an additional 40,000 Mcf per day and the facilities as proposed to be constructed and operated in El Paso's application in Docket No. CP63–296, as supplemented and heretofore filed with the Commission.

(2) With respect to Phase I, the parties stipulated and agreed to the following, in addition to other matters:

(a) A permanent certificate should be issued to El Paso, effective on or before December 31, 1963, to sell and deliver to Southern up to 60,000 Mcf per day for a limited period.

(b) El Paso shall have a firm obligation to deliver, upon advance operating arrangements, all or any portion of such volumes of gas as are requested by Southern but Southern shall have no obligation to take such volumes.

(c) The rate for all gas so delivered shall be the commodity charge in effect from time to time under El Paso's Rate Schedule G.

(d) If any portion of the years 1964 and 1965 are included in any test year in a future rate proceeding involving El Paso, El Paso agrees not to use any revenue deficiency accruing from the sale of the 60,000 Mcf per day as support for increased rates.

(3) With respect to Phase II, the parties stipulated and agreed, in addition to other matters:

(a) The issuance of a permanent certificate relating to the sale and delivery of gas described in Phase I of the stipulation and agreement shall not prejudice El Paso with respect to pursuing its application for the construction and operation of new facilities to enable it to sell and deliver an additional 40,000 Mcf per day to Southern.

(b) In the event a certificate is granted authorizing the construction of the facilities described in Phase II, the sale and delivery of up to 40,000 Mcf per

day will terminate on November 1, 1965, or upon the commencement of any new service which results from any order issued by the Commission in Docket No. CP63–204, *et al.*, whichever is the earlier.

(4) Rate Schedule G–1 shall be made available to any buyer purchasing natural gas in the State of California under El Paso's Rate Schedule G.

In brief, the stipulation and agreement relating to Transwestern's application in Docket No. CP64–34, provides, in addition to other matters:

(1) A limited term certificate of public convenience and necessity should be issued to Transwestern in Docket No. CP64–34 authorizing it to sell and deliver to Pacific Lighting up to 410,000 Mcf of gas per day on an annual average basis, and its maximum daily demand quantity shall be increased to 410,000 Mcf per day under the delivery conditions provided in its February 7, 1958, contract with Pacific Lighting as amended.

(2) The certificate shall provide for the filing of a superseding and acceptable tariff revision, appropriate service agreement and rate schedule to be effective January 1, 1964, similar to, and in place of, Transwestern's existing Rate Schedule LX which will provide a rate of 24 cents per Mcf for the sale of the first 50,000 Mcf per day sold thereunder and 21 cents per Mcf for volumes sold thereunder in excess of 50,000 Mcf per day. The daily contract demand volumes shall be the 300,000 Mcf now provided for in Transwestern's existing Rate Schedule CDQ–1 and the presently effective service agreement with Pacific Lighting.

In addition, both stipulations and agreements provide generally that the certificates shall be for a limited period ending November 1, 1965, or upon commencement of any new service which results from any order issued by the Commission in Docket No. CP63–204, *et al.*, whichever is the earlier and that no part of either stipulation and agreement shall be binding unless the order to be issued by this Commission shall provide that it is without prejudice to the applications in Docket Nos. CP63–204, CP63–223, CP64–76 and CP64–91.

Counsel for El Paso and Transwestern moved for waiver of the intermediate decision procedure pursuant to Section 1.30(c) of the Commission's Rules of Practice and Procedure. No party objected to the motions.

No additional facilities need be installed in order to render the service for which authorization is requested in either Docket No. CP63–296 (Phase I) or Docket No. CP64–34. The gas to be sold pursuant to the authorization to be granted herein is not required to meet the needs of any domestic and commercial resale customers and will not be required to meet these needs immediately after November 1, 1965. Therefore, we find that the public convenience and necessity require that permanent certificates issue for the limited term of up to November 1, 1965, under the terms of the stipulations and agreements entered into by the parties to the proceeding.

The Commission further finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware Corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) Applicant, Transwestern Pipeline Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(3) Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The sales and deliveries of natural gas as proposed by Applicants, are

required by the public convenience and necessity, and certificates therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificates issued hereinafter and the rights granted thereunder should be conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) The stipulations and agreements entered into and submitted to this Commission by El Paso Natural Gas Company and by Transwestern Pipeline Company and entered into the record on December 4, 1963, in Docket No. CP63–296, *et al.*, are hereby accepted and approved.

(B) The proceeding in El Paso Natural Gas Company, Docket No. CP63–296 is hereby divided into two phases. Phase I shall hereafter relate to the sale and delivery of up to 60,000 Mcf of natural gas per day to Southern California Gas Company and Southern Counties Gas Company of California (Southern) for which no additional facilities are required. Phase II shall hereafter relate to the sale and delivery of up to an additional 40,000 Mcf of natural gas per day to Southern and the construction and operation of the facilities proposed in that docket.

(C) A certificate of public convenience and necessity is hereby issued authorizing El Paso Natural Gas Company to sell and deliver to Southern California Gas Company and Southern Counties Gas Company of California up to 60,000 Mcf of natural gas per day for a limited period ending November 1, 1965, or upon the commencement of any new service which results from any order issued by this Commission in *Transwestern Pipeline Company, et al.*, Docket No. CP63–204, *et al.*, whichever is the earlier.

(D) El Paso shall have a firm obligation to deliver, upon advance operating arrangements any portion of such volumes of gas as are requested by Southern, but Southern shall have no obligation to take such gas, as provided in the stipulation and agreement herein approved.

(E) The rate for all gas so delivered by El Paso shall be the commodity charge in effect from time to time under Rate Schedule Gas contained in El Paso's FPC Gas Tariff Original Volume No. 1.

(F) If, in the future, all or any portions of the years 1964 or 1965 are included in any test year in a future rate proceeding involving El Paso, then any deficiency accruing from the sale of this 60,000 Mcf of natural gas per day during such period will not be used as support for increased rates.

(G) El Paso shall promptly file acceptable and appropriate tariff sheets required to implement its stipulation and agreement. The Commission, pursuant to Section 154.51 of its Regulations under the Natural Gas Act, for good cause shown hereby waives its 30-day notice requirement as set out in Section 154.22 of the Regulations.

(H) The certificate issued by paragraph (C) above and the rights granted thereunder shall in no way prejudice El Paso with respect to pursuing its application for the construction and operation of facilities and the sale and delivery of natural gas which now constitutes Phase II of Docket No. CP63–296.

(I) A certificate of public convenience and necessity is hereby issued authorizing Transwestern Pipeline Company to sell and deliver to Pacific Lighting Gas Supply Company up to 410,000 Mcf of natural gas per day on an annual average basis, and its maximum daily demand quantity is increased to 410,000 Mcf of natural gas per day under the delivery conditions provided in its February 7, 1958, contract, as amended, with Pacific Lighting. Said certificate is

limited for a period ending November 1, 1965, or upon the commencement of any new service with results from any order issued by this Commission in *Transwestern Pipeline Company, et al.*, Docket No. CP63–204, *et al.*, whichever is the earlier.

(J) Transwestern shall promptly file an acceptable tariff revision, appropriate service agreement, and rate schedule similar to, and in place of, its existing Rate Schedule LX, providing a rate of 24 cents per Mcf for the sale of the first 50,000 Mcf per day sold thereunder and 21 cents per Mcf for volumes sold thereunder in excess of 50,000 Mcf per day, all such volumes to be computed on an annual average basis. The rate and purchase obligation for the contract demand volumes shall be that now provided in Transwestern's existing Rate Schedule CDQ–1 and presently effective service agreement. All such rates shall remain subject to change as now provided in its tariff and service agreement with Pacific Lighting. The Commission, pursuant to Section 154.51 of its Regulations under the Natural Gas Act, for good cause shown, hereby waives its 30-day notice requirement as set out in Section 154.22 of the Regulations.

(K) The certificates issued in paragraphs (C) and (I) above shall be without prejudice to the applications in Docket Nos. CP63–204, CP63–223, CP64–76 and CP64–91.

(L) The certificates issued in paragraphs (C) and (I) above and the rights granted thereunder are conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of the Regulations.

(M) The sale and delivery of natural gas authorized in paragraphs (C) and (I) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one month from the date on which this order issues.

(N) A hearing on Phase II of El Paso's application in Docket No. CP63–296, as amended, will be held on January 8, 1964, at 10:00 a.m. (EST), in a Hearing Room of this Commission, 441 G Street NW., Washington, D.C. All testimony and exhibits in support of Phase II shall be served in writing on all parties and the Commission staff on or before January 3, 1964.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

GRARIDGE CORPORATION (OPERATOR), ET AL., DOCKET NO. G–19246, ET. AL.

ORDER DENYING APPLICATIONS FOR REHEARING

(Issued December 16, 1963)

On November 29, 1963, the Public Service Commission of the State of New York filed an application for rehearing of Opinion No. 408, 30 FPC 1156, and accompanying order which issued in the above-styled proceedings. On December 2, 1963, the Long Island Lighting Company, The Brooklyn Union Gas Company, and the Philadelphia Gas Works Division of The United Gas Improvement Company filed a similar joint application. In the aforesaid opinion we held that the price level issue need not be considered in certification proceedings involving producers who have succeeded to other producers' interests under gas sales contracts and seek certificates authorizing the continuance of the sales for which their predecessors were issued permanent certificates. The applications for rehearing present

nothing which was not carefully considered by the Commission in the course of the proceedings, and consequently we adhere to said opinion and order for the reasons stated therein.

The Commission finds:

No new facts or principles of law have been presented in the applications for rehearing which were not fully considered by the Commission prior to the rendition of the aforesaid opinion and order, or, having now been so considered, warrant further hearing, modification or revocation of said opinion and order.

The Commission orders:

The applications for rehearing filed herein by the Public Service Commission of the State of New York, the Long Island Lighting Company, The Brooklyn Union Gas Company, and the Philadelphia Gas Works Division of The United Gas Improvement Company are hereby denied.

Commissioner Ross *dissenting.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

TRANSWESTERN PIPELINE COMPANY, DOCKET NOS. CP63–204 AND CP64–91; GULF PACIFIC PIPELINE COMPANY, CP63–223; EL PASO NATURAL GAS COMPANY, CP64–76

ORDER DENYING MOTION TO REJECT FIRST AMENDMENT TO APPLICATION

(Issued December 16, 1963)

In our order of October 21, 1963,[1] we denied the motion of El Paso Natural Gas Company (El Paso) to consolidate its Docket No. CP61–26 with Gulf Pacific Pipeline Company's (Gulf Pacific), Docket No. CP63–223. We stated, however, in that same order, that El Paso could seek to amend its application in Docket No. CP64–76 in order to construct facilities and to deliver an additional 575,000 Mcf daily to California.[2] On November 12, 1963, El Paso did file a timely First Amendment to its Original Application, seeking to deliver the above-mentioned additional 575,000 Mcf daily. This amendment was noticed by this Commission on November 21, 1963.

On November 27, 1963, Gulf Pacific filed a "Motion Requesting Rejection of El Paso's First Amendment to Original Application in Docket No. CP64–76". On November 29, 1963, Southern California Edison Company (Edison) sent a telegram in support of Gulf Pacific's motion. And on December 6, 1963, Humble Oil and Refining Company (Humble) filed a "Protest Against Allowance of Amendment to Application and Motion to Treat Said Amendment as New Application to be Considered Subsequent to the Disposition of Docket Nos. CP63–204, CP63–223, CP64–76 (as Supplemented But Not as Amended) and CP64–91. These parties allege that this amendment is a wholly new and different application, on the grounds that the amendment seeks to increase the total cost of the project from approximately $49 million to approximately $197 million; that the amendment involves 575,000 Mcf daily rather than 250,000 Mcf daily; that the delivery point and delivery pressure have been changed by the amendment; and that the routing of the gas pipelines has been changed. In addition Humble urges that

[1] "Order Consolidating Proceedings, Fixing Date of Hearing Conference and Denying Motion to Consolidate and for Time to Amend" *Transwestern Pipeline Company, et al.*, docket No. CP63–204, *et al.*, p. 4.

[2] *Ibid.*

whether El Paso's filing is considered to be an amendment or a new application, it should, in either case, only be considered subsequent to the disposition of the consolidated proceedings in Docket Nos. CP63–204, CP63–223, CP64–76 (without amendment) and CP64–91.

El Paso filed an "Answer of El Paso Natural Gas Company to Motion of Gulf Pacific Requesting Rejection of El Paso's First Amendment to Original Application" on December 5, 1963.

In this instance a difference in size or in the technical specification is hardly determinative. The important fact is that El Paso has submitted a proposal to serve Southern California, supplementary to its original application, which will enable us to make a more informed judgment as to the needs of this market. Of course, in permitting El Paso to file this amendment we are making no determination as to the merits of its proposal, or of any of the other proposals consolidated in this proceeding. After careful consideration of the contentions set forth in the motion objecting to the amendment, we find them to be without merit.

We have indicated repeatedly our intention to proceed with the consideration of the natural gas needs of Southern California as expeditiously as possible and we therefore set October 12, 1963, as the final date for the filing of initial applications and provided that any amendment to an application should be filed not later than November 14, 1963. El Paso's amendment was filed November 12, 1963. Thus, El Paso's application and the amendment thereto were timely filed. We had no intention of precluding any party from filing an amendment of its initial application where such an amendment would enable us to make a more enlightened decision regarding the public interest, in these matters, and we so provided in our October 12, 1963 order. We find that this proposal does constitute an amendment to the timely filed application submitted by El Paso, as contemplated by that order.

The Commission orders:

The motion of Gulf Pacific Pipeline Company requesting rejection of El Paso's First Amendment to Original Application in Docket No. CP64–76 filed on November 27, 1963, the supporting motion filed by Southern California Edison on November 29, 1963, and the protest filed by Humble Oil and Refining Company on December 6, 1963 should be, and are hereby, denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TRANSWESTERN PIPELINE COMPANY, DOCKET NOS. CP63–204, CP64–34, AND CP64–91; GULF PACIFIC PIPELINE COMPANY, CP63–223; EL PASO NATURAL GAS COMPANY, CP63–296 AND CP64–76

ORDER DENYING APPLICATIONS FOR REHEARING AND RECONSIDERATION OF ORDERS ISSUED OCTOBER 21, 1963

(Issued December 16, 1963)

On November 7, 1963, Humble Oil & Refining Company (Humble) filed a petition for rehearing and reconsideration of our "Order Granting in Part and Denying in Part Motions to Consolidate" issued on October 21, 1963, in *Transwestern Pipeline Co., et al.*, Docket No. CP63–204, *et al.*,[1] and on November 21, 1963, Gulf

[1] By order issued December 5, 1963 we granted rehearing of Humble's petition for the limited purpose of further considering the issues raised therein.

Pacific Pipeline Company (Gulf Pacific) filed an application for rehearing and reconsideration of the above order and of two other orders also issued on October 21, 1963—"Order Consolidating Proceedings, Fixing Date of Hearing Conference and Denying Motion to Consolidate and for Time to Amend," *Transwestern Pipeline Co., et al.*, Docket No. CP63–204, *et al.*, and "Order Consolidating Proceeding and Noticing Applications," *El Paso Natural Gas Co., et al.*, Docket No. CP63–296, *et al.*

By the three October 21, 1963, orders we announced that we would conduct two separate consolidated hearings on applications for new or increased natural gas service to the Southern California market area. In one proceeding we consolidated the application for minor expansion of El Paso Natural Gas Company (El Paso) in Docket No. CP63–296 with the application for minor expansion of Transwestern Pipeline Company (Transwestern) in Docket CP64–34. In the other proceeding we consolidated applications for major expansions by Transwestern (Docket Nos. CP63–204 and CP64–91) and El Paso (Docket No. CP64–76) with the application to construct a new pipeline filed by Gulf Pacific in Docket No. CP63–223. Both Humble and Gulf Pacific urge that we reconsider our decision to hold two hearings and hold one hearing instead.

By separate order issued concurrently herewith we are issuing certificates of public convenience and necessity to El Paso and Transwestern in Docket Nos. CP63–296 (Phase I) and CP64–34, respectively, pursuant to the terms of stipulations and agreements voluntarily entered into by all parties (including Humble and Gulf Pacific). To the extent that we are issuing certificates agreeable to Humble and Gulf Pacific the reconsideration sought is moot. However, the parties have not agreed to the proper disposition of the portion of the El Paso application which is being set for further hearings as Phase II of Docket No. CP63–296. The Humble and Gulf Pacific motions merit our attention to the extent that they urge reconsideration of our decision not to consolidate Docket No. CP63–296 (Phase II) with the major expansion and new pipeline applications.

Humble[2] and Gulf Pacific allege that certification of El Paso's application in Docket No. CP63–296 may prejudice Gulf Pacific's application which is being heard in the other consolidated proceeding. In Phase II of its application, El Paso requests authority to construct and operate additional compressor and appurtenant facilities on its southern division in order to deliver up to an additional 40,000 (at 14.9 psia) Mcf per day of natural gas. These deliveries would be made to El Paso's customers in Southern California until a termination date of November 1, 1965, with the facilities to be used thereafter for customers of El Paso located east of California. Humble and Gulf Pacific allege that El Paso may desire to continue to use these facilities after November 1, 1965, to serve its Southern California customers. The mere speculation that an application does not correctly state the applicant's intention does not justify the consolidation of the application with other applications not otherwise requiring consolidation. This is a matter which can be explored at the hearing and, if necessary, treated by way of conditions on any grant which we might make.

Our preliminary indication is that certification of El Paso's application in Docket No. CP63–296 (Phase II), . . . should have little or no bearing on the feasibility or desirability of the applications for major construction.[3] Humble and Gulf Pacific challenge this statement as an illegal finding of fact. However, the statement does not constitute a finding of fact by us, but merely reflects preliminary indications on which we relied to determine whether to exercise our

[2] Humble is the major supplier of natural gas in the Gulf Pacific project and supports that project.

[3] "Order Granting in Part and Denying in Part Motions to Consolidate," *Transwestern Pipeline Co., et al.*, Docket No. CP63–204, *et al.*, issued October 21, 1963, Mimeo p. 3.

discretion to consolidate all applications. We have made no final conclusions as to the effect of Docket No. CP63–296 (Phase II) on the major consolidated proceedings. In the Phase II proceeding, Humble and Gulf Pacific will be permitted to attempt to prove that these preliminary indications on which we relied were incorrect.[4] If they do, we will, of course, withhold any grant which cannot, by proper condition, be made to eliminate the alleged conflict.

Both Humble and Gulf Pacific rely on the following as precedent in support of their contentions that a single consolidated hearing is required:

> . . . But as we understand the *Ashbacker* rule, which is essentially a rule of basic fairness, it prescribes that there should be joint consideration of two applications not only where it can be determined in advance that they are in fact mutually exclusive, but also whenver it appears that prior action on one will seriously jeopardize the chance of the other being granted. [*El Paso Natural Gas Co., et al.*, 27 FPC 984, 985.]

We agree that the above-quoted language is controlling here. However, Humble and Gulf Pacific have misinterpreted its significance. That language does not even state that a consolidated hearing must be held where jeopardy is *proved*, but only requires that joint consideration be given to all applications. (In fact, the applications under consideration in that statement were not consolidated for hearing.) *A fortiori*, there is no need for consolidation where it appears to the Commission, as it does here, that prior action on the El Paso application (Phase II) will *not* seriously jeopardize the chance of Gulf Pacific's application being granted.

The Commission orders:

Humble Oil & Refining Company's petition for rehearing and reconsideration of our "Order Granting in Part and Denying in Part Motions to Consolidate" issued on October 21, 1963, in *Transwestern Pipeline Co., et al.*, Docket No. CP63–204, *et al.*, and Gulf Pacific Pipeline Company's application for rehearing and reconsideration of that order and our "Order Consolidating Proceeding, Fixing Date of Hearing Conference and Denying Motion to Consolidate and for Time to Amend" issued on October 21, 1963, in *Transwestern Pipeline Co., et al.*, Docket No. CP63–204, *et al.*, and our "Order Consolidating Proceeding and Noticing Applications" issued on October 21, 1963, in *El Paso Natural Gas Co., et al.*, Docket No. CP63–296, *et al.*, are therefore denied.

Before Commissioners: Joseph C. Swidler, Chairman, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP64–64

FINDINGS AND ORDER AFTER STATUTORY HEARING, PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued December 18, 1963)

On September 16, 1963, El Paso Natural Gas Company (Applicant) filed in Docket No. CP64–64 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon and remove certain metering facilities located on Applicant's 8⅝ inch pipeline in Coke County, Texas.

---

[4] Both Humble and Gulf Pacific have been permitted to intervene in that proceeding. ("Order Permitting Intervention," *El Paso Natural Gas Co., et al.*, Docket No. CP63–296, *et al.*, issued December 2, 1963.)

The facilities to be abandoned were authorized to be constructed by an order issued by the Commission on November 28, 1961 in Docket No. CP62–62, 26 FPC 763.

Applicant has been using two metering facilities, Jameson and Millican respectively, to take gas from two sources which gas is being purchased from Sun Oil Company (Sun), but other arrangements have been made by which Sun will deliver all gas commingled to Applicant through the one Jameson facility thus eliminating the need for the Millican facility after November 1, 1963.

Applicant proposes to remove all surface parts of the Millican metering facility and to abandon the subsurface elements of that installation.

Applicant states that there will be no cessation of service being rendered.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 13, 1963, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record.

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware Corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of Natural Gas Act as heretofore found by the Commission in its order of January 11, 1944, in Docket No. G–288 (4 FPC 486).

(2) The facilities to be abandoned, as hereinbefore described and as more fully described in the application, in this proceeding, are subject to the jurisdiction of the Commission and abandonment of such facilities by Applicant is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) Such abandonment, as hereinbefore described, is permitted by the public convenience and necessity and an order authorizing and approving same should be issued as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment by El Paso Natural Gas Company, of the facilities hereinbefore described, as more fully described in the application, in this proceeding, be and the same are hereby granted.

(B) Applicant shall advise the Commission of the date of removal of the facilities within 10 days thereafter.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

FUELS RESEARCH COUNCIL, INC., NATIONAL COAL ASSOCIATION, UNITED MINE WORKERS OF AMERICA, AND MID–WEST COAL PRODUCERS INSTITUTE, INC. *v.* MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP62–57; MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP64–109

NOTICE OF APPLICATION AND DATE OF HEARING, AND ORDER GRANTING MOTION TO VACATE SHOW CAUSE ORDER AS MOOT, DENYING MOTION FOR INTERIM RELIEF, DENYING REQUEST FOR TEMPORARY CERTIFICATE, GRANTING PETITIONS TO INTERVENE, AND SEVERING AND TERMINATING PROCEEDING IN DOCKET NO. CP62–57

(Issued December 18, 1963)

Take notice that Michigan Wisconsin Pipe Line Company (Michigan Wisconsin), a Delaware corporation with principal place of business at One Woodward

Avenue, Detroit, Michigan 48226, filed on November 12, 1963, in Docket No. CP64–109, an application for a certificate of public convenience and necessity, pursuant to Section 7(c) of the Natural Gas Act, authorizing it to construct and operate facilities required for the sale and delivery of natural gas to Wisconsin Public Service Corporation (Public Service) for use in the latter's electric generating station located at a point near Weston, Wisconsin, subject to the jurisdiction of the Commission, as hereinafter described and as more fully represented in the application which is on file with the Commission and open for public inspection.

The facilities for which Michigan Wisconsin seeks certificate authorization are located at a point about 18 miles from the origin of Michigan Wisconsin's branch line which extends northward to Tomahawk, Wisconsin. The facilities consist of a tap on the Tomahawk branch line and 3,972 feet of eight-inch pipeline extending westward from the tap to a meter station. The cost of the facilities, including payment for acquirement of site and rights-of-way and allowance for overheads and interest during construction, is $48,655. A balance sheet attached to the application indicates that Michigan Wisconsin could finance the facilities from cash on hand.

Exhibit N to Michigan Wisconsin's application shows that annual volumes of about 6,284,040 Mcf of gas would be delivered to Public Service for consumption in the Weston generating plant, and that of the total volume, approximately 2,850,028 Mcf would be sold under Michigan Wisconsin's ACQ–1 Rate Schedule and 3,434,012 Mcf would be sold under Michigan Wisconsin's OS–1 Rate Schedule.

The above-described application was filed in response to the Commission's order issued October 30, 1963, in Docket No. CP62–57, 30 FPC 1138 requiring Michigan Wisconsin to show cause why it should not be ordered to file an application for authority to construct and operate the facilities it had already constructed for the purpose of delivering gas to Public Service for use in its Weston plant. Concurrently with the filing of its application in Docket No. CP64–109, Michigan Wisconsin filed on November 12, 1963, a motion requesting that the aforesaid show cause order be vacated as moot because Michigan Wisconsin had, by voluntarily filing its application in Docket No. CP64–109, taken the action which would have been the subject of the show cause proceeding in Docket No. CP62–57. It appears that Michigan Wisconsin's filing of an application for a certificate authorizing it to construct and operate the Weston delivery facilities does render the show cause order moot.

On November 13, 1963, Public Service filed a motion for interim relief from paragraph (B) of the Commission's show cause order issued October 30, 1963. Paragraph (B) of the show cause order had prohibited Michigan Wisconsin from "* * * utilizing facilities, heretofore constructed without apparent authority, for making deliveries of natural gas to Public Service for use by the latter in its Weston generating station prior to the issuance by the Commission of a final order in this proceeding." Public Service's eight-page motion alleges that the economic effect upon its operations of the discontinuance of gas deliveries to the Weston plant will be severe; otherwise, the motion is devoted to arguments asserting that the show cause order should not have been issued.

On November 22, 1963, the Fuels Research Council, Inc., *et al.* (Coal Petitioners) filed an answer to the aforementioned motions of Michigan Wisconsin and Public Service. The Coal Petitioners' answer indicates that they agree that Michigan Wisconsin's filing of its application in Docket No. CP64–109 did render moot our show cause order in Docket No. CP62–57. As to Public Service's motion for interim relief from paragraph (B) of the show cause order, however, the Coal Petitioners correctly observe that "* * * Since there is no authority

under which deliveries of gas can lawfully be made to Weston, no relief can be granted to Public Service in * * *" Docket No. CP62–57.

The Public Service Commission of Wisconsin, on November 18, 1963, filed an answer in support of Public Service's motion for interim relief from ordering paragraph (B) of the Commission's show cause order. The Wisconsin Commission points out that the use of gas at Weston by Public Service was "a factor" in the reduction of Public Service's electric rates in an annual amount of $1,750,000, and that discontinuance of natural-gas service at the Weston plant will work against the objective of maintaining the lowest possible fuel costs for generating electricity. The Wisconsin Commission's answer also requests that gas deliveries at Weston be continued, pending consideration of Michigan Wisconsin's application in Docket No. CP64–109, by "other appropriate means" in the event modification of paragraph (B) of the show cause order is considered to be an inappropriate means of resuming gas service to the Weston plant. We have already indicated above why modification of paragraph (B) of the show cause order would be an inappropriate way to restore gas service to Weston. Nevertheless, the Wisconsin Commission's request for restoration of service by "other appropriate means" will be considered as a filing in support of Michigan Wisconsin's application for a temporary certificate which Michigan Wisconsin filed November 12, 1963, in Docket No. CP64–109, seeking authorization to utilize the Weston delivery facilities for continuance of gas service to Public Service's Weston plant pending hearing and disposition of its application for a permanent certificate.

In support of its application for a temporary certificate Michigan Wisconsin alleges: (1) that the Weston delivery point was the cheapest way that could have been found for providing natural-gas service to Public Service's Weston generating plant; (2) that gas is cheaper than the coal which Public Service will have to buy because of the Commission's requirement that gas deliveries be discontinued; (3) that Michigan Wisconsin had no reason to oppose Public Service's desire for a delivery point for the use of gas at its Weston plant; (4) that Michigan Wisconsin had "assumed" that it had authority to construct and operate the Weston facilities after the issuance of the Commission's order accompanying Opinion No. 336 in *Michigan Wisconsin Pipe Line Co.*, 24 FPC 177; (5) that Public Service had already constructed 2.5 miles of pipeline to receive delivery of gas for its Weston plant and that the Coal Petitioners knew this for one year before they filed their petition for a show cause order and that the Commission didn't issue its show cause order for two years after the filing of the Coal Petitioners' petition; (6) that there is no "conceivable basis upon which" Michigan Wisconsin's application in Docket No. CP64–109 could be denied on the merits; (7) that the "balancing of the equities" requires maintenance of the *status quo* pending hearing and consideration of its application; (8) that Michigan Wisconsin relied upon the deliveries of gas to the Weston plant in its rate proceeding in Docket No. RP60–9 and in negotiating the "take-or-pay" provisions in its gas purchase contracts in the Woodward, Oklahoma, area in *Michigan Wisconsin Pipe Line Co.*, 27 FPC 449; (9) that the sole beneficiaries of a refusal of the Commission to issue temporary authorization would be the Coal Petitioners whose stockholders would reap increased profits from the sale of the coal which Public Service will be forced to buy at unregulated prices; and (10) that denial of the temporary certificate would only add to the Coal Petitioners' incentive to delay the forthcoming hearing and disposition of Michigan Wisconsin's certificate application filed in Docket No. CP64–109.

On November 27, 1963, the Coal Petitioners also filed an answer in opposition to the granting of Michigan Wisconsin's request for a temporary certificate.

The Coal Petitioners state in their answer in opposition to issuance of a temporary certificate: (1) that Michigan Wisconsin has neither alleged nor shown that an emergency exists which would prevent maintenance of adequate service to Michigan Wisconsin's customers; (2) that Michigan Wisconsin's request for a temporary certificate in primarily a defense to the Commission's show cause order and that this defense is misplaced in a proceeding where Michigan Wisconsin is requesting that the show cause order be vacated as moot; (3) that the only justification alleged by Michigan Wisconsin as grounds for the issuance of a temporary certificate is legally insufficient because such justification is based upon Michigan Wisconsin's own interpretation of the economic advantages to it and Public Service from making deliveries of gas at Weston and that Michigan Wisconsin's allegations in its request for a temporary certificate are in conflict with other facts stated by Michigan Wisconsin in its application for a permanent certificate; (4) that issuance of a temporary certificate would seemingly result in Michigan Wisconsin's withdrawing gas from storage in order to make boiler fuel sales and would again raise the question mentioned by the Commission in its order issued November 12, 1963, in *Michigan Wisconsin Pipe Line Co., et al.*, Docket No. CP63–230, *et al.*, 30 FPC 1239, 1241, as to whether Michigan Wisconsin and its customers have operated in a manner which is wholly consistent with the public interest; (5) that there is now an ample supply of coal available to meet all of Public Service's fuel requirements at its Weston plant and that the public will not want for an adequate fuel supply during the interim period necessary for the holding of a hearing and the rendering of a decision regarding Michigan Wisconsin's application; and (6) that issuance of a temporary certificate would be tantamount to a decision on the merits, contrary to the position taken by the Coal Petitioners, without affording them full opportunity for a complete hearing.

There is considerable validity to the contentions made by the Coal Petitioners' answer to Michigan Wisconsin's request for a temporary certificate. Our holding herein, that the filing by Michigan Wisconsin of its application in Docket No. CP64–109 has rendered the show cause order moot, makes further discussion of whether or not the Weston delivery facilities were constructed without authority irrelevant. It further appears that two issues to be considered in the hearing regarding Michigan Wisconsin's application is whether the sale of boiler fuel to the Weston plant is in the public interest, and whether, as we noted in our order issued in Docket No. CP63–230, *et al.*, *supra*, Michigan Wisconsin's and Public Service's operations have been consistent with the public interest, particularly as to the period of time within which Public Service has consumed the ACQ related to the MDQ which it may have nominated for a specific contract year.

However, it is unnecessary to comment further upon either Michigan Wisconsin's or the Coal Petitioners' allegations because Michigan Wisconsin's request for a temporary certificate contains a very obvious and fatal deficiency as hereinafter indicated. Despite the fact that Section 7(c) of the Act restricts the issuance of temporary certificates to "* * * cases of emergency, to assure maintenance of adequate service * * *", Michigan Wisconsin did not allege at any place in its nine-page request for a temporary certificate that an emergency exists because we ordered it to stop delivering gas to Public Service for use in the latter's Weston generating station. In fact, the statements in Michigan Wisconsin's request for a temporary certificate do not even attempt to show that an emergency exists within the meaning of Section 7 of the Natural Gas Act, and it necessarily follows that we cannot make the requisite finding that there is an emergency which would justify the issuance of a temporary certificate under the circumstances of this proceeding.

We do agree with Michigan Wisconsin that the "*status quo*" should be maintained pending the hearing and disposition of its application for a permanent certificate. In our opinion, however, the *status quo* means that when Michigan Wisconsin filed its application, the parties were appropriately placed in the same position they would have been in had no facilities ever been constructed or any deliveries of gas ever initiated for serving the Weston plant. Therefore, notice of the filing of the application in Docket No. CP64–109 will be duly published in the Federal Register and the hearing thereon will be held, pursuant to Section 7 of the Act, in the same manner as any other application is heard and decided. At the conclusion of that hearing, after all parties have had an opportunity to be heard, we shall determine whether operation of the Weston delivery facilities is required by the public convenience and necessity.

Petitions to intervene in the proceeding in Docket No. CP64–109 were filed on November 14, 1963, and November 27, 1963, by Public Service and the Coal Petitioners, respectively. On November 18, 1963, the Public Service Commission of Wisconsin filed a notice of intervention in Docket No. CP62–57 and on November 29, 1963, the Wisconsin Commission filed a notice of intervention in Docket No. CP64–109.

The Commission finds:

(1) The motion of Michigan Wisconsin to vacate the show cause order in Docket No. CP62–57 as moot should be granted and the proceeding in Docket No. CP62–57 should be terminated and severed from the hearing to be held on Michigan Wisconsin's application in Docket No. CP64–109.

(2) Public Service's motion for interim relief under paragraph (B) of the show cause order issued in Docket No. CP62–57 should be denied for the reasons that such order is hereinafter vacated and that there is no outstanding certificate authority under which deliveries of gas to Public Service's Weston plant can lawfully be made.

(3) Michigan Wisconsin's request for a temporary certificate in Docket No. CP64–109, and Public Service's and the Wisconsin Commission's motions in support thereof, should be denied because Michigan Wisconsin's and Public Service's failure to make a showing that an emergency exists within the meaning of the Natural Gas Act precludes the issuance of a temporary certificate authorizing deliveries of gas to the Weston plant pending hearing and disposition of the application for a permanent certificate in Docket No. CP64–109.

(4) It is desirable to grant the petitions to intervene of Public Service and the Coal Petitioners in order that they may establish the facts and law from which the nature and validity of their alleged rights and interests may be determined and show what further action may be appropriate under the circumstances in the administration of the Natural Gas Act.

The Commission orders:

(A) The show cause order issued October 30, 1963, in Docket No. CP62–57 is hereby vacated as moot because of Michigan Wisconsin's having filed its application in Docket No. CP64–109; the proceeding in Docket No. CP62–57 is hereby terminated and severed from the hearing provided for in paragraph (D) hereof.

(B) Public Service's motion for interim relief from paragraph (B) of the show cause order issued in Docket No. CP62–57 is hereby denied for the reasons given in paragraph (2) of this order.

(C) Michigan Wisconsin's request for a temporary certificate in Docket No. CP64–109, together with Public Service's and the Wisconsin Commission's motions in support thereof, are hereby denied for the reason given in paragraph (3) of this order.

(D) Pursuant to the authority contained in, and subject to the authority conferred upon the Federal Power Commission by the Natural Gas Act, including particularly Sections 7, 14, 15, and 16, and the Commission's Rules and Regulations under that Act, a public hearing shall be held commencing January 21, 1964, at 10:00 a.m. (EST), in a hearing room of the Federal Power Commission, 441 G Street, N.W., Washington, D.C., 20426, concerning the matters involved in and the issue presented by the application in Docket No. CP64–109, particularly as those issues have been hereinbefore discussed.

(E) Protests or petitions to intervene in this proceeding may be filed with the Federal Power Commission, 441 G Street, Washington, D.C., 20426, in accordance with the Rules of Practice and Procedure [18 CFR 1.8 or 1.10] on or before January 9, 1964.

(F) Public Service and the Coal Petitioners be and they are hereby permitted to become interveners in the proceeding in Docket No. CP64–109 subject to the rules and regulations of the Commission: *Provided, however*, that the participation of such interveners shall be limited to matters affecting asserted rights and interests as specifically set forth in said petitions for leave to intervene; and *provided, further*, that the admission of such interveners shall not be construed as recognition by the Commission that they or any of them might be aggrieved because of any order or orders of the Commission entered in this proceeding.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

HUNT INDUSTRIES (SUCCESSOR TO LYDA HUNT-MARGARET TRUSTS, LYDA HUNT-CAROLINE TRUSTS, LYDA HUNT-HERBERT TRUSTS, LYDA HUNT-BUNKER TRUSTS, LYDA HUNT-LAMAR TRUSTS), DOCKET NOS. G–13840,* G–16423, G–17162,* G–20445,* G–20535, AND RI60–432*

ORDER SUBSTITUTING RESPONDENTS, REDESIGNATING PROCEEDINGS, AND REQUIRING FILING OF SUCCESSOR'S AGREEMENTS AND UNDERTAKINGS

(Issued December 18, 1963)

On July 20, 1963, Hunt Industries (Industries) filed a certificate application to continue sales formerly made by Lyda Hunt-Margaret Trusts, Lyda Hunt-Caroline Trusts, Lyda Hunt-Herbert Trusts, Lyda Hunt-Bunker Trusts, and Lyda Hunt-Lamar Trusts (Trusts).[1] Industries also filed notices of succession to Trusts' rate schedules. The application for certificate authorization states that Trusts have formed a partnership under the name of Industries and Trusts' interests were assigned to Industries effective on April 1, 1963. The application further states that Industries will assume all refund obligations of Trusts in the above-designated rate proceedings. We will therefore require that Industries file agreements and undertakings in each of the above-designated rate suspension proceedings in accordance therewith.

By order issued November 29, 1963, the certificates of public convenience and necessity issued to Trusts, in Docket Nos. G–10333, G–10795, G–11802, CI61–1621 and CI63–48 were amended by substituting Industries as the certificate holder, Industries' notices of succession to the rate schedules of Trusts were accepted for

*The proceedings in Docket Nos. G–13840, G–17162, G–20445, and RI60–432 were consolidated with the Southern Louisiana Area Rate Proceeding, Docket No. AR61–2, *et al.*, by order issued May 10, 1961, 25 FPC 942.

[1] The certificate application has been construed as a motion to substitute Industries in lieu of Trusts as respondent in each of the above-designated proceedings.

filing, and Trusts' FPC Gas Rate Schedule Nos. 2, 4, and 5, involved in the related rate suspension proceedings, were redesignated, respectively, as Industries' FPC Gas Rate Schedule Nos. 1, 3, and 4.

The Commission finds:

It is necessary and proper in carrying out the provisions of the Natural Gas Act that Industries be substituted for Trusts in the above-designated rate suspension proceedings, that the proceedings be redesignated accordingly, and that agreements and undertakings be filed by Industries in each of the proceedings assuming all refund obligations in these proceedings, including the refund obligations heretofore undertaken by Trusts.

The Commission orders:

(A) Hunt Industries is hereby substituted as respondent in lieu of Lyda Hunt-Margaret Trusts, Lyda Hunt-Caroline Trusts, Lyda Hunt-Herbert Trusts, Lyda Hunt-Bunker Trusts, and Lyda Hunt-Lamar Trusts, in the proceedings in Docket Nos. G–13840, G–16423, G–17162, G–20445, G–20535, and RI60–432, and such proceedings are hereby redesignated accordingly.

(B) Within 30 days from the date of issuance of this order, Hunt Industries shall execute, in the form set out below, and shall file with the Secretary of the Commission, an acceptable agreement and undertaking in each of the proceedings, in Docket Nos. G–13840, G–16423, G–17162, G–20445, G–20535, and RI60–432, to assure refund of any excess charges which the Commission may require in these proceedings. Unless notified to the contrary by the Commission within 30 days from the date of submission, the agreements and undertakings shall be deemed to be satisfactory, and to have been accepted for filing.

(C) Hunt Industries shall comply with the refunding and reporting procedure required by the Natural Gas Act and Section 154.102 of the Regulations thereunder, and its agreements and undertakings shall remain in full force and effect until discharged by the Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

MISSISSIPPI RIVER TRANSMISSION CORPORATION, DOCKET NO. CP61–274

ORDER AMENDING ORDER AFTER STATUTORY HEARING, ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 18, 1963)

On October 22, 1963, Mississippi River Transmission Corporation (Movant) filed a motion to amend the Commission's order issued July 21, 1961, in Docket No. CP61–274, to permit construction and operation of certain additional natural gas facilities consisting of approximately 4,000 feet of 4.5-inch pipeline to enable Movant to deliver to Storage Corporation natural gas for the purpose of further testing the St. Jacob Storage Field located near St. Jacob, Illinois, and to connect the said pipeline with existing and proposed wells so as to enable Storage Corporation to inject gas into the storage reservoir. The motion also requests authorization for the installation of necessary metering, dehydration and miscellaneous equipment. Certain meter runs and separators will be taken from existing wells in the south area of the gas field in order to minimize the investment in facilities.

The estimated cost of the proposed changes in construction is $16,000 for which sum Movant is indemnified against loss by Storage Corporation, all as more fully described in the motion on file herein.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the motion to amend has been filed.

At a hearing held on December 13, 1963, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the motion to amend filed on October 22, 1963, and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued July 21, 1961, in Docket No. CP61–274 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order, issued July 21, 1961, in Docket No. CP61–274 be and the same is hereby amended to authorize the construction, installation and operation of additional facilities as hereinbefore described and as more fully set forth in the motion to amend.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP64–68

FINDINGS AND ORDER AFTER STATUTORY HEARING, ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 18, 1963)

On September 19, 1963, Natural Gas Pipeline Company of America (Applicant) filed in Docket No. CP64–68 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1964 and the operation of meter stations, lateral pipelines and taps on Applicant's existing natural gas transmission system to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application.

The total cost of all facilities for which authorization is sought herein will not exceed a maximum of $3,500,000, with no single project to exceed a cost of $500,000. Applicant has budgeted these costs from funds on hand for the year 1964.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally co-extensive with said system.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 13, 1963, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including

the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 13, 1942, in Docket No. G–235 (3 FPC 830).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 2.58(c) of the Commission's Rules of Practice and Procedure.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1964 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $3,500,000, with no single project to exceed a cost of $500,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Natural Gas Pipeline Company of America, to construct during the calendar year 1964, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 2.58(c) of the Commission's Rules of Practice and Procedure.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1964, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $3,500,000, with no single project to exceed a cost of $500,000.

747–370—66——100

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP64-58

FINDINGS AND ORDER AFTER STATUTORY HEARING, ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 18, 1963)

On September 6, 1963, Northern Natural Gas Company (Applicant) filed in Docket No. CP64-58 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain measuring and regulating facilities for the delivery of natural gas from its transportation system to Archer-Daniels Midland Company for use in a dehydration plant located near Tice in Haskell County, Kansas, all as more fully described in the application.

Applicant estimates that the proposed facilities will cost $8,530 which will be financed from funds on hand.

Applicant states that a volume of 136 Mcf per year of firm gas will be used for space and water heating and that the interruptible load will total 395,000 Mcf per year. The interruptible gas will be used for dehydrating alfalfa during the summer season from April through November.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 13, 1963, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application exhibits and supplements submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act as found by the Commission in its order of April 6, 1943, in Docket No. G-280 (3 FPC 967).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Northern Natural Gas Company, to construct and

operate facilities and to deliver natural gas in interstate commerce as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

EXPENDITURES FOR POLITICAL PURPOSES—AMENDMENT OF ACCOUNT 426, OTHER INCOME DEDUCTIONS, UNIFORM SYSTEM OF ACCOUNTS, AND REPORT FORMS PRESCRIBED FOR ELECTRIC UTILITIES AND LICENSEES AND NATURAL GAS COMPANIES—FPC FORMS NOS. 1 AND 2, DOCKET NO. R–226

ORDER NO. 276

ORDER REVISING ACCOUNT 426, OTHER INCOME DEDUCTIONS, AND ANNUAL REPORT FORMS

(Issued December 18, 1963)

The Commission has under consideration in this proceeding the amendment of Account 426 of its Uniform System of Accounts, Other Income Deductions, by the promulgation of five new subaccounts within the present Account 426. It also has under consideration the revision of Instruction No. 3 to the Schedule of Particulars Concerning Certain Income Deduction and Interest Charges Accounts included in FPC Forms Nos. 1 and 2, Annual Reports of Electric Utilities and Licensees (Classes A and B) and of Natural Gas Companies (Classes A and B), respectively, to provide for the reporting within that schedule of amounts entered in newly designated Subaccounts 426.1, 426.2, 426.3 and 426.5; and the further revision of its FPC Forms Nos. 1 and 2 to require that all expenditures for political purposes to be included in newly designated Subaccount 426.4 be reported in a separate schedule.

This proceeding was commenced by a notice of proposed rulemaking served upon interested parties, including State and Federal regulatory agencies, and by publication in the Federal Register on December 28, 1962 (27 F.R. 12839). The proposed amendment of Account 426 by the promulgation of five subaccounts (Subaccounts 426.1, 426.2, 426.3, 426.4 and 426.5) and the proposed revisions of FPC Forms Nos. 1 and 2 by changing the present wording of Instruction No. 3 to the Schedule of Particulars Concerning Certain Income Deduction and Interest Charges Accounts and by adding a separate schedule entitled "Expenditures for Political Purposes" were set forth in the notice.

Currently, Account 426 is utilized for recording numerous expenditures, which are primarily non-operating in nature, of public utilities and licensees subject to the provisions of the Federal Power Act and of natural gas companies subject to the provisions of the Natural Gas Act. Representative non-operating expenditures include items such as donations; life insurance of officers and employees wherein the public utility or gas company is beneficiary; penalties for violation of regulatory statutes; expenditures for the purpose of influencing public opinion as to the election of public officers, referenda, proposed legislation, proposed ordinances, repeal of existing laws or ordinances, and approval

or revocation of franchises; and expenditures for the purpose of influencing decisions of public officers. The utilization of five subaccounts within the present Account 426 will make possible for the first time the separate classification and identification of five categories of income deductions that cannot now be individually identified from the account balance in Account 426. The Amendments to Forms Nos. 1 and 2 will provide for more detailed annual reporting of the various categories of expenditures.

The notice of proposed rulemaking afforded a period of 55 days for the submission to the Commission of written data, views, comments and suggestions concerning the proposed amendments. Ninety-six responses were received from numerous segments of the electric and gas industry, mass communication and advertising media, state public service commissions, professional, press, radio and television associations, law firms and individual citizens. All have been given due consideration by the Commission. We are adopting certain of the suggested modifications of the original proposals and are rejecting the others for the reasons hereinafter set forth.

A principal source of criticism of the rules as originally proposed by the Commission was that the proposed Subaccount 426.4, relating to expenditures for political purposes, had been drafted in a manner which not only was ambiguous and indefinite as to exactly what expenditures were intended to be included, but also appeared to include expenditures—of which regulatory expenses are typical—which properly should be included in above-the-line operating expense or capital accounts of the Uniform System of Accounts. We have concluded that there is considerable merit to such criticism. No matter where the line be drawn with respect to either the general category of expenditures to be labeled as "political" for purposes of accounting and reporting or assignment of particular costs, there will be many people who will believe that some expenditures so listed should not have been classified as political and others who will be equally convinced that certain operating expenses were in fact expenditures for political purposes. This does not mean, as some have suggested, that we should abandon our effort at separate classification and reporting of political expenditures, or even that we should limit our effort to those types of expenditures with respect to which all persons would agree in advance concerning the classification. But it does indicate that if we wish to define a class of expenditures for political purposes in a way which can be applied with an appreciable degree of uniformity and comparability by the numerous public utilities, licensees and natural gas companies, we may have to forego inclusion of certain types of expense which *may* in fact be made for political purposes, but either usually are not, or are not subject to sufficiently clear definition to be capable of consistent application. Conversely the classification may encompass particular expenditures which usually are but which in a particular case may not have been made for political purposes.

Accordingly we are excluding from the text of Subaccount 426.4 the phrase "or having any direct or indirect relationship to political matters, including the influencing of public opinion with respect to public policy," and are adding thereto a clause excluding "expenditures which are directly related to appearances before regulatory or other governmental bodies in connection with the reporting utility's existing or proposed operations." In addition we are changing the title of the subaccount. As modified, the subaccount will read as follows:

426.4 Expenditures for Certain Civic, Political and Related Activities

This account shall include expenditures for the purpose of influencing public opinion with respect to the election or appointment of public officials, referenda, legislation, or ordinances (either with respect to the possible adoption

of new referenda, legislation or ordinances or repeal or modification of existing referenda, legislation or ordinances); or approval, modification, or revocation of franchises; or for the purpose of influencing the decisions of public officials, but shall not include such expenditures which are directly related to appearances before regulatory or other governmental bodies in connection with the reporting utility's existing or proposed operations.

Several of the comments received stated that the amendment of Instruction No. 3 to the Schedule of Particulars Concerning Certain Income Deduction and Interest Charges Accounts in the Commission's Annual Reports, FPC Forms Nos. 1 and 2, to require individual reporting of all amounts of $100 or more charged to proposed Subaccounts 426.1, 426.2, 426.3 and 426.5, would impose a considerable burden upon the reporting utilities and encumber the Commission with details of insignificant expenditures. We believe that modification of Instruction No. 3 to allow grouping of any amounts of less than $1,000 in the aforesaid subaccounts for reporting purposes would eliminate these objections without conflicting with the overall purposes of the accounting and reporting amendments contemplated herein. Inasmuch as the books of reporting utilities have been closed for the reporting year 1962, we also conclude that the proposed amendments to our Uniform System of Accounts and annual report forms should be made applicable commencing with the reporting year 1963. In addition, although the new schedule for Subaccount 426.4 hereafter prescribed does not permit any grouping of expenditures, we will permit such grouping for reporting years which begin in 1963 in accordance with our outstanding requirements for earlier years.

A number of the comments upon the proposed amendments suggest that any effort to classify and require the special reporting of expenditures for political purposes would infringe upon freedom of speech and other constitutional guarantees, that the term "political" will have a misleading connotation because of its utilization in certain state penal statutes concerning political activities, that the extension of the definition of political expenditures to those not specifically covered by the "*ECAP*" case * would be improper, and that the contemplated amendments are "socialistic" in nature.

By requiring that expenditures for political purposes be placed in Subaccount 426.4 for accounting purposes, we do not impose any censorship or prohibition upon expenditures of that nature by electric and gas utilities. Moreover, this Commission in the afore-mentioned "*ECAP*" case rejected assertions that placing such expenditures in a "below the line" account for accounting purposes constituted an infringement upon freedom of speech or other constitutional guarantees, and its opinion and order in that case was upheld by the courts. Nor do we find any sound basis for concluding that the mere designation of an expenditure as "political" by this Commission will in itself signify improper or illegal conduct by the person or party making that expenditure. As mentioned above, however, we are changing the title of Subaccount 426.4. We note also that such classification does not constitute a determination that the expenditures should be excluded from a utility's cost of service in rate proceedings.

Whether a given utility's specific expenditures should be charged to Subaccount 426.4 or placed in an appropriate operating expense account must be determined, of course, in the first instance by a proper application of the standard set forth in the text of the subaccount, as here modified, by the officers of electric and gas utilities who are conversant with the day-to-day operations of their respective business entities. It should be recognized that certain expenditures,

*Commission Opinion and Order No. 337, *Alabama Power Company, et al.*, 24 FPC 278, affirmed *sub nom Southeastern Electric Power Company* v. *F.P.C.*, 304 F. 2d 29, cert. denied, 371 U.S. 924.

such as those covering a trip to Washington, D.C., may involve a joint cost requiring allocation of the charge to Subaccount 426.4 and to another account or accounts. Although the preparation of an exhaustive list of items that normally should be placed in Subaccount 426.4 or in appropriate operating expense accounts would be impractical, particularly in the absence of specific fact situations, the following table illustrates the type of expenditures that it would appear should be placed in each category:

Subaccount 426.4

Advertising in various mass communication media to influence the election or appointment of public officers or proposed legislation at Federal, state, or local levels.

Advertising in mass communication media to promote legislation exempting independent producers of natural gas from Federal regulation.

Advertising in mass communication media to influence the general public or public officials on the private v. public power question. (Such advertising even where it has no specific or express objective is calculated to affect public or official attitudes toward future legislative or administrative action.)

Letters or inserts in customers' bills or in reports to stockholders to influence the opinion of recipients as to the election or appointment of public officers or pending legislation.

Payments for lobbying or other fees to persons or organizations including law firms, service companies or other affiliated interests, for influencing the passage or defeat of pending legislative proposals or influencing official decisions of public officers.

Payments for the preparation or distribution of editorial or cartoon material intended to influence the public on political matters.

Cost to utility of time utilized by employees in a house-to-house campaign or other devices for influencing public opinion as to public power or natural gas legislation together with associated company expenses.

Membership fees in organizations engaged in lobbying on legislative matters.

Cost to utility for meals, lodging and other personal and social items of persons involved in any of the above activities.

Operating Expense Accounts

Reasonable expenditures for promotional and "good will" advertising.

Costs of appearances before the Federal Power Commission or other Federal and State regulatory agencies in various regulatory proceedings.

Costs of submitting comments on this proceeding or other regulatory proceedings.

Necessary appearances before or communications to Congress or legislative bodies regarding matters of direct operating concern to the utility company.

Appearances before zoning and tax appeal boards.

Appearances before municipal councils or other local authorities on charter or franchise regulations of direct operating concern to the utility company.

Appearances before or communication with local bodies or officials regarding ordinances such as those concerning tree-trimming and safety of equipment.

Appearances before or communication with local bodies or officials concerning permits such as those for erecting poles on public property or obtaining rights of way.

With respect to reporting expenditures in Subaccount 426.4 in the new schedule for that purpose to be added to FPC Forms Nos. 1 and 2, the schedule itself is

largely self-explanatory. If a particular expenditure has been charged to Subaccount 426.4, the amount and nature thereof should be duly reported in the new schedule.

The Commission further finds:

(1) The notice and opportunity to participate in this rulemaking proceeding with respect to the matters presently before this Commission through the submission, in writing, of data, views, comments, suggestions and arguments in the manner as described above, are consistent and in accordance with all procedural requirements therefor as prescribed in Section 4 of the Administrative Procedure Act. In view of the foregoing and the modification of the proposed amendments to our accounting and reporting requirements to reflect valid objections raised thereto, opportunity for oral argument or a formal hearing in this matter would serve no useful purpose and is therefore unnecessary.

(2) In view of the foregoing and upon consideration of all relevant matters presented, adoption and promulgation of the proposed amendments of Account 426 of the Commission's Uniform Systems of Accounts for Public Utilities and Licensees and Natural Gas Companies and of FPC Forms Nos. 1 and 2 by the addition of the attached schedule for reporting expenditures for certain civic, political and related activities and the revision of Instruction No. 3 to the Schedule of Particulars Concerning Certain Income Deduction and Interest Charges Accounts contained therein for use in reporting for the calendar year beginning January 1, 1963, or subsequently during the calendar year 1963 if an established fiscal year is other than the calendar year, and years thereafter, are necessary and appropriate for the purposes of the Federal Power and Natural Gas Acts.

(3) Good cause exists for adoption and promulgation of the matters referred to above immediately upon issuance of this order; all as hereinafter provided.

The Commission, acting pursuant to the authority granted by the Federal Power Act, as amended, particularly Sections 3(13), 4 (a), (b), (c), 301(a), 302, 304, 309 and 311 thereof (16 U.S.C. 796(13), 797 (a), (b), (c), 825(a), 825a, 825c, 825h, and 825j) and by the Natural Gas Act, as amended, particularly Sections 8(a), 9, 10, and 16 thereof (15 U.S.C. 717g(a), 717h, 717i and 717o), *orders:*

(A) Account 426 of the Commission's Uniform Systems of Accounts for Public Utilities and Licensees and for Natural Gas Companies, Other Income Deductions, hereby is amended to include Subaccounts 426.1, 426.2, 426.3, 426.4, and 426.5, all set forth in the attachment hereto.

(B) Instruction No. 3 to the Schedule of Particulars Concerning Certain Income Deduction and Interest Charges Accounts in the Commission's Annual Reports, FPC Forms Nos. 1 and 2, 18 CFR 141.1 and 260.1, is hereby amended to read as follows:

3. Other Income Deductions (Account 426)—Report the nature, payee, and amount of other income deductions for the year as required by Subaccounts 426.1, Donations; 426.2, Life Insurance; 426.3, Penalties; and 426.5, Other Deductions, of the Uniform System of Accounts. Amounts of less than $1,000 may be grouped by classes within the above subaccounts if the number of items so grouped is shown. Additionally, report the total amount of income deductions included in Subaccount 426.4, particulars of which are contained in the separate schedule "Expenditures for Certain Civic, Political and Related Activities."

(C) FPC Forms Nos. 1 and 2 are hereby further amended by the addition of the new report schedule "Expenditures for Certain Civic, Political and Related Activities" attached hereto for the reporting of such expenditures.

(D) The amendments and revisions of Account 426 of the Commission's Uniform System of Accounts and FPC Forms Nos. 1 and 2, all as set forth in paragraphs (A) through (C) above, shall become effective upon the date of issuance of this order, and shall be utilized in accounting and reporting for the calendar year beginning January 1, 1963, or subsequently during the calendar year 1963 if an established fiscal year is other than the calendar year, and years thereafter.

(E) The Secretary of the Commission shall cause prompt publication of this order to be made in the Federal Register.

Commissioner Black, *concurring.*

Commissioner Woodward *dissenting.*

ATTACHMENT

Amendment to Parts 101, 104, 105, 201, 204, 205
(18 CFR Parts 101, 104, 105, 201, 204, 205)

Account 426, Other Income Deductions, appearing in each of the above-numbered parts, is amended to read:

426 Other Income Deductions

This account shall include miscellaneous expense items which are non-operating in nature but which are properly deductible before determining total income before interest charges. The account shall be maintained according to subaccounts shown below.

426.1 Donations

This account shall include all payments or donations for charitable, social or community welfare purposes.

426.2 Life Insurance

This account shall include all payments for life insurance of officers and employees where company is beneficiary (net premiums less increase in cash surrender value of policies).

426.3 Penalties

This account shall include payments by the Company for penalties or fines for violation of any regulatory statutes by the company or its officials.

426.4 Expenditures for Certain Civic, Political and Related Activities

This account shall include expenditures for the purpose of influencing public opinion with respect to the election or appointment of public officials, referenda, legislation, or ordinances (either with respect to the possible adoption of new referenda, legislation or ordinances or repeal or modification of existing referenda, legislation or ordinances) or approval, modification, or revocation of franchises; or for the purpose of influencing the decisions of public officials, but shall not include such expenditures which are directly related to appearances before regulatory or other governmental bodies in connection with the reporting utility's existing or proposed operations.

426.5 Other Deductions

This account shall include other miscellaneous expenses which are non-operating in nature, but which are properly deductible before determining total income before interest charges.

NOTE.—The classification of expenses as nonoperating and their inclusion in this account is for accounting purposes. It does not preclude Commission consideration of proof to the contrary for ratemaking or other purposes.

Form Approved Budget Bureau 54–RO 05.19

Annual Report of..... Year ended December 31, 19....

EXPENDITURES FOR CERTAIN CIVIC, POLITICAL AND RELATED ACTIVITIES
(Subaccount 426.4)

1. Report below all expenditures incurred by the respondent during the year for the purpose of influencing public opinion with respect to the election or appointment of public officials, referenda, legislation or ordinances (either with respect to the possible adoption of new referenda, legislation or ordinances or repeal or modification of existing referenda, legislation or ordinances); approval, modification, or revocation of franchises; or for the purpose of influencing the decisions of public officials which are accounted for as Other Income Deductions, Expenditures for Certain Civic, Political and Related Activities; Subaccount 426.4.

2. Advertising expenditures in this Subaccount shall be classified according to subheadings, as follows: (a) radio, television, and motion picture advertising; (b) newspaper, magazine, and pamphlet advertising; (c) letters or inserts in customers' bills; (d) inserts in reports to stockholders; (e) newspaper and magazine editorial services; and (f) other advertising.

3. Expenditures within the definition of paragraph (1), other than advertising shall be reported according to captions or descriptions, clearly indicating the nature and purpose of the activity.

4. If respondent has not incurred any expenditures contemplated by the instructions of Subaccount 426.4, so state.

5. For reporting years which begin during the calendar year 1963 only, minor amounts may be grouped by classes if the number of items so grouped is shown.

NOTE: The classification of expenses as nonoperating and their inclusion in this account is for accounting purposes. It does not preclude Commission consideration of proof to the contrary for ratemaking or other purposes.

Line No.	Item (a)	Amount (b)
		$ ¢

305

BLACK, Commissioner, *concurring:*

The Commission in its order should make clear that the term "political" in the title to subaccount 426.4 is used in its broadest meaning. The examples set forth in the order of types of expenditures which would be placed in this subaccount indicate that this is our intention, but I believe this should be specially emphasized.

The utilities and the advertising agencies have displayed great ingenuity in conveying a "message" which is not always political in the ordinary sense of the word, but which concerns itself with problems of broad national social or economic policy. These efforts are intended to influence fundamental attitudes or beliefs and bear no reasonable relationship to the necessary operations of a utility company or the furnishing of utility service. The industry is, of course, free to spend its money this way, but such costs should be reported as income deductions below the line. Unless we make this clear, I am fearful that too restrictive an interpretation may be put on the language of subaccount 426.4 and expenditures for these purposes may be lost in various above-the-line operating expense accounts.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP60–23

ORDER AMENDING ORDER AFTER STATUTORY HEARING, ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 18, 1963)

On October 16, 1963, Southern Natural Gas Company (Applicant) filed in Docket No. CP60–23 an application to amend the certificate issued on October 3, 1960, in the above entitled proceeding, as hereinafter described and as more fully described in said application.

Applicant requests authority to increase its interruptible service to Southern Cement Company (Cement) at Roberta, Shelby County, Alabama. The present maximum volume is 15,340 Mcf per day. Applicant requests authorization to increase the maximum volume to 17,000 Mcf per day.

The gas is and will be used in Cement's lime and cement manufacturing operations. None of the gas is or will be used for boiler fuel.

No additional facilities are necessary to deliver the increased volume.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 13, 1963, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued October 3, 1960, in Docket No. CP60–23 be amended as hereinafter ordered.

The Commission orders:

(A) The order issued October 3, 1960, in Docket No. CP60–23 be and the same is hereby amended by authorizing Applicant, Southern Natural Gas Company, to increase the volume of its interruptible service to Southern Cement Company from a maximum of 15,340 Mcf per day to a maximum of 17,000 Mcf per day.

(B) In all other respects the aforesaid order issued October 3, 1960, in Docket No. CP60–23, shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP64–46

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 18, 1963)

On August 21, 1963, Texas Gas Transmission Corporation (Applicant) filed in Docket No. CP64–46 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of 1.14 miles of 4-inch pipeline and one purchase meter station, to be located in the Perry Field, Vermilion Parish, Louisiana.

The facilities will be used to transport, for the account of Hope Natural Gas Company (Hope), gas to be produced by Hope, and gas to be purchased by Hope from Exchange Oil & Gas Company in the Perry Field. The facilities will enable Hope to supplement its existing South Louisiana gas supply for the requirements of the customers of the Consolidated Natural Gas System with no increase in cost of gas or transportation.

The transportation by Applicant, for the account of Hope, will be rendered under the certificate issued to Applicant on August 10, 1959, in Docket No. G–17335.

The estimated cost of the facilities is $32,860, to be financed from cash on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 13, 1963, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Texas Gas Transmission Corporation, a Delaware Corporation having its principal place of business in Owensboro, Kentucky, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation of natural gas by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Texas Gas Transmission Corporation, to construct and operate facilities and to transport natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission Regulations, within sixty days from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G–13221, ET AL.; COLORADO OIL AND GAS CORPORATION, CI60–721 AND CI63–813; TEXAS GAS EXPLORATION CORPORATION (OPERATOR), ET AL., CI61–1125; SKELLY OIL COMPANY (OPERATOR), ET AL., CI61–1419; TEXAS GAS EXPLORATION CORPORATION, CI62–930

ORDER SEVERING PROCEEDINGS, CONDITIONALLY APPROVING SETTLEMENT PROPOSALS AND CONDITIONALLY ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 18, 1963)

Motions for severance, for approval of settlement proposals and for issuance of certificates of public convenience and necessity in their respective dockets were filed in the above-captioned proceedings on August 30, 1963, by Colorado Oil and Gas Corporation (Colorado); on September 10, 1963, by Texas Gas Exploration Corporation (Texas Exploration); and on September 16, 1963, by Skelly Oil Company (Skelly).

The settlement proposals are similar to those previously approved by the Commission[1] and provide for the issuance of permanent certificates at initial rates of 20.625¢ per Mcf[2] for sales from the taxing jurisdiction of the State of Louisiana and 19.0¢ per Mcf for a sale in the Federal domain, five year moratoria on rate increase filings commencing April 1, 1963 (subject to the usual exceptions), extension of the take-or-pay make-up periods to four years in all contracts which provide lesser make-up periods, and refunds of amounts above the settlement rate collected since the date of initial delivery in Docket No. CI61–1125 wherein the temporary authorization contains an express refund condition.[3]

No answers to these motions have been received.

These proposals, generally, are in the public interest and we shall approve them subject to the following reservations and conditions.

Since deliveries have been made at rates above the settlement rates since the proposed effective date, refunds of such excesses are required. Colorado and Skelly propose to pay interest on such amounts to be refunded at a rate of 7 percent per annum. Texas Exploration's proposal contains no interest provision. In accordance with our present policy, we shall require that interest at 7 percent per annum be paid on all amounts to be refunded under these settlement proposals, such interest to accrue through the last day of the month in which the respective proposals were filed, August 31, 1963, in the case of Colorado and September 30, 1963, in the cases of Skelly and Texas Exploration.

In the context of proposals, we interpret the term "delivered" as used in paragraph 1 of the Colorado and Texas Exploration proposals and the term "sold" as used in the Skelly proposal to include gas required to be taken during the moratorium periods but paid for and not taken when paid for. In other words, prepayments shall not be made during the moratorium periods at rates higher than the rates in effect for gas physically delivered. Our approval of these settlements is conditioned upon such interpretation.

The settlement provisions for adjustments in rates according to our order or orders in Area Rate Proceeding, Docket No. AR61–2, seek to anticipate in part

[1] See *e.g.*, orders issued August 7, 1963, and October 9, 1963, in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, 30 FPC 456 and 979, respectively.

[2] All rates expressed inclusive of applicable tax reimbursement and all volumes expressed at 15.025 psia.

[3] See Appendix for further details.

the nature of our final determinations in that matter. It is clear that we shall make no determinations in this matter which will control our conclusions in Docket No. AR61–2. The settlement proposals also provide that adjustments in price growing out of the Area Rate Proceeding, Docket No. AR61–2, should go into effect upon conclusion of judicial review of our final order.

However, we cannot now commit the Commission to conditionally staying the effectiveness of its final order in Docket No. AR61–2. These matters should be decided at the conclusion of that proceeding and our approval of the settlements will be so conditioned.

On April 16, 1962, an amendatory agreement dated December 15, 1961, was filed by Skelly as Supplement No. 3 to its Rate Schedule No. 172. This supplement added thereto the interests of Columbia Carbon Company and Hudson Gas & Oil Corporation in certain acreage in the North Scott Field. The certificate issued below in Docket No. CI61–1419 will include such interests.

The "*et al.*" sellers whose interests are covered by Texas Exploration's filings in Docket No. CI61–1125 and Rate Schedule No. 5 are, Sun Oil Company, Southwest Gas Producing Company, Inc., United Producing Company, Inc., H. B. Zachry, Charles B. Wrightsman, Arley A. Sarver and Line Service, Inc. The certificate issued below to Texas Exploration as Operator covers such interests.

In accordance with the above we shall sever these individual dockets from the consolidated proceeding Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*, omit the intermediate decision in regard to these dockets [4] and issue certificates of public convenience and necessity in accordance with the applications, settlement proposals and conditions of this order.

The Commission finds:

(1) Each of the applicants herein is a "natural-gas" company within the meaning of the Natural Gas Act, and is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(2) The proposed sales of natural gas are subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Each of the applicants herein is able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, are required by the public convenience and necessity and are in the public interest upon the conditions set forth below, and certificates should be issued as ordered below.

(5) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

(6) No party has opposed the waiver of the intermediate decisions in these proceedings.

The Commission orders:

(A) The motions for waiver of the intermediate decisions are granted.

(B) The matters in Docket Nos. CI60–721, CI63–813, CI61–1125, CI61–1419

[4] The hearings in the Union Texas Petroleum, *et al.*, consolidated proceeding concluded July 25, 1963.

and CI62-930 are hereby severed from the consolidated proceeding Union Texas Petroleum, *et al.*, Docket No. G-13221, *et al.*

(C) Certificates of public convenience and necessity are hereby issued upon the conditions set forth herein to the applicants for the sales of natural gas in interstate commerce for resale as proposed and as modified by the settlement proposals and this order, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in the applications and settlement proposals herein.

(D) The certificates issued by paragraph (C) above, are granted upon the express conditions that the applicants comply fully with the terms of this order and the settlement proposals which settlement proposals are expressly approved, as modified by this order.

(E) Interest shall be paid on all amounts to be refunded under the terms of the settlements and this order (including refunds of all amounts collected for deliveries made since April 31, 1963, above that which would have been collected at the settlement rates) at a rate of 7 percent per annum, such interest to accrue through the last day of the months in which the respective settlements were filed August 31, 1963, in the case of Colorado and September 30, 1963, in the case of Skelly and Texas Exploration. All refunds required by this order shall be made within 90 days from the date of issuance hereof.

(F) Within 30 days after making the refunds required by the terms and conditions of this order and the settlement proposals the applicants shall report to the Commission, in triplicate, the amount of the refunds made to each pipeline purchaser, showing separately the amount of principal and interest so paid and the bases used for such determinations, together with releases from the purchasers showing receipt of the refunds in conformity with the settlements and the conditions of this order.

(G) Upon full compliance of the applicants with all the terms of this order and of the settlement proposals as modified, the applicants shall be relieved of any further refund obligations in these certificate proceedings and said proceedings shall terminate.

(H) The certificates herein issued are not transferable and shall be effective only so long as the applicants continue the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(I) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or Part 154 of the Regulations thereunder; *Provided, however,* that the 30-day notice provisions of Part 154.94(b) and the detailed submittal requirements of Part 154.94(f) are hereby waived insofar as they apply to the filing of reductions in rates as required by this order and the settlement proposals.

(J) The grant of certificates herein and approval of the settlement proposals is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the applicants, particularly any proceeding under Section 5 of the Natural Gas Act or Section 5(c) of the Outer Continental Shelf Lands Act and is without prejudice to claims or contentions which may be made by the Commission, applicants, the Commission staff, or any affected party herein in any other proceeding.

(K) Upon full compliance of Skelly with all the terms of this order and of its settlement proposal as modified, Supplement No. 3 to Rate Schedule No. 172 shall be accepted for filing effective as of the date of initial delivery.

APPENDIX

Docket No.	Rate schedule No.	Seller	Purchaser	Current rate (cents per Mcf)	Proposed settlement rate (cents per Mcf)
CI60-721	44	Colorado Oil & Gas Corp.	Florida Gas Transmission Co.	23.55	20.625
CI63-813	52	do	Texas Gas Transmission Corp.	20.75	20.625
CI61-1419	172	Skelly Oil Co. (Operator), *et al.*	do	[1] 21.25	20.625
CI61-1125	5	Texas Gas Exploration Corp. (Operator), *et al.*	Hope Natural Gas Co.	21.75	20.625
CI62-930	9	Texas Gas Exploration Corp.	Transcontinental Gas Pipe Line Corp.	[2] 19.5	19.0

[1] Contract initial price of 23.8 cents per Mcf was conditioned down to 21.25 cents per Mcf in temporary authorization.
[2] Contract initial price of 21.4 cents per Mcf was conditioned down to 19.5 cents per Mcf in temporary authorization.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G–13221, ET AL.; CONTINENTAL OIL COMPANY, G–16840, G–17521 AND G–20242

ORDER DENYING MOTION FOR SEVERANCE AND REJECTING OFFER OF SETTLEMENT

(Issued December 18, 1963)*

On September 23, 1963, Continental Oil Company (Continental) filed a motion for severance of the above-captioned Continental dockets[1] from the consolidated proceeding Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.* (hereinafter referred to as the Union Texas proceeding) and for the issuance of certificates of public convenience and necessity in accordance with the settlement proposal attached to the motion.

No answers to Continental's motion and offer have been filed.

The terms of the Continental proposal conform, generally, to the other settlements in the Union Texas proceeding which have been approved by the Commission[2] and provide for maximum initial rates of 20.625¢ per Mcf[3] for sales from south Louisiana, effectively April 1, 1963; a five-year moratorium on rate increase filings (subject to the usual exceptions); and extension of the make-up periods to four years in the rate schedules which provide for lesser make-up periods.

However, the refund provisions of Continental's proposal differ substantially from the provisions of the recent Union Texas proceeding settlements which have been approved by the Commission. The temporary authorizations heretofore issued in Docket Nos. G–17521 and G–20242 contain express refund conditions; the temporary authorization in Docket No. G–16840 contains no such condition. The recent Union Texas settlements have provided full refunds of all amounts collected since the dates of initial deliveries in excess of that which

*Reconsideration denied, 31 FPC 235.
[1] Continental does not propose to settle the matters in Docket Nos. CI61–586 and CI62–147 both of which are also consolidated herein.
[2] See orders issued August 7, 1963 (Humble Oil & Refining Company) and October 9, 1963 (Gulf Oil Corporation and Socony Mobil Oil Company, Inc.), in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, 30 FPC 456 and 979, respectively.
[3] All rates expressed inclusive of applicable tax reimbursement and all volumes expressed at 15.025 psia.

would have been collected at the settlement rates in those cases in which the temporary authorizations contain express refund conditions. In cases in which the temporary authorizations did not contain refund conditions, the settlements have provided for no refunds of any amounts collected for deliveries made prior to the effective date of the settlement.[4] Continental, however, proposes that it refund two-thirds of the difference between that which has been collected from the dates of initial deliveries under all three temporary authorizations and that which would have been collected at the settlement rate, yet Continental gives no reason for its proposed departure from the Union Texas settlement standards.

We are of the view that, except in unusual circumstances, all parties who choose to settle should be treated alike insofar as it is possible to do so. It appears that Continental's proposal would result in less money being refunded to its pipeline purchasers than would be refunded had it followed the pattern of the recent Union Texas proceeding settlements. As noted above, Continental gives no reason why such a result should be allowed.

In view of the above, we are of the view that Continental's motion should be denied and offer of settlement rejected.

The Commission orders:

The motion for severance and issuance of certificates in accordance with settlement offer filed by Continental Oil Company in the above-captioned matters on September 23, 1963 is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G–13221, ET AL., K&H OPERATING CO., AGENT FOR SWORD COMPANY, ET AL., DOCKET NO. G–18058

ORDER REJECTING OFFER OF SETTLEMENT AND DENYING PETITION FOR ISSUANCE OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 18, 1963)

On October 22, 1963, K&H Operating Co., Agent for Sword Company, *et al.* (K&H), filed an offer of settlement of the matters in Docket No. G–18058 and a petition for issuance of a certificate of public convenience and necessity in accordance with the application and offer of settlement.

On November 19, 1963, the Public Service Commission of the State of New York (PSC) filed an answer in opposition to the petition of K&H. PSC contends that K&H should be required to make refunds of amounts above the proposed settlement rate collected since the date of initial delivery under the temporary authorization heretofore issued to K&H.

Without determining the merits of the settlement offer or the objection of PSC but because there is no agreement between these parties, we shall reject the offer of settlement and deny the petition. Contested matters can best be decided in the formal proceedings in Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.* The hearings in that proceeding, which includes Docket No. G–18058, concluded on July 25, 1963.

---

[4] See orders listed in footnote 2 *supra*. In addition see orders issued in the *Union Texas* proceeding on November 12, 1963 (*Mississippi River Fuel Corp., et al.*), and November 27, 1963 (*The Atlantic Refining Co.*), 30 FPC 1280 and 1376 respectively.

The Commission orders:

The petition for issuance of a certificate of public convenience and necessity filed in the above-entitled matters on October 22, 1963, by K&H Operating Co., Agent For Sword Company, *et al.* is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G–13221, ET AL.; UNION TEXAS PETROLEUM, A DIVISION OF ALLIED CHEMICAL CORPORATION, DOCKET NO. G–14227; JOSEPH E. SEAGRAM & SONS, INC. D/B/A FRANKFORT OIL COMPANY, DOCKET NO. CI61–1412

ORDER SEVERING PROCEEDINGS, CONDITIONALLY APPROVING SETTLEMENT PROPOSAL AND CONDITIONALLY ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 18, 1963)

On October 30, 1963, Union Texas Petroleum, a division of Allied Chemical Corporation (Union Texas) and Joseph E. Seagram & Sons, Inc. d/b/a Frankfort Oil Company (Seagram) filed a motion for severance of Docket Nos. G–14227 and CI61–1412 from the consolidated proceeding Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*, for the issuance of a certificate of public convenience and necessity in Docket No. CI61–1412 in accordance with the application and attached settlement proposal and for an order vacating the authority in Docket No. G–14227 to sell gas produced in the Chegby Field, St. James and La Fourche Parishes, Louisiana. An amendment to the settlement offer was filed on December 11, 1963.

A certificate of public convenience and necessity was originally issued in Docket No. G–14227 in 1958. *Transcontinental Gas Pipe Line Corporation*, 20 FPC 264. This certificate was issued to Union Texas (formerly Union Oil and Gas Corporation of Louisiana) and sales commenced under Union Texas' F.P.C. Gas Rate Schedule No. 9. Effective November 1, 1960, the Union Texas leases in the Chegby Field were assigned to Seagram and, on March 29, 1961, Seagram filed an application in Docket No. CI61–1412 for authority to continue the sales from the Chegby Field. However, the order issuing the certificate to Union Texas in Docket No. G–14227 was remanded to the Commission in *Public Service Commission of New York* v. *F.P.C.*, 361 U.S. 195. Subsequently, on July 30, 1962, in accordance with a settlement agreement, the certificate was reissued to Union Texas in Docket No. G–14227 except insofar as it concerned the acreage in the Chegby Field. *Texaco Inc.*, 28 FPC 247.

Union Texas and Seagram in the instant motion and settlement offer propose to settle the Chegby Field aspect upon terms similar to the settlement terms approved by the Commission in Docket No. G–14227 on July 30, 1962.

The settlement proposes a future price of 20.625¢ per Mcf [1], effective July 1, 1962; a five year moratorium on rate increase filings, except that such filings may be made (1) prior to the end of the moratorium period to the extent that the maximum suspension period under Section 4(e) of the Natural Gas Act may be extended beyond 5 months or the Commission may hereafter be authorized to lengthen such period and, (2) at any time for reimbursement of one-half the amount of increased taxes provided that such increase does not exceed the reimbursement to which Seagram is entitled by contract; refunds by Union

[1] Inclusive of tax reimbursement; pressure base 15.025 psia.

Texas and Seagram for periods prior to July 1, 1962, of two-thirds of the difference between the charges they have collected and those they would have collected at the settlement rate; refunds of the full difference for periods subsequent to June 30, 1962; interest on all amounts to be refunded at a rate of 6 percent per annum as to volumes delivered before March 1, 1960 and at 7 percent as to volumes delivered after that date, such interest to accrue through October 31, 1963; extension of the take-or-pay make-up period to four years.

Union Texas will pay a total of $10,832.08 of principal and interest and Seagram will pay the remainder.

We find this proposal generally to be in the public interest and shall approve it subject to the following reservations and conditions.

In the context of the proposal we interpret the term "delivered" as used in paragraph 1 of the proposal to include gas required to be taken during the moratorium period but paid for and not taken and our approval is conditioned upon such interpretation.

The settlement provisions for adjustments in rates according to our order or orders in Area Rate Proceeding, Docket No. AR61–2, seek to anticipate in part the nature of our final determinations in that matter. It is clear that we shall make no determinations in this matter which will control our conclusions in Docket No. AR61–2. The settlement proposal also provides that adjustments in price growing out of the Area Rate Proceeding, Docket No. AR61–2, should go into effect upon conclusion of judicial review of our final order.

However, we cannot now commit the Commission to conditionally staying the effectiveness of its final order in Docket No. AR61–2. These matters should be decided at the conclusion of that proceeding and our approval of the settlement will be so conditioned.

In accordance with the above we shall sever these individual dockets from the consolidated proceeding Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*, omit the intermediate decision in regard to these dockets[2] and issue a certificate of public convenience and necessity in Docket No. CI61–1412 in accordance with the application, settlement proposal and conditions of this order. The matter in Docket No. G–14227 will be terminated insofar as it concerns the Chegby Field.

The Commission finds:

(1) Joseph E. Seagram & Sons, Inc. is a natural-gas company within the meaning of the Natural Gas Act, and is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(2) The proposed sale of natural gas is subject to the jurisdiction of the Commission, and such sale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, is subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Seagram is able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed sale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, is required by the public convenience and necessity and is in the public interest upon the conditions set forth below, and a certificate should be issued as ordered below.

---

[2] The hearings in the Union Texas Petroleum, *et al.*, consolidated proceeding concluded July 25, 1963.

(5) The conditions attached to the certificate herein issued are required by the public convenience and necessity.

(6) No party has opposed the waiver of the intermediate decisions in these proceedings.

The Commission orders:

(A) The motion for waiver of the intermediate decisions is granted.

(B) The matters in Docket Nos. G–14227 and CI61–1412 are hereby severed from the consolidated proceeding Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*

(C) A certificate of public convenience and necessity is hereby issued upon the conditions set forth herein to Joseph E. Seagram & Sons, Inc., d/b/a Frankfort Oil Company for the sales of natural gas in interstate commerce for resale as proposed in Docket No. CI61–1412 and as modified by the settlement proposal and this order, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in Seagram's application and settlement proposal herein.

(D) The certificate issued by paragraph (C) above, is granted upon the express condition that Seagram and Union Texas comply fully with the terms of this order and the settlement proposal, as amended, which settlement is expressly approved, under the conditions of this order.

(E) Within 30 days after making the refunds required by the terms and conditions of this order and the settlement proposal as modified, Seagram and Union Texas shall report to the Commission, in triplicate, the amount of the refunds made to the pipeline purchaser, showing separately the amount of principal and interest so paid and the bases used for such determinations, together with releases from the purchaser showing receipt of the refunds in conformity with the settlement as approved.

(F) Upon full compliance of Seagram and Union Texas with all the terms of this order and of the settlement proposal, Seagram and Union Texas shall be relieved of any further refund obligations in these certificate proceedings and said proceedings shall terminate.

(G) The certificate herein issued is not transferable and shall be effective only so long as Seagram continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(H) The grant of the certificate herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or Part 154 of the Regulations thereunder; *Provided, however,* that the 30-day notice provision of Part 154.94(b) and the detailed submittal requirements of Part 154.94(f) are hereby waived insofar as they apply to the filing of reductions in rate as required by this order and the settlement proposal.

(I) The grant of the certificate herein and approval of the settlement proposal is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Union Texas and Seagram, particularly any proceeding under Section 5 of the Natural Gas Act and is without prejudice to claims or contentions which may be made by the Commission, Union Texas, Seagram, the Commission staff, or any affected party herein in any other proceeding.

(J) Upon full compliance of Union Texas and Seagram with all the terms of this order and the settlement proposal, Joseph E. Seagram & Sons, Inc. d/b/a Frankfort Oil Company's Rate Schedule No. 6 and supplements Nos. 1, 3, and 4 thereto shall be accepted for filing effective November 1, 1960, and Supplement No. 2 shall be accepted for filing effective January 30, 1961.

APPENDIX

	Rate schedule No.	Docket No.	Present rate (cents per Mcf)	Settlement rate (cents per Mcf)	Buyer
Joseph Seagram & Sons, Inc. d/b/a Frankfort Oil Co.	6	CI61-1412.	23.05	20.625	Transcontinental Gas P/L Corp.
Union Texas Petroleum, a division of Allied Chemical Corp.	9	G-14227	(1)	20.625	

[1] Union Texas conveyed the acreage herein to Seagram as of November 1, 1960. Initially certificated rate was 23.55¢ per Mcf.

Before Commissioner: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Harold C. Woodward.

DAUGHERTY AND KIDD, DOCKET NO. G-17122

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICE OF CHANGE AND CONTRACT AMENDMENT, REQUIRING REFUND, AND TERMINATING PROCEEDING

(Issued December 19, 1963)

On November 21, 1963, Daugherty and Kidd (Daugherty) submitted an Offer of Settlement, pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure, in the above-designated proceeding, which relates to the jurisdictional sale of natural gas by Daugherty, under its FPC Gas Rate Schedule No. 1, to Tennessee Gas Transmission Company (TGT), in Texas Railroad Commission District No. 3. The proposed increased rate of 16.16947¢ per Mcf at 15.025 psia was suspended and later became effective subject to refund on April 18, 1960, in Docket No. G-17122.

Under the terms of the offer, Daugherty proposes to eliminate the favored-nation, price redetermination, and periodic escalation provisions from the rate schedule involved, and to establish a settlement rate of 15.0¢ per Mcf, including present tax reimbursement, for the remaining term of the contract. Daugherty also proposes to make appropriate refunds to TGT. The estimated amount of the refund is approximately $9,500, exclusive of interest, and the estimated decrease in annual revenues is approximately $2,500.

The proposed settlement is consistent with the provisions of the Second Amendment to the Commission's Statement of General Policy No. 61-1, issued December 20, 1960, 24 FPC 1107, as amended by Order No. 264, issued March 27, 1963, 29 FPC 589, for jurisdictional sales of natural gas in Texas Railroad Commission District No. 3, and its acceptance would serve the public interest.

However, we desire to make it clear that acceptance of the Offer of Settlement shall not be construed as approval of any future increased rate filed in accordance with its reservation of the right to file increases to cover future tax increases.

The Commission finds:

The proposed settlement of the above-designated proceeding, on the basis described herein, as more fully set forth in the Offer of Settlement filed by Daugherty with the Commission on November 21, 1963, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The Offer of Settlement filed by Daugherty and Kidd with the Commission on November 21, 1963, is hereby approved in accordance with the provisions of this order.

(B) Daugherty and Kidd shall file, within 30 days from the date of issuance of this order, a notice of change providing for the 15.0¢ per Mcf rate, including present tax reimbursement, specified in its Offer of Settlement, and an executed contractual amendment to its FPC Gas Rate Schedule No. 1, eliminating the favored-nation, price redetermination, and periodic escalation provisions therefrom. Both the notice of change and the contractual amendment shall be submitted in accordance with Part 154 of the Commission's Rules of Practice and Procedure.

(C) Within 30 days from the date of issuance of this order, Daugherty and Kidd shall refund to TGT all amounts collected under its FPC Gas Rate Schedule No. 1, in Docket No. G–17122, in excess of the settlement rate of 15.0¢ per Mcf, together with simple interest at the rate of 7 percent per annum, from the date of receipt of such excess amounts by Daugherty and Kidd to the date of refund. Daugherty and Kidd shall bear all costs incidental to the making of refunds.

(D) Within 45 days from the date of issuance of this order, Daugherty and Kidd shall report to the Commission in writing, the details of its calculations resulting in refunds ordered pursuant to paragraph (C) above, together with a copy of a release from TGT with respect to such refunds.

(E) Upon notification by the Secretary of the Commission that Daugherty and Kidd has complied with the terms and conditions of this order, the rate and charge of 15.0¢ per Mcf at 15.025 psia, including present tax reimbursement, specified in its Offer of Settlement, shall be effective as of the date of issuance of this order, the above-designated proceeding shall be deemed terminated, and Daugherty and Kidd's refund obligation with respect to the above-designated proceeding shall be deemed discharged.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TENNESSEE GAS TRANSMISSION COMPANY AND UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP64–92

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 19, 1963)

On October 14, 1963, Tennessee Gas Transmission Company (Tennessee) and United Gas Pipe Line Company (United) (sometimes hereinafter referred to jointly as Applicants) filed in Docket No. CP64–92 a joint application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas by Tennessee from Iberia Parish, Louisiana, to Jefferson Davis Parish, Louisiana, for United and the construction and operation of such additional facilities by Applicants necessary to effectuate said transportation service, all as more fully set forth in the joint application.

United proposes to construct and operate a measuring station and necessary appurtenances for the installation of a proposed interconnection of its 16-inch Weeks Island Line with the 16-inch and 24-inch lines of Tennessee in Iberia Parish and 5.4 miles of 20-inch line in Jefferson Davis Parish. Further, the application indicates that United proposes to construct and operate a measuring station and necessary appurtenances for the installation of an alternate delivery point in the Bastian Bay Field, Plaquemines Parish, Louisiana. The total cost of United's proposed facilities is estimated to be $784,631.

Tennessee proposes to construct and operate a metering station and necessary appurtenances for the installation of a proposed interconnection between its

16-inch line and United's herein proposed 20-inch line in Jefferson Davis Parish. The total cost of Tennessee's proposed facilities is estimated to be $88,700.

The application shows that United will deliver natural gas to Tennessee at the proposed Iberia Parish interconnection of their two systems and Tennessee will transport natural gas for United and redeliver same at the proposed interconnection of the two systems in Jefferson Davis Parish. The subject transportation service is to provide increased quantities of natural gas for United in the Lake Charles area, Louisiana.

Applicants have entered into an agreement, dated October 3, 1963, providing for the proposed service for a period of four years. Said agreement provides for the following maximum daily quantities of natural gas (at 15.025 psia) to be transported by Tennessee for United: first year—73,146 Mcf; second year—93,032 Mcf; third year—106,384 Mcf; and fourth year—122,983 Mcf.

United will pay Tennessee a transportation charge equal to 45 cents multiplied by the daily quantity of natural gas applicable during the month.

By letter dated October 25, 1963, Applicants were granted a temporary certificate authorizing the construction and adoption of the proposed facilities and the proposed service.

Pursuant to due notice, a public hearing was held in Washington, D.C., on December 10, 1963, respecting the matters involved in and the issues presented by the joint application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30 (c) (1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of July 12, 1947, in Docket No. G–910 (6 FPC 777).

(2) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 20, 1942, in Docket No. G–216 (3 FPC 3).

(3) The facilities hereinbefore described, as more fully described in the joint application in this proceeding, are to be used for the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation of such facilities and the subject transportation and delivery of natural gas are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) Applicants are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) The construction and operation of the subject facilities by Applicants and the subject transportation and delivery of natural gas by Tennessee are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

(7) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record

and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to the Applicants in this proceeding, jointly, authorizing the construction and operation of the subject facilities by Applicants and the transportation and delivery of natural gas by Tennessee, as hereinbefore described, all as more fully described in the joint application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the transportation and delivery of natural gas by Tennessee shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 6 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NOS. CP64-5, CP64-27, AND CP61-203; ALGONQUIN GAS TRANSMISSION COMPANY, CP64-6, CP64-29, AND G-8513; GULF OIL CORPORATION, CI64-26

FINDINGS AND ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING ABANDONMENT

(Issued December 19, 1963)

On July 5, 1963, as supplemented on July 29, 1963, and October 4, 1963, Texas Eastern Transmission Corporation (Texas Eastern), a Delaware corporation with its principal office in Houston, Texas, filed in Docket No. CP64-5, an application with the Federal Power Commission, pursuant to Section 7 of the Natural Gas Act and the Commission's Rules and Regulations, for a certificate of public convenience and necessity authorizing the construction and operation of additional facilities to its pipeline system to enable it to deliver and sell additional volumes of gas to its customers.

Texas Eastern proposes to construct and operate, together with related facilities: approximately 177 miles of 36-inch pipeline from a point near Venice, Louisiana, to its 30-inch pipeline system in Pointe Coupee Parish, Louisiana; approximately 638 miles of 30-inch pipeline loops at various points along its existing pipeline system between Opelousas, Louisiana, and Lambertville, New Jersey; approximately 18 miles of 12¾-inch pipeline from the terminus of its 24-inch pipeline near Hanover, New Jersey, to a point near Wanaque, New Jersey; a measuring and regulating station to be located near Wanaque, New Jersey; approximately 13,000 horsepower of additional compression on its existing pipeline system; it further proposes to convert and activate the Accident Field, an existing gas producing facility located in Garrett County, Maryland, into an underground storage reservoir, including the installation of field lines and workover of existing wells and to drill new wells, to install approximately 5,500 horsepower of compression, and related facilities; and approximately 29 miles of 30-inch pipeline to connect the Accident Field to its pipeline system.

The aforesaid facilities are designed to provide Texas Eastern with an additional 408,010 Mcf at 14.73 psia peak day capacity. The facilities are to be constructed over a four year period beginning in 1964 in order to sell and deliver additional maximum daily quantities of 336,553 Mcf of gas at 14.73 psia to 36 existing customers under Texas Eastern's Annual Firm Gas rate schedules and an additional 33,967 Mcf of gas at 14.73 psia to 5 existing customers under its Winter Service rate schedule, except that Texas Eastern stated that prior to the commencement of construction which it has scheduled for the year 1966–67 it would submit satisfactory proof of sales commitments for that phase of the proposed expansion and that construction of facilities proposed for the heating season 1965–66 would not be included as Gas Plant in Service prior to the commencement of such heating season.

Texas Eastern stated that it has entered into a gas purchase contract with Gulf Oil Corporation (Gulf) which would provide for the delivery of 4.4 trillion cubic feet of natural gas over a 26 pear period. The proposed 177 miles of 36-inch pipeline from Venice, Louisiana, to its mainline would be constructed to enable Texas Eastern to take into its system the volumes of gas which Gulf, in Docket No. CI64–26, proposes to sell and deliver to Texas Eastern at Venice. Texas Eastern proposes to take 541,889 Mcf of gas at 14.73 psia on a peak day from this source of supply.

The anticipated cost of the project is $195,046,000, with the estimated cost of the anticipated construction in 1964 being $92,392,000, in 1965 $47,105,000, in 1966 $40,207,000 and in 1967 $15,342,000. This project, together with the other above-listed Texas Eastern projects (Docket No. CP64–27 and the amendment in Docket No. CP61–203) would be financed through the issuance of first mortgage pipeline bonds, debentures and capital stock.

On July 5, 1963, Gulf filed an application in Docket No. CI64–26 seeking a certificate authorizing the sale of approximately 4.4 trillion cubic feet of natural gas to Texas Eastern from reserves located in fields in Southern Louisiana, primarily the West Delta Block 27 Field, Plaquemines Parish, Louisiana.[1]

Under the contract, gas will be delivered at the tailgate of a gas processing plant and facilities to be located near the East flank of the Venice Field, in Section 25, Township 21 South, Range 30 East, Plaquemines Parish. The gas is to come primarily from the West Delta Block 27 Field. Gulf indicated it had interest reserves in that field available for sale to fulfill the agreement with Texas Eastern presently estimated to be approximately 2.7 trillion cubic feet. Gulf further indicated that it had additional gas available to fulfill the overall contractual requirement.[2]

The volumes of gas which Texas Eastern is obligated to take are subject to a gradual buildup. Under the terms of the contract, the following daily contract quantities will be available to Texas Eastern:

Commencing	*Mcf/d*
Date of initial delivery	150,000
Nov. 1, 1965	250,000
Nov. 1, 1966	325,000
Nov. 1, 1967	425,000
Nov. 1, 1968, through remaining term of contract	500,000

The price of gas depends upon the Annual Load Factor at which Texas Eastern takes the gas from Gulf. It varies, pursuant to a specific scale, from a minimum of 19.0¢ per Mcf at 100 percent annual load factor to 20.987¢ per

[1] Notice of Gulf's application was issued on July 16, 1963, and published in the Federal Register on July 19, 1963 (28 F.R. 7405).

[2] Upon the use of additional gas reserves to fulfill the requirements of this contract, Gulf should notify the Commission of the source of such gas.

Mcf at 80 percent annual load factor.[3] Texas Eastern has advised us of its present intention to take this gas at 100 percent load factor or more, thereby realizing the lowest possible price under the terms of the contract. The price escalates 2.0 cents per Mcf on the first day of the eleventh year following the date of initial delivery and an additional 1.0 cent per Mcf on the first day of the 21st year. There are no indeterminate price increase provisions or provisions for tax reimbursement for future tax increase.

On July 5, 1963, concurrently with its application in Docket No. CP64–5, Texas Eastern filed a Motion to Amend Order Issuing Certificate of Public Convenience and Necessity issued in Docket No. CP61–203 on December 17, 1962, 28 FPC 1035. Under said order, the Commission authorized Texas Eastern, *inter alia*, to construct and operate approximately 57 miles of 14-inch pipeline from Castor, Louisiana, to West Monroe, Louisiana. Texas Eastern now requests that the order be amended to authorize the construction and operation of 20-inch pipeline instead of 14-inch pipeline. The 57 miles of 14-inch pipeline has not yet been constructed.

Texas Eastern stated that the substitution of a 20-inch pipeline in lieu of the 14-inch Castor-to-West Monroe pipeline will permit quantities of Texas and Louisiana gas, previously transported over the Southern Louisiana pipeline system, to be transported over this second connecting link to Kosciusko, Mississippi, thus permitting the gas purchases from Gulf to be transported over Texas Eastern's Southern Mississippi pipeline to Kosciusko at a minimum cost.

The estimated cost of the 20-inch line is $4,719,000, which is approximately $1,333,000 in excess of the estimated cost of the 14-inch line.

On July 25, 1963, Texas Eastern filed in Docket No. CP64–27 an application with the Commission pursuant to Section 7 of the Act and the Commission's Rules and Regulations, for a certificate of public convenience and necessity authorizing Texas Eastern to deliver natural gas to Algonquin Gas Transmission Company (Algonquin at the interconnection of their facilities near Hanover, New Jersey, equivalent to the quantities of natural gas to be delivered by Algonquin to Public Service Electric and Gas Company (Public Service) for the account of Texas Eastern at existing points of delivery in Bernards Township and Morris Township, New Jersey.

Concurrently with Texas Eastern's application in Docket No CP64–27, on July 25, 1963, as supplemented on October 4, 1963, Algonquin Gas Transmission Company (Algonquin), a Delaware corporation with its principal office in Boston, Massachusetts, filed in Docket No. CP64–29, an application for authority to abandon the transportation of natural gas for the account of Public Service previously authorized in Docket No. G–8513 and for a certificate of public convenience and necessity seeking authorization to transport and deliver natural gas to Public Service for the account of Texas Eastern at the aforesaid delivery points, in exchange for deliveries of equivalent amounts to Algonquin by Texas Eastern.

Algonquin stated that Public Service, on April 30, 1963, notified Algonquin that it was canceling the existing transportation agreement, filed as Algonquin's FPC Gas Rate Schedule X–2, effective November 1, 1964. The cancellation was in accord with the 18-month cancellation clause incorporated in the existing agreement between Algonquin and Public Service.

Algonquin and Texas Eastern seek certificates of public convenience and necessity authorizing the exchange agreement between them. The exchange agreement is for a term of 20 years commencing November 1, 1964, and provides

[3] The proposed maximum price consists of a mixture of 85 percent gas obtained from gas reserves located within the Louisiana taxing jurisdiction and 15 percent gas obtained from reserves located outside the Louisiana taxing jurisdiction.

for Algonquin to make deliveries to Public Service for the account of Texas Eastern at Bernards Township and Morris Township, New Jersey, out of its own gas received at Lambertville, New Jersey. Equal volumes of gas are to be delivered to Algonquin by Texas Eastern downstream on Algonquin's system at Hanover, New Jersey.

Algonquin further proposes to transport and deliver 15,400 Mcf per day of gas at 15.025 psia to Public Service at Wanaque, New Jersey, for the account of Texas Eastern for a period of one year commencing November 1, 1964, and for the transportation and delivery of 20,000 Mcf per day at 15.025 psia for an additional year commencing November 1, 1965.[4] The annual charge for the year commencing November 1, 1965, will be $21,420, plus the product of 110 times 20,000 times 2 cents. The transportation and delivery service which Algonquin proposes to render Public Service at Wanaque for the account of Texas Eastern requires that Texas Eastern deliver to Algonquin at Hanover, New Jersey, the volumes necessary to be delivered by Algonquin to Public Service at Wanaque.

On July 16, 1963, Algonquin filed in Docket No. CP64–6, an application pursuant to Section 7 of the Act and the Commission's Rules and Regulations, for a certificate of public convenience and necessity seeking authorization to construct and operate certain facilities and to render service as hereinafter described.

Algonquin proposes to construct and operate the following facilities:

(1) 23.1 miles of 30-inch pipeline loop between main line valve 25, Naugatuck, Connecticut and main line valve 28A, Rocky Hill, Connecticut.

(2) 15.5 miles of 30-inch pipeline loop between main line valve 36A, Burrillville, Rhode Island and main line valve 40, Mendon, Massachusetts.

(3) 6.4 miles of 30-inch pipeline loop between main line valve 14B, Cortlandt, New York and main line valve 15, Yorktown, New York.

(4) 22.2 miles of 30-inch pipeline loop between main line valve 31, Coventry, Connecticut and main line valve 35, Pomfret, Connecticut.

Algonquin stated that this additional looping will increase its system capacity sufficiently to enable it to sell in interstate commerce for resale an additional 20,735 Mcf at 14.73 psia per day from November 1, 1964, and 20,934 Mcf at 14.73 psia per day from November 1, 1965, of long-term firm gas under its Rate Schedule F–1.

The over-all capital cost of these facilities is estimated to be $15,213,900, which would be financed through the use of retained earnings, short-term bank loans and the issuance in the spring of 1965 of 20-year debt securities in the principal amount of $13,500,000.

Algonquin would receive increases in its supply of gas from its sole supplier, Texas Eastern, in order to satisfy the additional sales requirements.

Notice of the above-listed Texas Eastern and Algonquin applications was issued on November 4, 1963 (28 F.R. 12072). Petitions to intervene and notices of intervention in the several dockets were submitted by:

The Brooklyn Union Gas Company
Philadelphia Gas Works Division of the United Gas Improvement Company
Elizabethtown Consolidated Gas Company
United Natural Gas Company
New Jersey Natural Gas Company
Public Service Electric & Gas Company

[4] In its supplement to application in Docket No. CP64–5, filed October 4, 1963, Texas Eastern agreed that the exchange arrangement should be extended to a period of two years, commencing November 1, 1964, as proposed by Algonquin.

Long Island Lighting Company
The Consolidated Natural Gas System Companies
The East Ohio Gas Company
Hope Natural Gas Company
New York State Natural Gas Corporation
The Peoples Natural Gas Company
The River Gas Company
The Manufacturers Light & Heat Company
The Ohio Fuel Gas Company
Pennsylvania Public Utilities Commission
Public Service Commission of New York
Consolidated Edison Company of New York, Inc.

No party has indicated opposition to the issuance of certificates of public convenience and necessity as proposed.

We find that the proposed sale and the proposed projects are in the public interest. The proposed sale by Gulf guarantees the availability of a substantial quantity of gas at a price, which when taken at a high load factor rate is in the public interest. The proposed projects will make this gas available to the public and will otherwise make gas available to the public under terms which are consistent with the public interest. Accordingly, we shall herein grant certificates of public convenience and necessity as requested and as hereinafter conditioned.

Pursuant to due notice a public hearing was held in Washington, D.C., on December 2, 1963, respecting the matters involved in and the issues presented by the applications herein. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Gulf Oil Corporation, Texas Eastern Transmission Corporation and Algonquin Gas Transmission Company are "natural-gas" companies within the meaning of the Natural Gas Act, subject to the jurisdiction of the Commission.

(2) The proposed sale of natural gas by Gulf is subject to the jurisdiction of the Commission, and such sale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The sale proposed by Gulf, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, is required by the public convenience and necessity and is in the public interest upon the conditions set forth below and a certificate should be issued as ordered below.

(4) The facilities described above and more fully described in the applications of Texas Eastern in Docket No. CP64–5 and Algonquin in Docket No. CP64–6 and the facilities described above and more fully described in the Motion to Amend Order Issuing Certificate filed by Texas Eastern in Docket No. CP61–203 will be used for the transportation of natural gas in interstate commerce as integral parts of the pipeline system of Texas Eastern and Algonquin and their construction and operation are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) The public convenience and necessity permit Algonquin to abandon the transportation of natural gas for the account of Public Service previously authorized in Docket No. G–8513, as requested herein.

(6) It is in the public interest that Algonquin transport and deliver quantities of natural gas, as set forth above and as more fully set forth in the application of Algonquin in Docket No. CP64–29, and that Texas Eastern transport and deliver equivalent amounts of gas to Algonquin in exchange therefor, as set forth above and as more fully set forth in the application of Texas Eastern in Docket No. CP64–27.

(7) The proposed construction and operation of facilities and transportation proposed by Texas Eastern and Algonquin are required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

(8) Gulf, Texas Eastern and Algonquin are able and willing to do the acts and perform the services proposed and to conform to the provisions of the Natural Gas Act and the rules and regulations thereunder.

The Commission orders:

(A) A certificate of public convenience and necessity is hereby issued to Gulf Oil Corporation for the sale of natural gas in interstate commerce for resale proposed in its application as hereinafter conditioned, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor. The certificate issued by this paragraph is not transferable and shall be effective only so long as Gulf continues the acts or operation hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission and shall be accepted in writing within 30 days after the issuance of this order.

(B) Certificates of public convenience and necessity are hereby issued under the conditions hereinafter set forth to Texas Eastern Transmission Corporation and Algonquin Gas Transmission Company authorizing each to construct and operate the facilities described above and to make the sales proposed, as more fully described above and in each applicant's respective applications, as supplemented.

(C) Algonquin is hereby granted permission to abandon the transportation of natural gas, as previously authorized in Docket No. G–8513, for the account of Public Service Electric and Gas Company, as requested in Docket No. CP64–29, upon condition that it accept the certificate herein issued in Docket No. CP64–29.

(D) The general terms and conditions set forth in paragraphs (a), (b), (c) and (e) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, shall attach to the issuance of the certificates granted in paragraph (B) hereof and to the exercise of the rights granted thereunder.

(E) The time within which the facilities to be constructed by Texas Eastern and authorized in paragraph (B) hereof shall be constructed and placed in actual operation, as provided in paragraph (b) of Section 157.20 of the Commission's Regulations, is hereby fixed at four years, subject, however, to the express condition that prior to the commencement of construction of those facilities proposed to be constructed in the years 1966 and 1967 (as summarized in Texas Eastern's application in Docket No. CP64–5, Exhibit K, pp. 34 and 47) Texas Eastern shall submit satisfactory proof of sales commitments for that phase of its proposed expansion, and subject, further, to the condition that those facilities proposed to be constructed for the heating season 1965–66 (as summarized in the application in Docket No. CP64–5, Exhibit K, p. 17) will not be included as Gas Plant in Service prior to the commencement of such heating season.

(F) The certificate of public convenience and necessity hereby issued to Texas Eastern for the development and operation of the Accident Field in Garret County, Maryland, as a storage facility is hereby conditioned upon the following specific terms:

(i) The maximum reservoir inventory shall not exceed 48,401,000 Mcf (at 15.025 psia), without further approval of the Commission.

(ii) Semi-annual reports shall be submitted during the developmental operations at the end of each cycle of injection and withdrawal, in the fall and spring, respectively, stating:

(a) The reservoir inventory and the corresponding reservoir pressures of the wells;

(b) The maximum rates of injection and withdrawal during each operation cycle;

(c) Location of new wells, both injection-withdrawal and observation. Drilling, electric and micro-logs of such wells shall be submitted with the reports.

(G) The time within which the facilities to be constructed by Algonquin and hereby authorized in paragraph (B) hereof shall be constructed and placed in actual operation as provided in paragraph (b) of Section 157.20 of the Commission's Regulations is hereby fixed at two years.

(H) The transportation and delivery of volumes of natural gas by Algonquin to Public Service Electric and Gas Company at Wanaque, New Jersey, for the account of Texas Eastern, commencing November 1, 1964, in exchange for deliveries of equivalent quantities of natural gas by Texas Eastern to Algonquin near Hanover, New Jersey, as proposed by Algonquin in Docket No. CP64–29, as supplemented, shall be extended for an additional year commencing November 1, 1965, under the terms proposed in the aforesaid application, as supplemented.

(I) The Commission's order issued December 17, 1962, in Docket No. CP61–203, 28 FPC 1035, is hereby amended to permit Texas Eastern to construct and operate 57 miles of 20-inch pipeline in lieu of the construction and operation of 57 miles of 14-inch pipeline, as set forth above. In all other respects said order shall be effective as issued.

(J) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of part 154 of the Commission's Rules and Regulations thereunder, requiring the filing of rate schedules for the services herein authorized, where applicable, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the respective Applicants. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objection relating to the operation of any price or related provision in the gas purchase contract herein involved.

(K) The petitions to intervene of those parties listed in the body of this order are granted.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

ARKANSAS POWER & LIGHT COMPANY, DOCKET NO. E–6709

DETERMINATION OF CHARGES FOR HEADWATER BENEFITS

(Issued December 20, 1963)

The Commission by order of July 29, 1953 and superseding order of October 4, 1956 instituted an investigation under Section 10(f) of the Federal Power Act

to enable it to determine what part, if any, of the annual cost of interest, maintenance, and depreciation on the United States' Blakely Mountain project on the Ouachita River, Arkansas, should be charged to Arkansas Power and Light Company (Company) for headwater benefits received at its downstream Carpenter and Remmel projects, which are jointly licensed as Project No. 271.

The Corps of Engineers completed the Blakely Mountain project in 1955 for flood control and power production. Its earthfill dam creates a gross static head of 178 feet and retains a reservoir of 2,768,000 acre-feet, of which 1,083,000 is allocated to power production. Blakely Mountain's two 37,500 kilowatt units annually generate an average 156 million kilowatt-hours. Under a 30-year contract, the Southwestern Power Administration delivers Blakely Mountain's entire output to the Company as it schedules.

The Company's Carpenter project, built in 1932, has an installed capacity of 56,000 kilowatts. Its two units annually generate an average 92 million kilowatt-hours. Carpenter's concrete gravity dam creates a 95 foot gross static head and retains a 190,560 acre-foot reservoir. The Company's Remmel project, which was constructed in 1924, consists of an Ambursen-type dam, a 36,700 acre-foot reservoir, and three units with a 9,300 kilowatt combined capacity, generating annually an average 50 million kilowatt-hours. Remmel's gross static head is 53 feet.

The Company is charged below only for headwater benefits received after August 5, 1957, when it is estimated that the value of the Company's power gains from streamflow regulation offset the value of its earlier power losses from the filling of the upstream reservoir.

The staff report on its investigation, which recommended the findings and determinations made below, was sent for comment to the Company, the Chief of Engineers of the Department of Army, and the Secretary of the Interior. Each responded that the recommended payments were acceptable.

The Commission determines:

(1) As of August 5, 1957, the value of Arkansas Power & Light Company's power gains from streamflow regulation offset the value of its earlier power losses from the filling of the upstream Blakely Mountain reservoir.

(2) The equitable proportion of the annual charges for interest, maintenance, and depreciation on the Blakely Mountain project to be paid by Arkansas Power & Light Company to the United States for headwater benefits received at its Carpenter and Remmel projects between August 5, 1957 and December 31, 1957 is $27,750 and for each of the five successive calendar years is $69,360. Accordingly, the total charge for the period through December 31, 1962 is $374,550.

(3) For headwater benefits received thereafter, Arkansas Power & Light Company shall be billed annually pursuant to Section 11.30 of the Regulations under the Federal Power Act in the amount of $69,360 until such time as the Commission upon its own motion or upon motion of any party finds that changed conditions warrant revision.

The Commission finds:

The cost to the Commission of making the determination herein is $17,500.

The Commission orders:

(A) Payment to the Commission of the sum of $374,550 and $17,500 for the purposes stated above shall be made by Arkansas Power & Light Company within sixty (60) days from the date of issuance of this determination.

(B) For headwater benefits received after December 31, 1962, the Arkansas Power & Light Company shall be billed annually pursuant to Section 11.30 of the Regulations under the Federal Power Act in the amount of $69,360 until such time as the Commission upon its own motion or upon motion of any party finds that changed conditions warrant revision.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross., Harold C. Woodward and David S. Black.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP63-159

ORDER DENYING REHEARING

(Issued December 20, 1963)

On November 22, 1963, Panhandle Eastern Pipe Line Company (Panhandle) filed an Application for Rehearing of our Opinion No. 410 and accompanying order in this proceeding, issued November 12, 1963, 30 FPC 1260. By said Opinion and Order we issued a certificate of public convenience and necessity to Panhandle for the transportation in interstate commerce of an average of 1,000 Mcf of natural gas per day and up to 2,000 Mcf of natural gas per day to the National Helium Corporation (National Helium) plant located near Liberal, Kansas, to be used as fuel, space heating and other miscellaneous purposes, subject to certain conditions.

We have carefully considered each of Panhandle's allegations and arguments, but find that no new allegation of fact or law has been presented warranting a shift in the views expressed in Opinion 410. In our initial order we fully explained the relationship of the Helium Act Amendments of 1960 to the Natural Gas Act. We are only assuring here, as we have done in the past, that if a pipeline makes arrangements to have some of the BTU content of its gas stream siphoned off for non-jurisdictional use that it file an application to transport this "shrinkage volume" so that we can consider the extent to which action is required by public convenience and necessity and what conditions may be required to make the pipeline's jurisdictional customers whole.

Panhandle has not been deprived of property without due process of law. By our order we are affording Panhandle full opportunity upon the filing of an application to present its evidence and argument concerning the transportation of its natural gas for the extraction of liquids therefrom. In any such proceeding it will have a chance to show why it believes that, unlike the situation presented in the *Northern* case (Opinion No. 374, 28 FPC 1155), there is no need for any condition to the grant to compensate its jurisdictional customers for any resulting loss in BTU or pipeline expandability. But Panhandle has no basis for complaint because we are unwilling to assume that it could prove the case it has heretofore been unwilling to make.

The Commission orders:

The rehearing applied for by Panhandle Eastern Pipe Line Company on November 22, 1963, is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

SUN OIL COMPANY, DOCKET NOS. G–13316, G–13425, G–13426, G–15010, G–15011, G–16621, G–16622, G–16810, G–18094, G–19774, G–19775, RI60–162, RI61–122, RI61–139, RI61–454, RI62–115, RI62–342, RI63–112, RI64–232

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICES OF CHANGE, CONTRACTUAL AMENDMENTS, AND WAIVERS, REJECTING NOTICES OF CHANGE, REQUIRING WITHDRAWAL OF NOTICES OF CHANGE, REQUIRING REFUNDS, TERMINATING PROCEEDING IN PART, AND TERMINATING PROCEEDINGS

(Issued December 20, 1963)

On July 19, 1963, Sun Oil Company (Sun) submitted an Offer of Settlement, pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure, in the above designated rate suspension proceedings. Sun filed an amendment to the offer on October 15, 1963. These proceedings relate to eight sales to Texas Eastern Transmission Corporation (Texas Eastern) in North Louisiana and Texas Railroad Commission District Nos. 2, 4, and 6. The data pertinent to these proceedings are set forth in Appendix A hereto.

Under the terms of the offer, Sun proposes to delete the favored-nation, price redetermination, and periodic escalation provisions from the rate schedules involved, and to file waivers of its contractual right to file for any increases in rate, in excess of the settlement rates, until February 5, 1968. Sun further offers to refund all amounts collected in excess of the settlement rates. The estimated total refund resulting from these settlement rates is approximately $8,830. The estimated annual decrease in rates from the suspended rates is approximately $2,200.

On October 1, 1963, Sun filed notices of change in rate in its FPC Gas Rate Schedule Nos. 23 and 91. These proposed increases are in excess of the applicable area rate ceilings and were suspended in Docket No. RI64–232. As a condition of this order, we will require that Sun withdraw these rate filings.

In support of the offer, Sun cites the deletion of the favored-nation and price redetermination provisions from its gas purchase contracts with Texas Eastern, and states that such provisions were important elements of consideration required by Sun under the contracts for the long-term commitment of its gas reserves to the performance of the contracts. Texas Eastern has concurred in the offer.

Since the proposed settlement rates are acceptable under the provisions of the Second Amendment to the Commission's Statement of General Policy No. 61–1, issued December 20, 1960, 24 FPC 1107, as amended by Order No. 264, issued March 27, 1963, in Docket No. R–234, 29 FPC 589, the public interest will best be served by accepting Sun's proposed Offer of Settlement.

However, we desire to make it clear that acceptance of this Offer of Settlement shall not be construed as approval of any future increased rates proposed by Sun.

The Commission finds:

The proposed settlement of the above-designated proceedings, on the basis described herein, as more fully set forth in the Offer of Settlement filed by Sun

with the Commission on July 19, 1963, as amended on October 15, 1963, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The Offer of Settlement filed by Sun with the Commission on July 19, 1963, as amended on October 15, 1963, is hereby approved in accordance with the provisions of this order.

(B) Sun shall file, within 30 days from the date of issuance of this order, notices of change in its FPC Gas Rate Schedule Nos. 23, 24, 32, 74, 88 and 91, reflecting the settlement rates set forth in Appendix A hereto, and executed contractual amendments to its FPC Gas Rate Schedule Nos. 23, 32, 35, 36 and 91, which Sun shall execute with Texas Eastern in conformity with Sun's Offer of Settlement, as amended, in all respects. The notices of change and the contractual amendments shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) The notices of change in Sun's FPC Gas Rate Schedule Nos. 24, 74 and 88, tendered with the Offer of Settlement on July 19, 1963, are hereby rejected.

(D) Within 30 days from the date of issuance of this order, Sun shall refund to Texas Eastern all amounts collected in Docket Nos. G–18094, G–19774, RI60–162, RI61–122, RI61–139, RI61–454, RI62–115, RI62–342, and RI63–112, in excess of the settlement rates, together with appropriate interest, from the date of receipt of such excess amounts by Sun to the date of refund. Sun shall bear all costs incidental to the making of such refunds.

(E) Within 45 days from the date of issuance of this order, Sun shall report to the Commission in writing the details of its calculations resulting in refunds ordered pursuant to paragraph (D) above, together with copies of releases from Texas Eastern with respect to such refunds.

(F) Within 30 days from the date of issuance of this order, Sun shall file waivers of its contractual right to file for any increase in rate, in excess of the settlement rates, under its FPC Gas Rate Schedule Nos. 24, 32, 74 and 88, until February 5, 1968.

(G) Within 30 days from the date of issuance of this order, Sun shall withdraw the rate increase filings under its FPC Gas Rate Schedule Nos. 23, and 91, tendered on October 1, 1963, which are under suspension in Docket No. RI64–232.

(H) Upon notification by the Secretary of the Commission that Sun has complied with the terms and conditions of this order, the settlement rates set forth in Appendix A hereto shall be effective as of the date of issuance of this order, and the proceedings in Docket Nos. G–13316, G–13425, G–13426, G–15010, G–15011, G–16621, G–16622, G–16810, G–18094, G–19774, G–19775, RI60–162, RI61–122, RI61–139, RI61–454, RI62–115, RI62–342, RI63–112 shall be deemed terminated and Sun's refund obligations with respect to these proceedings shall be deemed to be discharged, and the proceeding in Docket No. RI64–232 shall be deemed terminated insofar as it pertains to Sun's FPC Gas Rate Schedule Nos. 23 and 91.

(I) The acceptance of this Offer of Settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Sun.

APPENDIX A

Rate schedule No.	Supplement No.	Area	Docket No.	Suspended rate,* cents per Mcf	Date effective subject to refund	Proposed settlement rate, cents per Mcf
35	10	Franklin, Richland, and Madison Parishes, La. (north Louisiana).	G-13425	[1] 13.4956	Apr. 1, 1958	15.2712
	12		G-16622	14.5757	Apr. 1, 1959	
	13		G-16622	14.4507	Apr. 1, 1959	
	14		G-13425	14.2456	Dec. 1, 1958	
	15		G-19775	14.6558	Apr. 1, 1960	
	16			[2] 14.8610	Jan. 6, 1961	
	17			[2] 15.0661	Nov. 1, 1961	
	18			[2] 15.2712	Nov. 1, 1962	
36	7	Richland Parish, La. (north Louisiana).	G-13426	[1] 13.4956	Apr. 1, 1948	15.2712
	9		G-16622	14.5757	Apr. 1, 1959	
	10		G-16622	14.4507	Apr. 1, 1959	
	11		G-13426	14.2456	Dec. 1, 1958	
	12		G-19775	14.6558	Apr. 1, 1960	
	13			14.8610	Jan. 6, 1961[2]	
	14			15.0661	Nov. 1, 1961[2]	
	15			15.2712	Nov. 1, 1962[2]	
23	9	Panola County, Tex. (Railroad Commission District No. 6).	G-13316	14.4	Apr. 1, 1958	14.6
	10		G-16621	14.6	Apr. 1, 1959	
	11		G-19774	[3] 14.8	Apr. 1, 1960	
	12		R161-122	[3] 15.0	Apr. 1, 1961	
	13		R162-115	[3] 15.2	Apr. 1, 1962	
	14		R163-112	[3] 15.4	Apr. 2, 1963	
			R164-232	[7] 15.6	Apr. 1, 1964[6]	
91	3	Hidalgo County, Tex. (Railroad Commission District No. 4).	G-16810	14.6	Apr. 13, 1959	14.6
	4		G-19774	[3] 14.8	Apr. 1, 1960	
	5		R161-139	[3] 15.0	Apr. 1, 1961	
	6		R162-115	[3] 15.2	Apr. 1, 1962	
	7		R163-112	[3] 15.4	Apr. 2, 1963	
			R164-232	[7] 15.6	Apr. 1, 1964[6]	
32	11	DeWitt and Victoria Counties, Tex. (Railroad Commission District No. 2).	G-15010	[4] 14.3733	Oct. 4, 1958	[4] 14.6
	12		G-18094	[3] 15.4444	Aug. 27, 1959[4]	
	13		R160-162	[3] 15.7777	Aug. 6, 1960[4]	
	14		R161-454	[3] 16.1111	Mar. 21, 1961[4]	
	15		R162-342	[3] 16.6111	Aug. 4, 1962[4]	
24	12	Bee County, Tex. (Railroad Commission District No. 2).	G-15011	[5] 13.8733	Oct. 4, 1958	14.1
74	8	Goliad County, Tex. (Railroad Commission District No. 2).		[3] 12.0947	Feb. 5, 1963[8]	14.1
88	7	Bee County, Tex. (Railroad Commission District No. 2)		[3] 12.1344	Feb. 5, 1963[8]	14.1

*Texas sales are at a pressure base of 14.65 psia, Louisiana sales are at a pressure base of 15.025 psia.

[1] A 1.35 cents per Mcf handling charge is deducted from all suspended rates under Rate Schedule Nos. 35 and 36.

[2] Rate not involved in suspension proceeding.

[3] Offer provides for refund of all amounts collected subject to refund in excess of the proposed settlement rate.

[4] Includes 0.5 cent per Mcf dehydration and gathering allowance paid by buyer to seller.

[5] Nondehydrated gas delivered at wellhead.

[6] Not yet effective subject to refund.

[7] Filing to be withdrawn.

[8] Nondehydrated gas delivered at a central point in the field.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

A. J. INDUSTRIES, INC., PROJECT NO. 2307

ORDER MODIFYING ORDER ISSUING LICENSE (MAJOR)

(Issued December 23, 1963)

On November 1, 1963, A. J. Industries, Inc., applicant for license for Project No. 2307, has requested reconsideration and modification of Articles 35 and 39 of our order issued October 24, 1963 issuing a license for Project No. 2307, 30 FPC 1064.

Article 35 requires both the initiation and completion by the licensee of a program for the repair and modification of the generating equipment and appur-

tenant facilities of the Salmon Creek and Annex Creek developments within the first year from the effective date of the license, while also requiring continuation of such repair and modification during the second and third years.

Article 39 requires the licensee, among other things, to make "monthly readings" of measurements of the deflection of the crown of the Salmon Creek dam at its crest and simultaneous readings of the water surface elevation and water and air temperatures. We are advised that weather conditions during the winter months of the year could render impossible monthly readings throughout the entire year.

The Commission finds:

It is appropriate and consistent with the public interest that our aforementioned order issued October 24, 1963 be modified as hereinafter provided.

The Commission orders:

(A) Articles 35 and 39 of our aforementioned October 24, 1963 order are hereby modified to read as follows:

Article 35. The Licensee shall repair and modify the Salmon Creek and Annex Creek developments to make the structures safe and adequate and restore the project to a satisfactory operating condition in accordance with the following schedule, the period to begin as of the effective date of the license:

First year

1. Installation of air vent in blowoff line at outlet of Annex Creek Dam.
2. Initiation of a program for the repair and modification of the generating equipment and appurtenant facilities of the Salmon Creek and Annex Creek Developments.

Second year

1. General cleanup around Salmon Creek dam and in and around Salmon Creek Reservoir.
2. Scale downstream face of Salmon Creek dam.
3. Replacement of supports for Salmon Creek penstock No. 1.
4. Initiation of the rehabilitation of the Salmon Creek flume.
5. Continuation of the program for the repair and modification of generating equipment.

Third Year

1. Drill and grout Salmon Creek Dam.
2. Repair saddle dams at Upper Annex Creek Lake.
3. Replacement of supports for Salmon Creek penstock No. 1.
4. Continuation of the rehabilitation of the Salmon Creek flume.
5. Clean and paint valves of outlet of Salmon Creek dam.
6. Continuation of the repair and modification of generating equipment.

Fourth year

1. Gunite and waterproof upstream face of Salmon Creek dam.
2. Continuation of the rehabilitation of the Salmon Creek flume.
3. Check the plate thickness of all penstocks.
4. Continuation of the program for the repair and modification of generating equipment.

Fifth year

1. Repair tailrace concrete at Annex Creek power plant.
2. Completion of the rehabilitation of the Salmon Creek flume.

3. Completion of the repairs and modifications to the generating equipment and appurtenant facilities of the project.

Article 39. The Licensee shall make provisions at the Salmon Creek dam for measurement of the deflection of the crown of the dam at its crest; and, subject to prevailing weather conditions, shall make monthly readings of the measurements together with simultaneous readings of the water surface elevation and water and air temperatures. The Licensee shall also submit an annual report of such measurements and readings together with a report on the overall condition of the dam, particularly with respect to the condition of the repairs as prescribed in Article 35.

(B) The aforementioned Commission order issued October 24, 1963, as modified by this order, shall be accepted by the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Commissioner Ross *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP63–126; PAN AMERICAN PETROLEUM CORPORATION, DOCKET NO. CI63–1455; PAN AMERICAN PETROLEUM CORPORATION, DOCKET NOS. CI64–169, CI64–170, CI64–171, CI64–172, CI64–173, CI64–174, CI64–175, CI64–176, CI64–177, CI64–178, CI64–179, CI64–180

ORDER GRANTING MOTION TO OMIT THE INTERMEDIATE DECISION, APPROVING PROPOSED SETTLEMENT AND ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 23, 1963)

On December 11, 1963, the Presiding Examiner certified to us a proposed settlement by the Applicants, El Paso Natural Gas Company (El Paso) and Pan American Petroleum Corporation (Pan American), in the above-entitled proceeding. The applications which were consolidated for hearing in this proceeding, together with all amendments thereto, have already been fully described in three notices heretofore issued [1] and these facts need not be repeated here. Only two of the applications listed in the caption of this order now require detailed consideration. These are the amended application of El Paso filed in Docket No. CP63–126 on November 5, 1963, and the amended application of Pan American filed in Docket No. CI64–175 on November 6, 1963.

In its amended application, Pan American is requesting a certificate authorizing it to sell to El Paso in interstate commerce for resale natural gas pursuant to the terms and conditions of a gas purchase contract, dated October 2, 1963, between El Paso and Pan American. The gas which Pan American proposes to sell under this contract is to be produced from the Dakota formation, as defined in the contract, underlying about 74,636 acres located in the San Juan Basin area, San Juan and Rio Arriba Counties, New Mexico, including Pan

[1] "Order to Show Cause, Notice of Applications, and Consolidation of Proceedings" issued June 4, 1963, and published in the Federal Register on June 11, 1963 (28 F.R. 5696); "Notice of Applications and Order Permitting Intervention and Granting Motions to Consolidate Proceedings and Fix Date of Prehearing Conference" issued August 16, 1963, and published in the Federal Register on August 23, 1963 (28 F.R. 9333); and "Notice of Amendments to Applications and Date for Reconvening of Hearing" issued November 15, 1963, and published in the Federal Register on November 22, 1963 (28 F.R. 12374).

American's interest in gas produced from all wells[2] which were previously described in Pan American's applications filed in Docket Nos. CI64–169, CI64–171, CI64–173, CI64–175, CI64–177, and CI64–179.

The recoverable reserves underlying the acreage subject to the contract are estimated to be between 746 billion cubic feet[3] and 916 billion cubic feet, the lower of the two reserve estimates being El Paso's and the higher estimate being Pan American's. El Paso and Pan American agreed, for the purposes of negotiating the contract, that the presently-developed recoverable reserves, attributable to existing wells, total 227 billion cubic feet.

The contract provides for an initial price of 13 cents per Mcf and for fixed escalations of 1 cent per Mcf on January 1, 1969, and at the end of each five-year period thereafter. Pan American agrees to pay all taxes on the gas prior to delivery if such taxes were in effect on the contract date of October 2, 1963, and El Paso agrees to reimburse Pan American for three-fourths of any additional taxes which become effective after the contract date.

Under Article XV of the contract, in recognition of the unrecovered development costs already incurred by Pan American and of additional costs to be incurred by Pan American up to January 6, 1964, El Paso agrees to make a prepayment of $2,692,787 to Pan American on January 6, 1964. The prepayment is equivalent to a total quantity of 20,713,750 Mcf priced at 13 cents per Mcf and is the amount of gas El Paso estimates it would purchase under the contract over a two-year period if such gas were to be purchased at a rate of one Mcf per day for each 8,000 Mcf of presently-developed reserves. To eliminate objections by the parties to El Paso's making the prepayment, El Paso made the following stipulation and agreement (Settlement Proposal, Article V, Section 5):

> (5) *Initial prepayment by El Paso.* El Paso hereby stipulates and agrees that no part of the initial prepayment of $2,692,787 to be made to Pan American on January 6, 1964, will be included in El Paso's rate base, and El Paso further agrees not to claim such amount, or any part thereof, as a component of rate base in any pending or future proceedings involving El Paso under Sections 4 or 5 of the Natural Gas Act, *provided*, however, that such stipulation and agreement by El Paso are solely for the purposes of settlement of possible contested issues in these proceedings and of obtaining expeditious issuance of certificates herein; that it is understood by all parties that such stipulation and agreement shall not foreclose El Paso from proposing to include in its rate base take-or-pay amounts which might accrue under the contract herein between El Paso and Pan American, and that such stipulation and agreement are not, and shall not be, available or used as a precedent with respect to any other prepayments heretofore made by El Paso, or which may be made hereafter by El Paso;

Although the contract provides that El Paso has the full 20-year term within which to recoup the initial prepayment, El Paso estimates that it will have recovered the initial prepayment by the end of 1967. Article XXII of the contract further provides that if at the end of such 20-year period, El Paso has not recovered, through offsets described in Article IV of the contract, all of the initial prepayment and any take-or-pay amounts which might have accrued under Article IV, Pan American has the option of (1) extending the contract so as to permit El Paso to recover such amounts pursuant to Article IV, or (2)

[2] There is one exception. Pan American's contract does not cover its non-signatory, non-operating working interest in the Farmington Gas Unit "A" No. 1 Well which is operated by Pioneer Production Company and which was described in Pan American's original application filed in Docket No. CI64–175.

[3] All volumes and prices stated in this order are at a pressure base of 15.025 psia.

paying to El Paso in cash at the end of the 20th year, or any time thereafter, any portion of the prepayment or take-or-pay amounts which El Paso has not recovered. If Pan American elects to pay the cash amount, the contract will thereupon be terminated.

El Paso estimates average deliveries of gas under the contract will be about 28,000 Mcf per day during 1964, and that deliveries will gradually increase, as the acreage is developed up to 140,000 Mcf per day by 1969 after full development is reached.

By separate letter agreement dated October 2, 1963, El Paso has agreed at all times to process the gas for Pan American in three existing plants in the San Juan Basin (the Chaco, Blanco, and San Juan River Plants) and to recover such liquids and liquefiable hydrocarbons as might be economically recovered by El Paso. El Paso and Pan American agreed that Pan American would reimburse El Paso, pursuant to Section 5 of Article I of the gas purchase contract, for five percent of the total volume of gas processed by El Paso for Pan American. El Paso estimates that this five-percent reimbursement for inlet volumes represents the reduction in gas volumes which will occur at the plants because of the processing operations to be performed by El Paso.

The processing agreement further provides that Pan American shall be delivered 75 percent of the gasoline recovered, and from 15 percent to 33⅓ percent of the additional liquid products recovered, dependent upon the monthly average price received by El Paso for the applicable liquid products, and El Paso shall retain the remaining portion of the gasoline and additional liquid products recovered as its compensation for processing. The percentages of such additional liquid products to be delivered to Pan American correspond exactly with the percentages applicable in existing processing arrangements entered into by El Paso with respect to similar gas in the San Juan Basin area, and, while Pan American's 75-percent share of the gasoline recovered is greater than that specified in existing El Paso contracts in the area involved (a maximum of 33⅓%), the difference is offset by Pan American's reimbursement to El Paso of the loss in gas volumes at the plants. El Paso's existing contracts in the San Juan Basin area provide that El Paso shall bear the plant loss in gas volumes. Consequently, El Paso's portion of revenues, under its processing agreement with Pan American, will be the same as the revenues obtained by El Paso under existing processing arrangements in the area, since the smaller gasoline percentage to be retained by El Paso under its agreement with Pan American will be offset by Pan American's reimbursement to El Paso of the loss in gas volumes at the plants. Additionally, whereas El Paso's existing processing arrangements in the area guarantee all producers a minimum of one cent per Mcf for liquids, whether their gas is processed or not, Pan American's return for liquids arises solely from the actual processing of the gas, and there is no reference in the gas purchase contract or processing agreement to any stated minimum return for liquids per Mcf.

The net effect of the processing agreement is that El Paso will pay Pan American 13 cents per Mcf for gas at the tailgates of El Paso's plants. Although the actual Btu content after processing is expected to be in excess of 1100 Btu's per cubic foot, the contract will specifically provide for the Btu content to be in excess of 1050 Btu's.[4]

---

[4] Although Article VI, Section 2, of the gas purchase contract presently provides for a Btu content in excess of 1000, El Paso and Pan American have agreed to amend the gas purchase contract so as to provide for a Btu content in excess of 1050 Btu's per cubic foot, pursuant to Article V, Section 6, of the settlement proposal. This amendment will be filed as a supplement to Pan American's contract which is herein being accepted for filing as Pan American's FPC Gas Rate Schedule No. 363.

El Paso states that the gas purchase contract between it and Pan American will not trigger any favored-nations clauses in its existing contracts involving the purchase of gas in the San Juan Basin area. The initial price of 13 cents per Mcf in the gas purchase agreement is consistent with and conforms to the Commission's Statement of General Policy No. 61–1, 24 FPC 818, as amended, and the pricing provisions are otherwise consistent with the Commission's Regulations.

Since Pan American has included under its contract dated October 2, 1963, all of its interest in the acreage from which "Dakota" gas was being produced by El Paso as the operator, Pan American has complied with Section 154.91 (c) (2) of the Commission's Regulations under the Natural Gas Act which provides that where the operator of gas properties is an interstate pipeline company, the "* * * co-owners shall make all required filings." The issuance herein of a certificate to Pan American in Docket No. CI64–175 will render moot the remaining applications filed by Pan American in response to the show cause order issued June 4, 1963, in Docket No. CI63–1455.

Although El Paso's application indicates that it does not expect take-or-pay amounts to accrue under the contract except for small amounts in 1974 and 1975, Article IV of the contract does provide for El Paso's take-or-pay obligations to be determined in the aggregate by taking into account all of the wells subject to the gas purchase agreement. Therefore, it seems appropriate to make the minimum take-or-pay provisions in the contract subject to the Commission's determination of the rule-making proceeding in Docket No. R–199, with the proviso, that in no event shall Pan American be required to accept minimum take-or-pay provisions of less than 80 percent.

El Paso's amended application in Docket No. CP63–126 seeks authorization to construct and operate a total of approximately 269.6 miles of field gathering lines, consisting of 4½-inch through 20-inch pipe of varying lengths, and the necessary measuring, regulating, and connecting facilities required for attachment of Pan American's wells to El Paso's system in the San Juan Basin. The total estimated cost of these facilities, including allowance for overhead and contingency provisions, is $10,742,300.

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order dated October 29, 1942, in Docket No. G–242, 3 FPC 851.

(2) Applicant, Pan American Petroleum Corporation, a Delaware corporation with its principal place of business in Tulsa, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, and is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(3) The sale of natural gas proposed by Pan American, as more fully described in its application in Docket No. CI64–175, as amended, is subject to the jurisdiction of the Commission, and such sale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, is subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) El Paso and Pan American are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(5) The construction and operation of the facilities proposed by El Paso, and the sale proposed by Pan American, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity and are in the public interest upon the conditions set forth herein, and certificates should be issued to each of them as hereinafter ordered and conditioned.

(6) The conditions attached to the certificates of public convenience and necessity herein issued are required by the public convenience and necessity.

(7) The settlement proposal hereinabove referred to is in the public interest and is consistent with the requirements of the public convenience and necessity.

(8) Pan American has filed notices of withdrawal of its applications filed under Section 7(c) of the Natural Gas Act in Docket Nos. CI64–169, CI64–171, CI64–173, CI64–177, and CI64–179, together with notices of withdrawal of the respective related rate schedules filed by it under Section 4 of the Act, and such withdrawals should be permitted in furthering the administration of the Natural Gas Act.

(9) Pan American has filed notices of withdrawal of its applications filed under Section 7(b) of the Natural Gas Act in Docket Nos. CI64–170, CI64–172, CI64–174, CI64–176, CI64–178, and CI64–180, and all such withdrawals should be permitted in furthering the administration of the Natural Gas Act.

(10) The certificates of public convenience and necessity issued herein render unnecessary and moot further proceedings regarding the show cause order issued in Docket No. CI63–1455, as well as further consideration of Pan American's applications filed in Docket Nos. CI64–169 through CI64–174, and in Docket Nos. CI64–176 through CI64–180, and the proceedings in all such dockets should be terminated.

(11) No party has opposed the waiver of the intermediate decision in this proceeding.

The Commission orders:

(A) The motion for waiver of the intermediate decision is granted.

(B) A certificate of public convenience and necessity is hereby issued to El Paso in Docket No. CP63–126, upon the terms and conditions of this order, authorizing the construction and operation of the facilities proposed, as more fully described above and in its application, as amended.

(C) A certificate of public convenience and necessity is hereby issued to Pan American in Docket No. CI64–175, upon the terms and conditions of this order, authorizing the sale by Pan American of natural gas in interstate commerce for resale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described above and in Pan American's application, as amended.

(D) The certificate herein issued to El Paso is granted upon the express condition that El Paso shall comply fully with the terms of its stipulation and agreement as to waiver of any future claims to inclusion of all or any part of the initial prepayment to be made by El Paso to Pan American on January 6, 1964, in El Paso's rate base in any future proceedings under Sections 4 or 5 of the Natural Gas Act.

(E) The certificate herein issued to Pan American is not transferable and shall be effective only so long as it continues the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act, and the applicable rules, regulations, and orders of the Commission.

(F) The grant of the certificates herein and approval of the settlement proposal shall not be construed as a waiver of the requirements of Section 4 of the

Natural Gas Act, or of Part 154 of the Commission's Regulations thereunder requiring the filing of rate schedules for the service authorized, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the Applicants, and is without prejudice to claims or contentions which may be made by the Commission, Applicants, the Commission's staff, or any affected party herein in any other proceeding. Further, the action in this proceeding shall not foreclose nor prejudice any further proceedings or objection relating to the operation of any price or related provision in the gas purchase agreement herein involved.

(G) The rate schedule consisting of the gas purchase agreement dated October 2, 1963, and the letter agreement dated October 2, 1963, between El Paso and Pan American, tendered for filing by Pan American on November 6, 1963, and December 10, 1963, respectively, are hereby accepted for filing, effective as of the date of this order, and designated Pan American Petroleum Corporation's FPC Gas Rate Schedule No. 363 and Supplement No. 1 thereto.

(H) The certificate herein issued to Pan American is granted upon the express condition that Pan American and El Paso shall comply fully with their stipulation and agreement to amend Article VI, Section 2, of the gas purchase agreement as expressed in Article V, Section (6), of the settlement proposal, and that Pan American shall file such amendment as a supplement to its rate schedule.

(I) Withdrawal of the applications filed by Pan American pursuant to Section 7(c) of the Natural Gas Act in Docket Nos. CI64–169, CI64–171, CI64–173, CI64–177, and CI64–179, together with the withdrawal of the respective related rate schedules filed by it under Section 4 of the Act, are all permitted and approved, pursuant to Section 1.11(d) of the Commission's Rules of Practice and Procedure.

(J) Withdrawal of the applications filed by Pan American pursuant to Section 7(b) of the Natural Gas Act in Docket Nos. CI64–170, CI64–172, CI64–174, CI64–176, CI64–178, and CI64–180 is hereby permitted and approved, pursuant to Section 1.11(d) of the Commission's Rules of Practice and Procedure.

(K) The proceedings in Docket No. CI63–1455, in Docket Nos. CI64–169 through CI64–174, and in Docket Nos. CI64–176, through CI64–180, are hereby terminated.

(L) The certificate issued to El Paso in paragraph (B) above and the rights granted thereunder are conditioned upon El Paso's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(4), and (e) of Section 157.20 of such Regulations.

(M) The certificate herein issued to Pan American in paragraph (C) above is granted upon the further express condition that the allowance of the take-or-pay provisions in Pan American's contract is subject to our ultimate disposition with respect to such provisions in the rulemaking proceeding in Docket No. R–199. Upon establishment by regulation or otherwise of general policies governing such provisions in producer contracts, Pan American shall file within 30 days thereafter an amendment to its Rate Schedule No. 363 in conformity therewith, acceptable to the Commission; provided, however, that Pan American shall not be required to file take-or-pay provisions for less than 80 percent of the annual contract quantities. Any changes or modifications to be made in accordance with this paragraph (M) shall be prospective only.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP63-235

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 23, 1963)

On February 19, 1963, Northern Natural Gas Company (Applicant) filed in Docket No. CP63-235 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities and the sale and delivery of natural gas to Iowa Electric Light and Power Company for resale and distribution by the latter in the communities of Clarence, Mechanicsville and Stanwood, all in Cedar County, Iowa, all as more fully set forth in the application on file with the Commission.

Applicant proposes to construct and operate approximately 6.3 miles of 3-inch and 2.4 miles of 2-inch lateral pipeline as well as the necessary measuring facilities. The total estimated cost of the proposal facilities is $173,900, which cost will be financed from cash on hand, reserve accruals and retained earnings.

The total estimated third year peak day and annual natural gas requirements for the three communities are 1,049 Mcf and 118,786 Mcf, respectively.

Pursuant to due notice, a public hearing was held in Washington, D.C., on December 3, 1963, respecting the matters involved in and the issues presented by the application herein. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-280 (3 FPC 967).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) A request during the public hearing by staff counsel for omission of the intermediate decision procedure herein was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Northern Natural Gas Company, to construct and operate the proposed facilities and to sell and deliver natural gas as hereinbefore described, all as more fully described in the application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the sale of natural gas authorized in paragraph (A) above shall commence as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 6 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

RATE FILINGS BASED UPON KANSAS OIL AND GAS SEVERANCE TAX ACT, DOCKET NO. R-167

ORDER TERMINATING PROCEEDING

(Issued December 23, 1963)

On January 30, 1958, the Supreme Court of the State of Kansas, in *State of Kansas, ex rel. Dole, et al.* v. *Kirchner, et al.* (182 Kan. 437, 321 P.2d 183), held the Kansas Oil and Gas Severance Tax Act (Chap. 516, Laws of 1957, G.S. 1957 Supp. 79-4201) to be unconstitutional in that the subject of the law was not clearly expressed in its title as required by the Constitution of the State of Kansas.

In this proceeding the Commission has under consideration a proposed rulemaking that would provide for the rejection of all filings made pursuant to the Severance Tax Act, in view of the unconstitutionality of the tax. Notice of the proposed rulemaking involved herein was issued on April 24, 1958 and published in the Federal Register on April 29, 1958 (23 F.R. 2850). When giving notice of the proposed rulemaking the commission invited all interested parties to submit data, views and comments in writing concerning such rulemaking. In response to the Commission's notice, comments were received from ten interested parties.

We believe that at this late date a rulemaking proceeding would be a cumbersome and inappropriate means by which to exercise our jurisdiction over the matter involved herein. Such matter can more conveniently be decided when properly raised in individual proceedings before us. We note, moreover, that a buyer of natural gas who has paid seller on the basis of an unconstitutional tax can invoke the jurisdiction of an appropriate court in the event he is entitled

to a refund under his contract.[1] We conclude, therefore, that the above-entitled proceeding should be terminated.

The Commission finds:

The proceeding in Docket No. R–167 should be terminated.

The Commission orders:

The proceeding in Docket No. R–167 is hereby terminated.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G–13221, ET AL.; BRADCO PROPERTIES, INC., ET AL., DOCKET NO. CI60–88; COLUMBIAN FUEL CORPORATION, DOCKET NO. CI62–1068

ORDER SEVERING PROCEEDINGS, CONDITIONALLY APPROVING SETTLEMENT PROPOSALS AND CONDITIONALLY ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 23, 1963)

Motions for severance, for approval of settlement proposals and for issuance of certificates of public convenience and necessity in their respective dockets were filed in the above-captioned proceedings on October 18, 1963, by Columbian Fuel Corporation (Columbian) and on October 29, 1963, by Bradco Properties, Inc., *et al.* (Bradco).

The settlement proposals are similar to those previously approved by the Commission[1] and provide for the issuance of permanent certificates at initial rates of 20.625¢ per Mcf,[2] five year moratoria on rate increase filings (subject to the usual exceptions) and extension of take-or-pay make-up periods to 4 years in both contracts.[3]

The temporary authorizations heretofore issued to both applicants contain no express refund conditions and applicants do not propose to refund any amounts collected for deliveries made prior to April 1, 1963, the effective date of the proposed rate reductions. Both Applicants will refund amounts collected for deliveries since March 31, 1963, above that which would have been collected at the settlement rates. Interest on such amounts to be refunded is to accrue at 7% per annum through October 31, 1963.

These proposals generally are in the public interest and we shall approve them subject to the following reservations and conditions.

In the context of the proposals, we interpret the term "delivered" as used in paragraph 1 of each proposal to include gas required to be taken during the moratorium periods but paid for and not taken. Our approval of these settlements is conditioned upon such interpretation.

The settlement provisions for adjustments in rates according to our order or orders in Area Rate Proceeding, Docket No. AR61–2, seek to anticipate in part

---

[1] *Cf. Pan American Petroleum Corp.* v. *Superior Court of Delaware for New Castle County, et al.*, 366 U.S. 656 (1961).

[1] See *e.g.*, orders issued August 7, 1963, and October 9, 1963, in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, 30 FPC 456 and 979, respectively.

[2] All rates expressed inclusive of applicable tax reimbursement and all volumes expressed at 15.025 psia.

[3] See Appendix for further details.

the nature of our final determinations in that matter. It is clear that we shall make no determinations in this matter which will control our conclusions in Docket No. AR61–2. The settlement proposal also provides that adjustments in price growing out of the Area Rate Proceeding, Docket No. AR61–2, should go into effect upon conclusion of judicial review of our final order.

However, we cannot now commit the Commission to conditionally staying the effectiveness of its final order in Docket No. AR61–2. These matters should be decided at the conclusion of that proceeding and our approval of the settlement will be so conditioned.

In accordance with the above we shall sever these individual dockets from the consolidated proceeding Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*, omit the intermediate decision in regard to these dockets[4] and issue certificates of public convenience and necessity in accordance with the applications, settlement proposals and conditions of this order.

The Commission finds:

(1) Each of the applicants herein is a "natural-gas" company within the meaning of the Natural Gas Act, and is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(2) The proposed sales of natural gas are subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Each of the applicants herein is able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, are required by the public convenience and necessity and are in the public interest upon the conditions set forth below, and certificates should be issued as ordered below.

(5) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

(6) No party has opposed the waiver of the intermediate decisions in these proceedings.

The Commission orders:

(A) The motions for waiver of the intermediate decisions are granted.

(B) The matters in Docket Nos. CI60–88 and CI62–1068 are hereby severed from the consolidated proceeding Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*

(C) Certificates of public convenience and necessity are hereby issued upon the conditions set forth herein to the applicants for the sales of natural gas in interstate commerce for resale as proposed and as modified by the settlement

[4] The hearings in the Union Texas Petroleum, *et al.*, consolidated proceeding concluded July 25, 1963.

proposals and this order, and for the contruction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in the applications and settlement proposals herein.

(D) The certificates issued by paragraph (C) above, are granted upon the express condition that the applicants comply fully with the terms of this order and the settlement proposals which settlement proposals are expressly approved, as modified by this order.

(E) The refunds required by the settlement proposals and this order shall be made within 90 days from the date of issuance of this order.

(F) Within 30 days after making the refunds required by the terms and conditions of this order and the settlement proposals the applicants shall report to the Commission, in triplicate, the amount of the refunds, made to each pipeline purchaser, showing separately the amount of principal and interest so paid and the bases used for such determinations, together with releases from the purchasers showing receipt of the refunds in conformity with the settlements and the conditions of this order.

(G) Upon full compliance of the applicants with all the terms of this order and of the settlement of proposals as modified, the applicants shall be relieved of any further refund obligations in these certificate proceedings and said proceedings shall terminate.

(H) The certificates herein issued are not transferable and shall be effective only so long as the applicants continue the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(I) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or Part 154 of the Regulations thereunder; *Provided, however,* that the 30-day notice provision of Part 154.94(b) and the detailed submittal requirements of Part 154.94(f) are hereby waived insofar as they apply to the filing of reductions in rates as required by this order and the settlement proposals.

(J) The grant of certificates herein and approval of the settlement proposals is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the applicants, particularly any proceeding under Section 5 of the Natural Gas Act and is without prejudice to claims or contentions which may be made by the Commission, applicants, the Commission staff, or any affected party herein in any other proceeding.

APPENDIX

Producer	Rate schedule No.	Docket No.	Purchaser	Present rate [1]	Settlement rate [1]
				Cents	*Cents*
Columbian Fuel Corp.	[2] 71	CI62-1068	Texas Gas Transmission Corp.	21.25	20.625
Bradco Properties, Inc., *et al.*	2	CI60-88	Transcontinental Gas Pipe Line Corp.	23.55	20.625

[1] At 15.025 psia; includes tax reimbursement.
[2] Formerly Columbian Carbon FPC Gas Rate Schedule No. 39.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G-13221, ET AL.; SUN OIL COMPANY, G-19574 AND CI62-1186

ORDER SEVERING PROCEEDINGS, CONDITIONALLY APPROVING SETTLEMENT PROPOSAL AND CONDITIONALLY ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 23, 1963)

On October 14, 1963, Sun Oil Company (Sun) filed a motion for severance of the above-captioned Sun proceedings from the consolidated proceeding Union Texas Petroleum, *et al.*, Docket Nos. G-13221, *et al.*, (hereinafter referred to as the Union Texas proceeding), for approval of the attached settlement proposal and for the prompt issuance of certificates of public convenience and necessity in accordance with the applications and the settlement proposal.

The terms of the settlement proposal are similar to the terms of other settlements in the Union Texas proceeding which have been approved by the Commission [1] and provide for initial rates of 20.625¢ per Mcf [2] for sales from south Louisiana, effective April 1, 1963; a five-year moratorium on rate increase filings (subject to the usual exceptions); and extension of the make-up periods for take-or-pay gas to four years in all rate schedules which provide lesser make-up periods.[3]

The rate under Rate Schedules Nos. 113 (G-19574) and 147 (CI62-1186) will be 20.625¢ per Mcf during the moratorium period and Sun proposes to refund to the pipeline purchasers the dollar amount of the difference between the rates collected for gas delivered since March 31, 1963, and that which would have been collected at the settlement rate. The temporary authorizations relating to these rate schedules do not contain express refund conditions.

Sun proposes to pay interest on all amounts to be refunded at a rate of 7 percent per annum to accrue through October 31, 1963.

In general, the proposal is in the public interest and we shall conditionally approve it.

The settlement provisions for adjustments in rates according to our order or orders in Area Rate Proceeding, Docket No. AR61-2, seek to anticipate in part the nature of our final determinations in that matter. It is clear that we shall make no determinations in this matter which will control our conclusions in Docket No. AR61-2. The settlement proposal also provides that adjustments in price growing out of the Area Rate Proceeding, Docket No. AR61-2, should go into effect upon conclusion of judicial review of our final order.

However, we cannot now commit the Commission to conditionally staying the effectiveness of its final order in Docket No. AR61-2. These matters should be decided at the conclusion of that proceeding and our approval of the settlement will be so conditioned.

Sun, by separate motion and offer filed on October 22, 1963, proposes a settlement of the matters in Docket No. CI60-75, another certificate application

---

[1] See orders issued August 7, 1963 (Humble Oil & Refining Company), and October 9, 1963 (Gulf Oil Corporation and Socony Mobil Oil Company, Inc.), in *Union Texas Petroleum, et al.*, Docket No. G-13221, *et al.*, 30 FPC 456 and 979, respectively.

[2] All rates expressed inclusive of applicable tax reimbursement and all volumes expressed at 15.025 psia.

[3] See Appendix for further details.

in the Union Texas Proceeding. However, on November 22, 1963, the Public Service Commission of New York filed a response in opposition to the offer in Docket No. CI60–75. Therefore that motion will be denied and the offer rejected by separate order. Although there are other Sun dockets consolidated in the Union Texas proceeding (G–3653 G–11116, G–16267 and CI60–490) our records show that the proposed initial prices in those dockets are less than the settlement rate of 20.625¢ per Mcf. Therefore, although we are of the view that settlements should include all dockets in the proceeding, in the circumstances here presented and since sales under the temporary authorizations heretofore issued in Docket Nos. G–19574 and CI62–1186 are currently being made without refund conditions and at high rates, we are constrained to conditionally approve the settlement of the matters in Docket Nos. G–19574 and CI62–1186 separately.

In accordance with the above we shall sever these Sun dockets from the consolidated proceeding Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*, omit the intermediate decision in regard to these dockets [4] and issue certificates of public convenience and necessity in accordance with the applications, settlement proposal and conditions of this order.

The Commission finds:

(1) The Sun Oil Company is a "natural-gas" company within the meaning of the Natural Gas Act, and is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(2) The proposed sales of natural gas are subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Sun is able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, are required by the public convenience and necessity and are in the public interest upon the conditions set forth below, and certificates should be issued as ordered below.

(5) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

(6) No party has opposed the waiver of the intermediate decisions in these proceedings.

The Commission orders:

(A) The motion for waiver of the intermediate decisions is granted.

(B) The matters in the Sun dockets listed in the caption to this order are hereby severed from the consolidated proceeding, Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*

(C) Certificates of public convenience and necessity are hereby issued to Sun Oil Company upon the conditions set forth herein authorizing the sales of natural gas in interstate commerce for resale as proposed and as modified by the settlement proposal and this order, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in Sun's applications and settlement proposal herein.

[4] The hearings in the Union Texas Petroleum, *et al.*, consolidated proceeding concluded July 25, 1963.

(D) The certificates issued by paragraph (C) above, are granted under the express condition that Sun comply fully with the terms of this order and the settlement proposal, which settlement is expressly approved, under the conditions of this order.

(E) Within 30 days after making the refunds required by the terms and conditions of this order and the settlement proposal Sun shall report to the Commission, in triplicate, the amount of the refunds made to its pipeline purchasers, showing separately the amount of principal and interest so paid and the bases used for such determination, together with releases from the purchasers showing receipt of the refunds in conformity with the settlement as approved.

(F) Upon full compliance of Sun with all the terms of this order and of the settlement proposal, Sun shall be relieved of any further refund obligations in these certificate proceedings and said proceedings shall terminate.

(G) The certificates herein issued are not transferable and shall be effective only so long as Sun continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules regulations and orders of the Commission.

(H) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or Part 154 of the Regulations thereunder; *Provided, however*, that the 30-day notice provision of Part 154.94(b) and the detailed submittal requirements of Part 154.94(f) are hereby waived insofar as they apply to the filing of reductions in rate as required by this order and the settlement proposal.

(I) The grant of certificates herein and approval of the settlement proposal are without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Sun, particularly any proceeding under Sections 4 or 5 of the Natural Gas Act and are without prejudice to claims or contentions which may be made by the Commission, Applicant, the Commission staff, or any affected party herein in any other proceeding.

APPENDIX

Producer	Rate Schedule No.	Docket No.	Purchaser	Present Rate (cents per Mcf)[1]	Proposed Settlement Rate (cents per Mcf)
Sun Oil Co	113	G–19574	Southern Natural Gas Co	23.55	20.625
Sun Oil Co	147	CI62–1186	Tennessee Gas Transmission Co	21.25	20.625

[1] All rates expressed inclusive of tax reimbursement; all volumes at 15.025 psia.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP64–83

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 24, 1963)

On October 1, 1963, Cities Service Gas Company (Applicant) filed in Docket No. CP64–83, an application pursuant to Section 7(c) of the Natural Gas Act

for a certificate of public convenience and necessity authorizing the installation and construction during the calendar year 1964, and the operation of small field compressor units ranging in size from 200 to 300 horsepower on gathering laterals in various gas producing fields to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producer thereof, all as more fully set forth in the application.

Such compressor units will enable Applicant to take into its system supplies of gas from certain fields in which it has certain contractual obligations. Such obligations require Applicant to make ratable field purchases and to operate its field lines at pressures sufficiently low to permit the wells to feed into these lines. The wellhead pressures of certain wells are declining; therefore, additional compressors are needed.

The total cost of the proposed facilities will not exceed a maximum of $500,000, and the cost of such units for any single producing area will not exceed $125,000. The proposed facilities will be financed from treasury cash.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 20, 1963, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G–298 (4 FPC 471).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the installation and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The installation and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 2.58(c) of the Commission's Rules of Practice and Procedure.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to installation and construction during the calendar year 1964, and the total expenditures for facilities to be installed and constructed thereunder should be limited to a maximum of $500,000, with no single project to exceed a cost of $125,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Cities Service Gas Company, to install and construct during the calendar year 1964 the proposed compressor facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 2.58(c) of the Commission's Rules of Practice and Procedure.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted by paragraph (A) above is hereby limited to installation and construction during the calendar year 1964, and the total expenditures for facilities to be installed and constructed thereunder are hereby limited to a maximum of $500,000, with no single project to exceed a cost of $125,000.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP64-84

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 24, 1963)

On October 1, 1963, Cities Service Gas Company (Applicant) filed in Docket No. CP64-84 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1964 and operation of field facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally coextensive with its system.

The total cost of the proposed facilities will not exceed a maximum of $3,000,000 and no single project will exceed a cost of $500,000. The application states that the proposed facilities will be financed from treasury cash.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 20, 1963, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G–298 (4 FPC 471).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 2.58(c) of the Commission's Rules of Practice and Procedure.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1964 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $3,000,000, with no single project to exceed a cost of $500,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Cities Service Gas Company, to construct during the calendar year 1964, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 2.58(c) of the Commission's Rules of Practice and Procedure.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1964, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $3,000,000, with no single project to exceed a cost of $500,000.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

COLORADO INTERSTATE GAS COMPANY, DOCKET NO. CP63-197

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 24, 1963)

On January 7, 1963, as amended on July 3 and September 25, 1963, Colorado Interstate Gas Company (Applicant) filed in Docket No. CP63-197 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the operation of certain existing facilities to exchange natural gas with Phillips Petroleum Company (Phillips), all as more fully set forth in the application, as amended.

The application, as amended, shows that Applicant will sell to Cabot Corporation (Cabot) up to a maximum daily average of 20,000 Mcf of natural gas through 12:01 a.m., January 1, 1965. Said volumes of gas will be used by Cabot in its carbon black operations, Panhandle Field, Texas. Pursuant to an agreement, dated May 8, 1963, as amended, between Applicant and Phillips, the gas to be sold by Applicant to Cabot will be delivered by Phillips from its system in Carson County, Texas, to Cabot for the account of Applicant. The application, as amended, further shows that in exchange for the volumes delivered by Phillips, Applicant will deliver equivalent volumes to Panhandle Eastern Pipe Line Company (Panhandle) for the account of Phillips. Said volumes will be delivered by means of existing facilities interconnecting Applicant's and Panhandle's system in Texas County, Oklahoma. Such deliveries are provided for by an agreement dated May 8, 1963, as amended, between Applicant and Panhandle. Applicant proposes to deliver to Panhandle for Phillips' account a maximum daily average of 25,000 Mcf for the period ending 12:01 a.m., January 1, 1965.

Therefore, Applicant requests authorization to operate existing facilities to deliver to Panhandle gas equal in volume to that exchanged with Phillips and delivered by Phillips to Cabot for the account of Applicant.

Applicant states that it has an excess supply of gas and is making the short-term sale to Cabot in order to help comply with minimum take provisions of its gas purchase and lease agreements.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application, as amended, has been filed.

At a hearing held on December 20,1963, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, amendments and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record.

The Commission finds:

(1) Applicant, Colorado Interstate Gas Company, a Delaware corporation having its principal place of business in Colorado Springs, Colorado, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of June 5, 1945, in Docket No. G-294 (4 FPC 936).

(2) The facilities hereinbefore described, as more fully described in the application, as amended, in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction

of the Commission and the operation thereof and the subject transportation and delivery of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The operation of the subject facilities and the proposed transportation and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(6) The certificate hereinafter issued should be further conditioned as follows:

(a) The volume of gas sold to Cabot should be limited to a maximum daily average of 20,000 Mcf, for the period covered by the agreement, as amended, between Applicant and Phillips, expiring 12:01 a.m., January 1, 1965.

(b) The volume of replacement gas to be delivered by Applicant to Panhandle should be limited to a maximum daily average of 25,000 Mcf; provided, however, that the total volumes of gas delivered by Applicant to Panhandle during the period terminating 12:01 a.m., January 1, 1965, should not exceed the total volume of gas delivered by Phillips to Cabot for the account of Applicant.

(c) The certificate hereinafter issued should terminate at 12:01 a.m., January 1, 1965.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Colorado Interstate Gas Company, to operate existing facilities and to transport and deliver natural gas, as hereinbefore described, all as more fully described in the application, as amended, herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) The certificate issued by paragraph (A) above is hereby further conditioned as follows:

(a) The volume of gas sold to Cabot shall be limited to a maximum daily average of 20,000 Mcf, for the period covered by the agreement, as amended, between Applicant and Phillips, expiring 12:01 a.m., January 1, 1965.

(b) The volume of replacement gas to be delivered by Applicant to Panhandle shall be limited to a maximum daily average of 25,000 Mcf; provided, however, that the total volumes of gas delivered by Applicant to Panhandle during the period terminating 12:01 a.m., January 1, 1965, shall not exceed the total volume of gas delivered by Phillips to Cabot for the account of Applicant.

(c) The certificate issued by paragraph (A) above shall terminate at 12:01 a.m., January 1, 1965.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

KANSAS-NEBRASKA NATURAL GAS COMPANY, INC., DOCKET NO. CP64-86

FINDINGS AND ORDER AFTER STATUTORY HEARING, ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 24, 1963)

On October 3, 1963, Kansas-Nebraska Natural Gas Company, Inc. (Applicant) filed in Docket No. CP64-86 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the 12-month period commencing November 28, 1963, and the operation of routine pipeline, measuring and compression facilities on Applicant's existing gathering and transmission systems to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

The total cost of the facilities proposed hereunder will not exceed a maximum of $1,450,000, with no single project to exceed a cost of $360,000. These costs will be defrayed from current working capital.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 20, 1963, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Kansas-Nebraska Natural Gas Company, Inc., a Kansas corporation having its principal place of business in Phillipsburg, Kansas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-259 (3 FPC 966).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 2.58(c) of the Commission's Rules of Practice and Procedure.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the 12-month period commencing November 28, 1963, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $1,450,000, with no single project to exceed a cost of $360,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Kansas-Nebraska Natural Gas Company, Inc., to construct during the 12-month period commencing November 28, 1963, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 2.58(c) of the Commission's Rules of Practice and Procedure.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the 12-month period commencing November 28, 1963, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $1,450,000, with no single project to exceed a cost of $360,000.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP61-30 AND DOCKET NO. CP64-71 (PHASE I)*

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 24, 1963)

On September 23, 1963, as amended on October 18, 1963, Natural Gas Pipeline Company of America (Applicant) filed in Docket No. CP64-71 (Phase I) an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities in order to enable Applicant to purchase and receive from

*The application in Docket No. CP64-71 is divided into two phases. This order pertains exclusively to Phase I of said application.

Texaco Inc. (Texaco)[1] natural gas produced from the Kelsey and Encinitas Fields, Brooks County, Texas, all as more fully set forth in the application, as amended.

The facilities proposed in both Phase I and Phase II of the application are ultimately to enable Applicant to receive gas from four fields in Willacy and Hidalgo Counties, Texas, as well as from Kelsey-Encinitas Fields. However, since the producer certificate proceedings involving the Willacy and Hidalgo Counties fields are still pending before the Commission, Applicant requests that the Phase I facilities be considered and authorized separately.

Specifically, in Phase I Applicant proposes to construct and operate in Jim Wells and Brooks Counties, Texas, approximately 24.15 miles of 16-inch and 19.43 miles of 8-inch pipeline, metering facilities, tap connection and other miscellaneous appurtenant facilities in order to receive the Kelsey-Encinitas Fields gas.

The application shows the estimated cost of Phase I facilities to be $1,500,000, which cost will be financed by short-term borrowing pending permanent financing.

On September 23, 1963, Applicant filed in Docket No. CP61–30 an application to amend further the Commission's order issued July 11, 1961, as amended on December 12, 1962, by deleting therefrom authorization to construct and operate 30 miles of 10-inch pipeline originally proposed to have been constructed to receive gas from the Kelsey-Encinitas Fields, all as more fully set forth in the application to amend.

Since construction has not commenced, Applicant requests the deletion of the authorization for said 30 miles of 10-inch line because the Kelsey-Encinitas gas can be more economically attached under Applicant's proposals in both Phases in Docket No. CP64–71.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the applications has been filed.

At a hearing held on December 20, 1963, the Commission on its own motion received and made a part of the record in these proceedings all evidence, including the application, amendment thereto and exhibits in Docket No. CP64–71 (Phase I) and the application to amend in Docket No. CP61–30, submitted in support of the authorizations sought herein, and upon consideration of the records,

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 13, 1942, in Docket No. G–235 (3 FPC 830).

(2) The facilities to be constructed by Applicant, as hereinbefore described and as more fully described in the application, as amended, in Docket No. CP64–71 (Phase I), are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and construction and operation thereof by Applicant are subject to the requirments of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The construction and operation of the facilities proposed by Applicant in Docket No. CP64–71 (Phase I) are required by the public convenience and

[1] Texaco was authorized to sell gas to Applicant by the Commission's orders issued March 27 and August 27, 1963, in Docket Nos. CI61–118 and CI61–119.

necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter to Applicant and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued July 11, 1961, as amended December 12, 1962, in Docket No. CP61–30 be further amended as hereinafter ordered.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Natural Gas Pipeline Company of America, to construct and operate the facilities as hereinbefore described, all as more fully described in the application in Docket No. CP64–71 (Phase I), upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized in paragraph (A) above shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 6 months from the date on which this order issues.

(D) The Commission's order issued July 11, 1961, as amended December 12, 1962, in Docket No. CP61–30 be and the same is hereby further amended by deleting therefrom authorization to construct and operate 30 miles of 10-inch pipeline, and appurtenant facilities, to have been constructed to enable Applicant to receive gas from the Kelsey-Encinitas Fields, all as hereinbefore described and as set forth in the subject application to amend.

(E) In all other respects said order, as amended, shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

SOUTHERN NATURAL GAS COMPANY, DOCKET NO. G–1907

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 24, 1963)

On October 7, 1963, Southern Natural Gas Company (Petitioner) filed a petition to amend the Commission's order issued May 4, 1953, 12 FPC 550, in Docket No. G–1907, by authorizing the sale and delivery of 500 Mcf of natural-

gas on a firm basis to United Merchants and Manufacturers, Inc. (United Merchants) at its Clearwater Finishing Company plant at Clearwater, South Carolina, and by authorizing the installation and operation of additional metering facilities necessary for such sale.

Petitioner has agreed to supply its present customer, United Merchants, with 500 Mcf of natural gas per day on a firm basis in addition to the gas now being supplied on an interruptible basis. In order to make the sale and delivery, certain metering facilities to render the service must be installed at an estimated cost of $2,835, which cost is to be financed from funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the petition has been filed.

At a hearing held at Washington, D.C., on December 20, 1963, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the petition to amend and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued May 4, 1953, in Docket No. G–1907 be amended as hereinafter conditioned and ordered.

The Commission orders:

(A) The Commission's order issued May 4, 1953, in Docket No. G–1907 be and the same is hereby amended by authorizing the construction and operation hereinbefore described and the sale of 500 Mcf of natural gas per day on a firm basis to United Merchants and Manufacturers, Inc. as more fully set forth in the petition to amend.

(B) The certificate issued hereby is granted on the express condition that the sale authorized herein shall be subject to curtailment and interruption if required to meet the existing and future contract demands of Applicant's customers for firm resale service.

(C) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP64–38

FINDINGS AND ORDER AFTER STATUTORY HEARING, ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 24, 1963)

On August 9, 1963, Southern Natural Gas Company (Applicant) filed in Docket No. CP64–38 an application (and supplements thereto on September 20 and 27, 1963), pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain line taps and metering facilities and the sale and delivery of additional volumes of natural gas to South Carolina Natural Gas Company, for resale in the communities of Bath and Graniteville, Aiken County, South Carolina, all as more fully set forth in the application.

Applicant states that the present capacity of its Clearwater and Graniteville branch lines are adequate to supply the requested requirements of the communities of Bath and Graniteville and that the estimated cost of the proposed facilities is $29,800, which is to be financed from funds on hand.

The estimated maximum volume of gas for the third year and thereafter is 1,249 Mcf on peak days and 159,000 Mcf per year. Neither of the above named communities has heretofore been served with natural gas. Temporary authorization to construct and operate the proposed facilities and render the proposed service gas granted by the Commission on October 11, 1963.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 20, 1963, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application exhibits and supplements submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Southern Natural Gas Company is a "natural-gas company" within the meaning of the Natural Gas Act as found by the Commission in its order of October 6, 1942 in Docket No. G–296 (3 FPC 822).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce for resale, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Southern Natural Gas Company, to construct and operate facilities and to sell natural gas in interstate commerce for resale as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G–13221, ET AL.; GEORGE R. BROWN, ET AL., DOCKET NO. G–18131;[1] REUBEN W. MAYRONNE, JR., D/B/A RIVERSIDE OIL COMPANY (OPERATOR), ET AL., DOCKET NO. G–20182;[1] GEORGE R. BROWN (OPERATOR), ET AL., DOCKET NO. CI60–580;[1] TIDEWATER OIL COMPANY (OPERATOR), ET AL., DOCKET NO. CI62–638;[2] TEXAS GULF PRODUCING COMPANY, DOCKET NO. CI63–772; TIDEWATER OIL COMPANY, DOCKET NO. CI63–823 AND CI63–824

ORDER SEVERING PROCEEDINGS, CONDITIONALLY APPROVING SETTLEMENT PROPOSALS AND CONDITIONALLY ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 26, 1963)

Motions for severance, for approval of settlement proposals and for issuance of certificates of public convenience and necessity in their respective dockets were filed in the above-captioned proceedings on November 8, 1963, by George R. Brown (Brown); on November 13, 1963, by Texas Gulf Producing Company (Texas Gulf); on November 15, 1963, by Tidewater Oil Company (Tidewater) and Reuben W. Mayronne, Jr., d/b/a Riverside Oil Company (Riverside).

The settlement proposals are similar to those previously approved by the Commission[3] and provide for the issuance of permanent certificates at maximum initial rates of 20.625¢ per Mcf[4] for sales from the taxing jurisdiction of the State of Louisiana; five-year moratoria on rate increase filings commencing April 1, 1963 (subject to the usual exceptions); extension of the take-or-pay make-up periods to four years in all contracts which provide lesser make-up periods; and refunds with interest at 7 percent per annum of amounts above the settlement rate collected for deliveries made since the effective date of the rate reductions.[5]

The effective rate during the moratorium period will be 20.625¢ per Mcf in all cases except Docket Nos. CI60–580, CI63–823 and CI63–824. In Docket No. CI60–580 Brown proposes that the certificate be issued at the initial rate of 20.25¢ per Mcf and that the increased rate in effect subject to refund in Docket No. RI62–145 (22.25¢ per Mcf) remain in effect subject to further orders of the Commission in the rate proceeding in Docket No. RI62–145. In Docket Nos. CI63–823 and CI63–824, Tidewater proposes that the initial rates of 19.75¢ per Mcf[6] and 19.25¢ per Mcf remain in effect during the moratorium period.

---

[1] Applications, related rate schedules and settlement offers include interests of "*et al.*" sellers designated in such filings.

[2] Signatory co-owners in the contract covering this sale are Hudson Gas & Oil Corporation (Hudson) and R. E. Hibbert (Hibbert). Hudson has its own rate schedule (No. 6) on file and its own application for a certificate pending in Docket No. CI62–841. Likewise, Hibbert has his own rate schedule on file (No. 6) and his own application pending in Docket No. CI62–702.

Tidewater as operator proposes to settle as to its own interests and those of the non-signatory owners. However, the signatory co-owners are not included in the settlement.

[3] See *e.g.*, orders issued August 7, 1963, and October 9, 1963, in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, 30 FPC 456 and 979, respectively.

[4] All rates expressed inclusive of applicable tax reimbursement and all volumes expressed at 15.025 psia.

[5] See Appendix for further details.

[6] In its motion and offer, Tidewater states that the initial rate in this docket is 19.5¢ per Mcf. However, our records show it as 19.75¢ per Mcf and the certificate herein issued will be at the latter rate.

No answers to these motions have been received.

These proposals, generally, are in the public interest and we shall approve them subject to the following reservations and conditions.

Texas Gulf proposes to make refunds of amounts collected above the settlement rate for the period April 1, 1963, to November 1, 1963, with interest at 7 percent per annum. Since time has passed since Texas Gulf filed its offer and further collections of the higher rate may have been made, the excess must also be refunded. Our approval is so conditioned.

In keeping with our present policy, we shall require that the interest to be paid by Texas Gulf accrue through the last day of the month in which the settlement proposal was filed, November 30, 1963.

In the context of the proposals, we interpret the term "delivered" as used in paragraph 1 of the proposals to include gas required to be taken during the moratorium periods but paid for and not taken when paid for. In other words, prepayments shall not be made during the moratorium periods at rates higher than the rates in effect for gas physically delivered. Our approval of these settlements is conditioned upon such interpretation.

The settlement provisions for adjustments in rates according to our order or orders in Area Rate Proceeding, Docket No. AR61–2, seek to anticipate in part the nature of our final determinations in that matter. It is clear that we shall make no determinations in this matter which will control our conclusions in Docket No. AR61–2. The settlement proposals also provide that adjustments in price growing out of the Area Rate Proceeding, Docket No. AR61–2, should go into effect upon conclusion of judicial review of our final order.

However, we cannot now commit the Commission to conditionally staying the effectiveness of its final order in Docket No. AR61–2. These matters should be decided at the conclusion of that proceeding and our approval of the settlements will be so conditioned.

In accordance with the above we shall sever these individual dockets from the consolidated proceeding Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*, omit the intermediate decision in regard to these dockets[7] and issue certificates of public convenience and necessity in accordance with the applications, settlement proposals and conditions of this order.

The Commission finds:

(1) Each of the applicants herein is a "natural-gas" company within the meaning of the Natural Gas Act, and is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(2) The proposed sales of natural gas are subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Each of the applicants herein is able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, are required by the public convenience and necessity and are in the public

[7] The hearings in the Union Texas Petroleum, *et al.*, consolidated proceeding concluded July 25, 1963.

interest upon the conditions set forth below, and certificates should be issued as ordered below.

(5) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

(6) No party has opposed the waiver of the intermediate decisions in these proceedings.

The Commission orders:

(A) The motions for waiver of the intermediate decisions are granted.

(B) The matters in Docket Nos. G–18131, G–20182, CI60–580, CI62–638, CI63–772, CI63–823 and CI63–824 are hereby severed from the consolidated proceeding Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*

(C) Certificates of public convenience and necessity are hereby issued upon the conditions set forth herein to the applicants for the sales of natural gas in interstate commerce for resale as proposed and as modified by the settlement proposals and this order, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in the applications and settlement proposals herein.

(D) The certificates issued by paragraph (C) above, are granted upon the express condition that the applicants comply fully with the terms of this order and the settlement proposals which settlement proposals are expressly approved, as modified by this order; the certificate issued to Texas Gulf is granted upon the further express condition that it refund amounts above the settlement rates, if any, collected for deliveries made subsequent to November 1, 1963, and prior to the reductions required by the settlement and this order.

(E) Interest shall be paid on all amounts to be refunded under the terms of the settlements and this order (including refunds of all amounts collected for deliveries made since March 30, 1963, above that which would have been collected at the settlement rates, except in Docket No. CI60–580) at a rate of 7 percent per annum, such interest to accrue through the last day of the month in which the settlements were filed, November 30, 1963. All refunds required by this order shall be made within 90 days from the date of issuance hereof.

(F) Within 30 days after making the refunds required by the terms and conditions of this order and the settlement proposals, the applicants shall report to the Commission, in triplicate, the amount of the refunds made to each pipeline purchaser, showing separately the amount of principal and interest so paid and the bases used for such determinations, together with releases from the purchasers showing receipt of the refunds in conformity with the settlements and the conditions of this order.

(G) Upon full compliance of the applicants with all the terms of this order and of the settlement proposals as modified, the applicants shall be relieved of any further refund obligations in these certificate proceedings and said proceeding shall terminate.

(H) The certificates herein issued are not transferable and shall be effective only so long as the applicants continue the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(I) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or Part 154 of the Regulations thereunder; *Provided, however*, that the 30-day notice provisions of Part 154.94(b) and the detailed submittal requirements of Part 154.94(f) are hereby waived insofar as they apply to the filing of reductions in rates as required by this order and the settlement proposals.

(J) The grant of certificates herein and approval of the settlement proposals are without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the applicants, particularly any proceedings under Sections 4 or 5 of the Natural Gas Act and are without prejudice to claims or contentions which may be made by the Commission, applicants, the Commission staff, or any affected party herein in any other proceeding.

(K) Upon full compliance of Riverside with all the terms of this order and of its settlement proposal as modified, Supplements Nos. 1, 2 and 3 to Rate Schedule No. 2 shall be accepted for filing effective as of the date of initial delivery.

APPENDIX

Producer	Rate schedule No.	Docket No.	Buyer	Present rate (cents per Mcf) [1]	Proposed settlement rate (cents per Mcf) [1]
George R. Brown, *et al.*	5	G-18131	Transco. Gas P/L Corp.	23.55	20.625
George R. Brown, (Operator), *et al.*	7	CI60-580	United Gas P/L Co.	[2] 22.25	20.25
Texas Gulf Producing Co.	34	CI63-772	Texas Gas Trans. Corp.	20.75	20.625
Tidewater Oil Co. (Operator), *et al.*	115	CI62-638	do	21.25	20.625
Tidewater Oil Co.	122	CI63-823	United Gas P/L Co.	[3] 19.75	[3] 19.75
Do.	123	CI63-824	do	19.25	19.25
Reuben W. Mayronne, Jr., d/b/a Riverside Oil Co. (Operator), *et al.*	2	G-20182	Transco. Gas P/L Co.	21.65	20.625

[1] At 15.025 psia; inclusive of tax reimbursement.
[2] The rate increase now in effect subject to refund in Docket No. RI62-145 will continue to be collected.
[3] Tidewater listed this rate in its proposal at 19.5 cents per Mcf.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G-13221, ET AL.; HERMAN BROWN, DOCKET NO. CI61-709; GEOLOGICAL, GEOPHYSICAL ASSOCIATES, INC. (OPERATOR), ET AL.,[1] DOCKET NO. CI61-1519

ORDER SEVERING PROCEEDING, CONDITIONALLY APPROVING SETTLEMENT PROPOSALS AND CONDITIONALLY ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 26, 1963)

On September 18, 1963, Geological, Geophysical Associates, Inc. (Operator), *et al.* (GGA), filed a motion for severance of the above-entitled GGA docket from the consolidated proceeding Union Texas Petroleum, *et al.*, Docket No. G-13221, *et al.* (hereinafter referred to as the Union Texas proceeding), for approval of the attached settlement offer, and for the issuance of a certificate of public convenience and necessity in accordance with the application and settlement proposal. GGA's settlement proposal was amended on November 6, 1963.

On November 21, 1963, the Estate of Herman Brown, Deceased (Brown) filed a similar motion and settlement offer in Docket No. CI61-709.

The terms of the Brown proposal and the GGA proposal, as amended, are similar to other settlements in the Union Texas proceeding which have been

[1] The application, related rate schedule and settlement proposal include the interests of the *"et al."* sellers set forth in the rate schedule.

approved by the Commission[2] and provide for initial rates of 20.625¢ per Mcf[3] for sales of gas from south Louisiana; a five year moratorium on rate increase filings (subject to the usual exceptions) effective April 1, 1963; extension of the take-or-pay make-up periods to four years; refunds of all amounts collected in excess of the settlement rates since the dates of initial deliveries under the refund-conditioned temporary authorizations.[4]

As originally filed, GGA's offer did not provide for refunds of amounts in excess of the settlement rate collected since the date of initial delivery. This aspect of GGA's offer was objected to on September 27, 1963, by Consolidated Edison Company of New York, Inc., on October 4, 1963, by Public Service Electric and Gas Company, and on October 11, 1963, by The Brooklyn Union Gas Company. GGA's amendment filed on November 6, 1963, cured the objectionable omission.

In general, these proposals are in the public interest and we shall conditionally approve them.

Brown proposes to pay interest on all amounts to be refunded at a rate of 7 percent per annum to accrue through November 30, 1963. GGA's proposal, as amended, does not provide for interest. We shall require that GGA pay interest on the amounts to be refunded at a rate of 7 percent per annum, such interest to accrue through the last day of the month in which GGA filed the amendment to its offer, November 30, 1963.

In the context of the proposals, we interpret the term "delivered" as used in paragraph 1 of the settlement offers to include gas required to be taken during the moratorium period but paid for and not taken and our approval is conditioned upon such interpretation. Thus, prepayments, if any, shall be made during the moratorium periods at rates no higher than the rates in effect for gas physically delivered.

The settlement provisions for adjustments in rates according to our order or orders in Area Rate Proceeding, Docket No. AR61–2, seek to anticipate in part the nature of our final determinations in that matter. It is clear that we shall make no determinations in this matter which will control our conclusions in Docket No. AR61–2. The settlement proposals also provide that adjustments in price growing out of the Area Rate Proceeding, Docket No. AR61–2, should go into effect upon conclusion of judicial review of our final order.

However, we cannot now commit the Commission to conditionally staying the effectiveness of its final order in Docket No. AR61–2. These matters should be decided at the conclusion of that proceeding and our approval of the settlements will be so conditioned.

In accordance with the above we shall sever these individual dockets from the Union Texas proceeding, omit the intermediate decision in regard to these dockets,[5] and issue certificates of public convenience and necessity in accordance with the applications, settlement proposals, as amended, and conditions of this order.

The Commission finds:

(1) Each of the applicants is a natural-gas company within the meaning of the Natural Gas Act, and is engaged in the sale of natural gas in interstate

[2] See orders issued August 7, 1963 (Humble Oil & Refining Company) and October 9, 1963 (Gulf Oil Corporation and Socony Mobil Oil Company, Inc.) in Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*, 30 FPC 456 and 979, respectively.

[3] All rates expressed inclusive of applicable tax reimbursement and all volumes expressed at 15.025 psia.

[4] See Appendix for further details.

[5] The hearings in the Union Texas Petroleum, *et al.*, consolidated proceeding concluded July 25, 1963.

commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(2) The proposed sales of natural gas are subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicants are able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, are required by the public convenience and necessity and are in the public interest upon the conditions set forth below, and certificates should be issued as ordered below.

(5) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

(6) No party has opposed the waiver of the intermediate decisions in these proceedings.

The Commission orders:

(A) The motions for waiver of the intermediate decisions are granted.

(B) The matters in Docket Nos. CI61–709 and CI61–1519 are hereby severed from the consolidated proceeding Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*

(C) Certificates of public convenience and necessity are hereby issued to the applicants in Docket Nos. CI61–709 and CI61–1519 upon the conditions set forth herein authorizing the sales of natural gas in interstate commerce for resale as proposed and as modified by the settlement proposals, as amended, and this order, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in the applications and settlement proposals herein.

(D) The certificates granted by paragraph (C) above, are granted upon the express condition that applicants comply fully with the terms of this order and the settlement proposals, as amended, which settlements are expressly approved under the conditions of this order.

(E) Within 90 days from the date of issuance of this order, applicants shall refund to the respective pipeline purchasers the difference between the amounts collected since the dates of initial deliveries and the amounts that would have been collected under the settlement rates together with interest computed at a rate of 7 percent per annum, such interest to accrue through the last day of the month in which the settlement proposals, as amended, were filed, November 30, 1963.

(F) Within 30 days after making the refunds required by the terms and conditions of this order and the settlement proposals, as amended, each applicant shall report to the Commission, in triplicate, the amount of the refunds made to its pipeline purchaser, showing separately the amount of principal and interest so paid and the bases used for such determination, together with a release from the purchaser showing receipt of the refunds in conformity with the settlement as approved.

(G) Upon full compliance of applicants with all the terms of this order and and of the settlement proposals, as amended, applicants shall be relieved of any further refund obligations in these certificate proceedings and said proceedings shall terminate.

(H) The certificates herein issued are not transferable and shall be effective only so long as applicants continue the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(I) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or Part 154 of the Regulations thereunder; *Provided, however,* that the 30-day notice provision of Part 154.94(b) and the detailed submittal requirements of Part 154.94(f) are hereby waived insofar as they apply to the filing of reductions in rate as required by this order and the settlement proposal.

(J) The grant of certificates herein and approval of the settlement proposals, as amended, is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against applicants, particularly any proceeding under Section 5 of the Natural Gas Act and is without prejudice to claims or contentions which may be made by the Commission, applicants, the Commission staff, or any affected party herein in any other proceeding.

APPENDIX

Docket No.	Rate schedule No.	Seller	Purchaser	Current rate (cents per Mcf)	Proposed settlement rate (cents per Mcf)
CI61-1519	1	Geological, Geophysical Associates, Inc. (Operator), *et al.*	Tennessee Gas Transmission Co.	23.09167	20.625
CI61-709	9	Herman Brown [1]	Texas Gas Transmission Corp	[2] 23.25	20.625

[1] Now the Estate of Herman Brown.
[2] Initial price of 23.55 cents per Mcf was conditioned down to 23.25 cents per Mcf.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

CITY OF NEW BOSTON, ILLINOIS, DOCKET NO. CP64-22

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued December 27, 1963)

On July 23, 1963, the City of New Boston, Illinois (Applicant), filed an application herein, and on November 19, 1963, a supplement thereto, pursuant to Section 7(a) of the Natural Gas Act, for an order of the Commission directing Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) to establish physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant, and to sell and deliver to Applicant the volume of natural gas estimated to be required for sale and distribution in the third year of operation in the community of New Boston, as hereinafter described.

Applicant shows that its annual and peak day requirements for the first three years of operation will be as follows:

Year of operation	(*Volumes—Mcf*) *Peak day*	*Annual*
1st	391	42,620
2d	426	46,687
3d	465	50,240

Applicant proposes to construct and operate a municipally owned natural gas distribution system within the borders of the City of New Boston and also two regulating stations and appurtenant equipment. It is also proposed on the basis of the 10 cent formula, Michigan Wisconsin construct a 4-inch lateral line from a point on its main transmission line in Illinois to a measuring station, which it will also construct, to be located approximately 1.5 miles north of its main pipeline.

Applicant estimates the cost of constructing the proposed distribution system and the New Boston portion of lateral line (approximately 1.5 miles) and said two regulating stations and appurtenant equipment will be approximately $210,000, which will be financed by the sale of gas revenue bonds.

Pursuant to due notice, the hearing was convened on November 20, 1963. Such hearing was recessed on that date to reconvene on December 2, 1963. On the latter date a public hearing was held respecting the matters involved in and the issues presented by the application.

No protest or petition to intervene has been received. Michigan Wisconsin, having filed herein an answer on August 23, 1963, questioned the economic feasibility of the project.

On November 19, 1963, New Boston filed herein an amendment to its application. Thereafter, on November 22, 1963, Michigan Wisconsin filed an amendment to its answer stating that New Boston's said amendment to its application satisfactorily meets the issues raised by Michigan Wisconsin's answer of August 23, 1963, and that it has no objection to the entry of an order granting New Boston's application.

Michigan Wisconsin's original answer had stated that it could provide the requested service from its presently authorized gas supplies without the construction of additional main line facilities.

Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and the Commission render a decision herein pursuant to section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) The City of New Boston, Illinois is a municipal corporation and is legally authorized to construct, own and operate a local gas distribution system.

(2) Michigan Wisconsin Pipe Line Company, a Delaware corporation having its principal place of business in Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 30, 1946 in Docket No. G-669 (5 FPC 953).

(3) It is necessary and desirable in the public interest that the Commission, by order, direct Michigan Wisconsin Pipe Line Company to establish physical connection of its transportation facilities with the facilities proposed to be constructed by the City of New Boston, Illinois and to sell and deliver to New Boston a maximum volume of 465 Mcf of natural gas per day for resale and distribution in said community.

(4) The extent of the required lateral to be constructed by Michigan Wisconsin Pipe Line Company in order to render service to the City of New Boston, Illinois, as set forth in paragraph (3) *supra* should be determined by Michigan Wisconsin's ten cent formula as heretofore approved by the Commission.

(5) The requirement that Michigan Wisconsin serve applicant as above set forth will not place any undue burden upon it nor require it to enlarge its facilities, nor impair its ability to render adequate service to its existing customers.

(6) A request having been made by staff counsel for omission of the intermediate decision procedure and all requirements of the provisions of Section 1.30(c)(1) [18 CFR 1.30(c)(1)] of the Commission's Rules of Practice and Procedure

having been satisfied, sufficient cause exists for the Commission forthwith to render its final decision in the instant proceeding.

The Commission orders:

(A) Michigan Wisconsin Pipe Line Company be and the same is hereby directed to establish physical connection of its transportation facilities with the facilities proposed to be constructed by the City of New Boston, Illinois, and to sell and deliver a maximum volume of 465 Mcf of natural gas per day to New Boston for resale and distribution in New Boston.

(B) Michigan Wisconsin Pipe Line Company shall apply its "10-cent formula", as heretofore approved by the Commission, in order to determine the amount of expenditures to be made by it for the cost of the transportation facilities necessary to render service to the City of New Boston, Illinois.

(C) The City of New Boston, Illinois, shall be prepared to receive natural gas service from Michigan Wisconsin Pipe Line Company within one year from the date of issuance of this order.

(D) Michigan Wisconsin Pipe Line Company shall report to the Commission in writing the date of commencement of service to said City of New Boston.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

PAN AMERICAN PETROLEUM CORPORATION (OPERATOR), ET AL., DOCKET NO. G-7486

FINDINGS AND ORDER RESCINDING IN PART ORDER ISSUED JUNE 3, 1963, RESCINDING ORDER ISSUED OCTOBER 29, 1963, AND DISMISSING APPLICATION FOR REHEARING

(Issued December 27, 1963)

On January 24, 1961, Pan American Petroleum Corporation (Operator), *et al.* (Applicant), filed in Docket No. G-7486 an application to amend the order issuing a certificate in said docket to authorize the sale of natural gas from additional acreage. Concurrently therewith Applicant filed a Supplemental Gas Purchase Agreement dated September 20, 1960, dedicating the additional acreage to performance under the basic agreement, Applicant's FPC Gas Rate Schedule No. 136. The supplemental agreement was accepted for filing as Supplement No. 16 to said rate schedule.

By letter dated August 2, 1961, Applicant was requested to advise the Commission whether it would accept authorization for the additional sale conditioned upon the refunding of any amounts collected in excess of the rate found to be just and reasonable in the pending proceeding in Docket No. RI61-45. Docket No. RI61-45 is a rate proceeding in which a proposed increased rate, designated as Supplement No. 15 to Applicant's FPC Gas Rate Schedule No. 136, is being collected subject to refund. By letter dated December 4, 1961, Applicant advised the Commission that it was unwilling to accept permanent authorization with such a condition.

On April 12, 1963, the Commission issued a notice of the application to amend (published in the Federal Register on April 20, 1963, 28 F.R. 3944) and stated therein the rate of 15.559869¢ per Mcf for Supplement No. 16. This is the rate proposed in Supplement No. 15 and being collected subject to refund as may be determined in Docket No. RI61-45. On June 3, 1963, an order was issued in Docket No. G-7486, *et al.*, which granted authorization to sell natural gas from the additional acreage; and on October 29, 1963, the Commission issued an order amending the order of June 3, 1963, to make the sale of gas pursuant to

Supplement No. 16 subject to the rate proceeding in Docket No. RI61–45. On November 27, 1963, Applicant filed an application for rehearing of the order of October 29, 1963.

Inasmuch as Applicant has expressed its unwillingness to accept authorization for the sale of gas from additional acreage conditioned upon the refunding of any amounts collected in excess of the rate found to be just and reasonable in Docket No. RI61–45, the orders of June 3, 1963, and October 29, 1963, should not have been issued in Docket No. G–7486 and were, in fact, issued by mistake. The Commission realizes that the issuance of the October 29, 1963, order was not the way to correct its error in inadvertently granting permanent authorization at the increased rate. Inasmuch as the sale from additional acreage is being made pursuant to temporary authorization issued March 8, 1961, there will be no change in position for Pan American by the rescission of the orders of June 3, 1963, and October 29, 1963. We see no reason why Applicant should be allowed to profit by the error. See, *e.g.*, *American Trucking Assn., Inc.*, v. *Frisco Transportation Co.*, 358 U.S. 133, 145. It would be an anomaly to authorize the sale of gas pursuant to a supplement to a contract under conditions other than those conditions which apply to the basic contract, particularly where the Applicant has indicated that the basic contract should apply to the additional volumes of natural gas covered by the supplemental agreement.

The Commission finds:

(1) Applicant has not agreed to accept permanent authorization in Docket No. G–7486 for sales made pursuant to Supplement No. 16 to Applicant's FPC Gas Rate Schedule No. 136 conditioned upon the refunding of any amounts collected in excess of the rate found to be just and reasonable in Docket No. RI61–45.

(2) The orders of June 3, 1963, and October 29, 1963, were issued by mistake.

The Commission orders:

(A) The order issued June 3, 1963, in Docket No. G–7486, *et al.*, be and the same is hereby rescinded insofar as said order authorized the sale of natural gas by Pan American Corporation (Operator), *et al.*, to El Paso Natural Gas Company pursuant to Supplement No. 16 to Pan American Petroleum Company (Operator), *et al.*, FPC Gas Rate Schedule No. 136; and in all other respects, said order shall remain in full force and effect.

(B) The order issued October 29, 1963, in Docket No. G–7486 be and the same is hereby rescinded.

(C) The application for rehearing of the order issued October 29, 1963, filed November 27, 1963, be and the same is hereby dismissed as moot.

(D) The matter of the application for authorization to sell natural gas from additional acreage filed in Docket No. G–7486 on January 24, 1961, shall be considered further in such proceedings as may be appropriate under the circumstances.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

PAN AMERICAN PETROLEUM CORPORATION, DOCKET NO. CI61–516

ORDER DENYING APPLICATION FOR REHEARING

(Issued December 27, 1963)

On November 29, 1963, Pan American Petroleum Corporation (Applicant) filed in Docket No. CI61–516 an application for rehearing of the order issued

November 7, 1963, 30 FPC 1230, rescinding in part the order issued September 13, 1963 [not reported] in Docket No. G–4616, *et al.* The order issued September 13, 1963, amended the order issuing a certificate of public convenience and necessity to Applicant to authorize the sale of natural gas from additional acreage. The order issued November 7, 1963, rescinded said authorization.

On May 13, 1963, Applicant filed in Docket No. CI61–516 an application to amend the order issuing a certificate in said docket to authorize the sale of natural gas from additional acreage. Concurrently therewith Applicant filed an Amendatory Agreement dated April 4, 1963, dedicating the additional acreage to performance under the basic agreement, Applicant's FPC Gas Rate Schedule No. 330. The Amendatory Agreement was accepted for filing as Supplement No. 7 to said rate schedule. On June 19, 1963, the Commission granted a temporary certificate to Applicant pursuant to Section 157.28 of the Regulations under the Natural Gas Act to commence the sale of natural gas as proposed in the application of May 13, 1963. Said temporary certificate was conditioned as was the original certificate issued in said docket in the order accompanying Opinion No. 353 (27 FPC 449). In the letter order issuing the temporary certificate Applicant was requested to advise the Commission if it would accept permanent authorization with the same rate conditions. Applicant has not expressed its willingness to do so but did accept the temporary certificate and commence delivery pursuant thereto. On September 13, 1963, unconditioned permanent authorization was issued by mistake under the abridged hearing procedure.

Applicant asserts that the revocation of the permanent authorization to sell natural gas from additional acreage is in excess of Commission authority, is in violation of due process, is contrary to stability in Commission decisions, good order, proper administrative procedure, and the public interest, and constitutes an unlawful imposition of sanctions.

In fact, under the circumstances of this case the revocation of permanent authorization tends to promote consistency and stability in Commission decisions and is in the public interest.

The Commission, after a public hearing, determined under what conditions and at what rates natural gas might be sold under the basic contract and incorporated those determinations in Opinion No. 353. Applicant has accepted Opinion No. 353. The sale of gas from additional acreage was made under an amendatory agreement which states that the new sale ". . . shall be subject to the terms of the Contract to the same extent as if additional acreage had been originally described on the schedule attached as Exhibit 'A' to the Contract and in all other respects included under the terms of the Contract." Thus, it is apparent that Applicant intended the sales under the Amendatory Agreement to be made under the same conditions as the sales under the basic contract. Applicant has not been deprived of its right to due process by the prompt correction of a mistake by the Commission which should have been recognized by it clear and apparent when the erroneous notice for hearing was issued. Significantly, Pan American made no effort to contact the Commission to determine whether it intended to impose the Opinion No. 353 conditions, which it had previously been advised was the Commission's intention. In the absence of any change in position as a result of the Commission's error we see no reason why it should be allowed to so profit. See *e.g. American Trucking Assn., Inc.*, v. *Frisco Transportation Co.*, 358 U.S. 133, 145. Applicant is still entitled to a hearing under the Natural Gas Act on the issues presented by the application to amend.

The Commission finds:

The application for rehearing of the order of November 7, 1963, in Docket No. CI61–516 (Docket No. G–4616, *et al.*) sets forth no assignments of error to justify the revocation and vacation of said order as requested.

The Commission orders:

The application for rehearing of the order of November 7, 1963, in Docket No. CI61–516 (Docket No. G–4616, *et al.*) be and the same is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

UNITED STATES DEPARTMENT OF THE INTERIOR, SOUTHWESTERN POWER ADMINISTRATION, DOCKET NO. E–6407

ORDER CONFIRMING AND APPROVING RATES FOR SALE OF ELECTRIC POWER AND ENERGY

(Issued December 27, 1963)

Pursuant to the Flood Control Act of 1944 (58 Stat. 887), the Secretary of the Interior, on behalf of the Southwestern Power Administration (SWPA) on June 17, 1963, submitted for confirmation and approval, proposed increased rates for the third five-year period beginning January 1, 1964, for the sale of power and energy to Arkansas Power and Light Company, as provided for under the terms of an agreement, dated January 29, 1952, as supplemented, between the United States of America, Arkansas Power and Light Company (Arkansas Power) and Reynolds Metals Company (Reynolds), and on October 16, 1963 submitted supplemental information in relation thereto.

By order issued April 28, 1952, the Commission approved the schedule of rates and charges embodied in the agreement of January 29, 1952 (Aluminum Contract) as amended by supplemental agreement of April 25, 1952, to be effective for the 30-year term thereof,[1] subject to the provisions of the supplemental agreement for redetermination of rates by the Secretary for the second and each succeeding five-year period and confirmation and approval by the Commission.

The agreement, as supplemented, provides for SWPA to sell 150,000 kilowatts and 30,000,000 kilowatt-hours per month of firm hydroelectric power and energy to Arkansas Power and for the latter in turn to sell 110,000 kw at a high load factor to Reynolds at its alumnium plant at Arkadelphia, Arkansas. Payment by Arkansas Power during the first five-year period of the contract term, is at the base rate of 6 mills per kwh for the first 22,000,000 kwh of monthly energy and 3 mills per kwh for the remaining 8,000,000 kwh; the average of these rates it 5.2 mills. In addition, SWPA may sell to Arkansas Power up to 25,000,000 kwh of secondary energy per month at a rate of 1.25 mills per kwh during the first five-year period of the term of the agreement; 1.50 mills per kwh during the next ten-year period; 1.75 mills per kwh during the next five-year period and 2.00 mills per kwh during the final ten-year period.

The agreement further provides that the base rate for firm power service shall be reviewed and redetermined by the Secretary effective as of the commencement of the second and each succeeding five-year period provided that the increased rate resulting therefrom shall not exceed, for each period, 110%,

[1] The 30-year term began January 1, 1954.

115%, 117½%, 120% and 122½% respectively, of the initial base rate; nor shall such redetermined rate be higher than would be required to meet the standards of Section 5 of the Flood Control Act of 1944 if equally applied to all customers of SWPA that are similarly situated.

In the above filing, the Secretary reports that, pursuant to the agreement, he has reviewed the base rate and has redetermined it to be 115% of the initial base rate effective for the period of the eleventh through the fifteenth year of service thereunder, beginning with January 1, 1964, and requests confirmation and approval thereof by this Commission. The proposed rate is 6.90 mills per kwh for the first 22,000,000 kwh of monthly energy and 3.45 mills per kwh for the remaining 8,000,000 kwh. The average of these rates is 5.98 mills per kwh.

In support of the proposed increase from 110 to 115% of the initial base rate, the Secretary refers to the information and data submitted in previous filings of repayment studies and other analyses as support for the present review by the Commission. Specific reference was made to the repayment study and data filed in 1956, in Docket No. IT–5971, *et al.*, together with other analyses and data filed in support of the existing Aluminum contract rate level which became effective January 1, 1959.

The Secretary points out that in 1956 it was shown that if the Aluminum Contract rates continued to become effective, the revenue estimate for 1958 as shown in SWPA repayment studies would have to be reduced by $1,098,000 and by lesser amounts for succeeding years totaling $22,000,000 for the remaining years of the contract which deficiency would result from inability to apply the standard P–1 rate schedule to these sales. This discrimination between classes of customers which existed in 1958 still exists. Preferred customers who purchase power and energy at load factors and under the same character and conditions of service as outlined in the Aluminum Contract continue to pay an average of 8.25 mills per kilowatt-hour under the P–1 rate schedule while Arkansas Power and Light Company pays SWPA today an average of only 5.72 mills per kilowatt-hour. This difference amounts to an annual loss of revenue of $910,800 to the Government which totals $4,554,000 over a five-year period. The Secretary further states that the rate must be increased to the maximum allowable for the next five-year period beginning January 1, 1964, in order to minimize to the greatest extent the deficiency under the Aluminum Contract. The average rate of 5.98 mills per kilowatt-hour to be effective January 1, 1964, under the Aluminum Contract would still be far below the level of the P–1 rate schedule, but would reduce the loss by $93,600 per year and lessen the degree of inequity and discrimination in the Aluminum Contract rate level. This must be accomplished in order to comply as much as possible with requirements of Section 5 of the Flood Control Act of 1944 which requires among other things that rate schedules shall be drawn having regard to the recovery (upon the basis of the application of such rate schedules to the capacity of the facilities of the projects) of the cost of producing and transmitting such electric enegry, including the amortization of the capital investment allocated to power over a reasonable period of years.

The most recent information concerning the financial status of SWPA was filed in support of SWPA's Rate Schedule P–2 which was approved by the Commission by order issued April 30, 1962 (Docket No. E–6975). This information included a comparison of estimated revenues and costs for fiscal year 1962, estimated by SWPA in November, 1961, which revealed that anticipated revenues would fall short by about $4 million of paying operating expenses and interest charges for that year. Furthermore, applying the proposed P–2 Rate Schedule and consummation of contemplated new power marketing contracts, the annual

costs, including interest charges, would be slightly in excess of revenues, so there would still be no amortization of investment costs. The proposed base rate for firm power and energy under the Aluminum Contract as redetermined by the Secretary would still be lower than the rates provided under Rate Schedule P–2. The sale of firm power and energy under the Aluminum Contract would yield annual revenues of $2,152,800, compared to $2,880,000, if equivalent power were sold under Rate Schedule P–2, a difference of $727,200.

An analysis of the cost studies filed with the Commission in Docket No. IT–5971 *et al.*, and subsequent cost studies filed in Docket No. E–6975, and with particular reference to the facilities used and service rendered to Arkansas Power, shows that the proposed rates will not produce revenue in excess of the cost of service to Arkansas Power.

Arkansas Power and Reynolds were invited to comment on the filing by the Secretary and have filed protests to the proposed increased rates requesting that the application thereof be rejected. In support of their contention, they refer to certain cost studies which they submitted with their previous protests filed in Docket No. IT–5971, *et al.* In these cost studies in which the companies attempt to show that the rates are adequate they fail to include all facilities and costs necessary to render service to Arkansas.

The Commission finds:

(1) The proposed rates as redetermined by the Secretary for the third five-year period beginning January 1, 1964, for the sale of power and energy to Arkansas Power, as provided for under the terms of the agreement referred to above are not higher than would be required to meet the standards of Section 5 of the Flood Control Act of 1944 if equally applied to all customers of SWPA that are similarly situated.

(2) The proposed rates as redetermined by the Secretary for the third five-year period beginning January 1, 1964, for the sale of power and energy to Arkansas Power, as provided for and limited by the terms of the agreement referred to above are justified and should be approved.

The Commission orders:

The proposed rates as redetermined by the Secretary for the third five-year period beginning January 1, 1964, for the sale of power and energy to Arkansas Power as provided in the agreement referred to above, hereby are confirmed and approved.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

YUBA COUNTY WATER AGENCY, PROJECT NO. 2246

ORDER MODIFYING ORDER ON REHEARING

(Issued December 27, 1963)

The Commission on May 16, 1963, 29 FPC 1002, issued an order for the issuance of a license to the Yuba County Water Agency (Applicant), an agency of the State of California with offices at Marysville, California, for the Yuba River development, Project No. 2246, on the Yuba River and its tributaries, North Yuba River, Middle Yuba River, and Oregon Creek, in the counties of Yuba, Nevada, and Sierra, California. Applicant petitioned on June 14, 1963 for rehearing of the license order with respect to articles 33, 38, 39, 40, 46, 49, and 55. The Commission on July 15, 1963 granted a rehearing.

(1) Article 49, recommended by the Secretary of Interior, forbids Applicant from interfering with future depletion and consumptive use of the Yuba River and tributaries. Because of the formal agreement dated June 12, 1963 between Applicant and the Bureau of Reclamation upon river operations, article 49 is no longer necessary. The Secretary of Interior does not object to the deletion of article 49 if the Commission approves the agreement on river operations. As hereinafter provided, the agreement of June 12, 1963 will be approved as contemplated by article 50 of the license order.

(2) Applicant requested that the second sentence of footnote one to article 33 be reworded so that it could not be construed to replace certain terms of an agreement dated November 28, 1962 between Applicant and the California Department of Fish and Game. The footnote will be modified substantially as Applicant asked.

(3) Applicant requested that article 38, compelling Applicant to make minimum possible alteration of natural fish and wildlife habitat consistent with reasonable economic practices, be deleted. However, the modification proposed by the Secretary of Interior is acceptable to Applicant.

(4) Article 46 requires Applicant to operate its project for flood control according to rules prescribed by the Secretary of Army and specified in a formal agreement between Applicant and the District Engineer. Article 46 makes this agreement "subject to review from time to time as requested by either party." Applicant has requested that article 46 be amended to enable it, by agreement with the District Engineer, to provide periodic review in lieu of review at the request of the parties. The Corps of Engineers has reported that it has no objection to incorporating a review provision in the agreement.

(5) Applicant's objections to articles 39, 40, and 55 are without substantial basis. (a) Applicant's objection to article 39 would be met by notice and opportunity for hearing. Any request for Commission action under article 39 will be referred to the Applicant and it will be afforded an opportunity for hearing before such action is taken. (b) Applicant states that article 40 does not specify the location of the outlet works of New Bullards Bar dam. However, article 30 requires that the Applicant submit drawings for Commission approval which would show the location of the outlet works of New Bullards Bar dam. (c) Applicant requests that article 55 be modified so that any coordination required would not impair the capacity or energy output of the project. As stated in *South Carolina Electric and Gas Company*, Project No. 2315, issued November 21, 1963, 30 FPC 1338, this article contemplates that coordination will result in net benefits to be shared by all parties involved, including the Applicant.

The Commission finds:

It appears appropriate and in the public interest that article 49 be deleted from the Commission's order of May 16, 1963; that articles 33, 38, and 46 be modified as hereinafter provided; that the application for modification be denied with respect to articles 39, 40, and 55; and that the agreement dated June 12, 1963 between Applicant and the Bureau of Reclamation be approved as hereinafter provided.

The Commission orders:

(A) Article 49 is deleted from the order of May 16, 1963, in Project No. 2246.

(B) Footnote one to article 33 of the order of May 16, 1963, is amended to read:

[1] Or natural flow, whichever is less, measured at a point not more than 500 feet downstream of dam. Maximum 24-hour fluctuations of plus or minus 10 percent are permitted for flows in Middle Yuba below Hour House Diversion and Oregon Creek below Low Cabin Diversion.

(C) Article 38 of the order of May 16, 1963 is amended to read:

Article 38. The Licensee shall construct and operate the project in a manner providing minimum possible alteration of fish and wildlife habitat, consistent with reasonable economic practices, except where habitate changes result from specific modification of construction and operation designed to enhance fish and wildlife under ways and means approved by the California Department of Fish and Game, the Secretary of Agriculture, and the Secretary of the Interior.

(D) Article 46 of the order of May 16, 1963 is amended to read:

Article 46. The Licensee shall operate the project reservoirs for flood control in accordance with rules prescribed by the secretary of the Army, such rules to be specified in a formal agreement between the Licensee and the District Engineer, U.S. Army Engineers District, Sacramento, California. Said agreement shall be subject to review from time to time at the request of either party; provided, however, that a different procedure of review may be prescribed by formal agreement.

(E) The application for modification of articles 39, 40, and 55 is denied.

(F) The aforesaid agreement dated June 12, 1963 between Applicant and the Bureau of Reclamation as contemplated by article 50 of the order of May 16, 1963, is approved.

(G) The order issued by the Commission on May 16, 1963 in Project No. 2246, as amended by this order, shall be accepted by Yuba County Water Agency and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP63-188 (PHASE II)*

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 30, 1963)

On December 31, 1962, as amended and supplemented on January 7, January 28, February 12 and July 3, 1963, Cities Service Gas Company (Applicant) filed in Docket No. CP63-188 (Phase II) an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction, acquisition and operation of certain facilities and the acquisition of certain leasehold interests and gas reserves in order to develop and operate as an underground gas storage field, the Webb gas field located in Grant County, Oklahoma, all as more fully set forth in the application, as amended and supplemented.

Applicant proposes to clean out and plug old wells in the Webb field and drill, equip and connect some 40 new wells for storage injection and withdrawal. Applicant will also construct and operate a gathering system, dehydration plant and a 26-inch pipeline to connect the 40 wells to its Blackwell Compressor Station which is to be used for input and withdrawal operations.

Applicant has entered into contracts to acquire from Arkansas Louisiana Gas Company (Arkansas Louisiana), Oklahoma Natural Gas Company (Oklahoma Natural) and Champlin Oil and Refining Company (Champlin) their respective

---

*The application in Docket No. CP63-188 is divided into two phases. This order pertains exclusively to Phase II of said application.

leasehold interests in the Webb field and the remaining gas reserves in said field. Oklahoma Natural and Champlin have been selling their production from the field to Arkansas Louisiana who has been using such production, along with that from its own interests, to help supply the customers on its system. Applicant and Arkansas Louisiana have agreed on an existing reserve figure of 6,000 MMcf. Of this amount, Arkansas Louisiana own 15.42 per cent. Pursuant to the agreement between Applicant and Arkansas Louisiana, the latter will receive its 15.42 per cent interest free of cost from Applicant at various points of connection between Applicant's and Arkansas Louisiana's systems; the balance of the agreed-on reserves will be delivered and sold to Arkansas Louisiana for 11.5 cents per Mcf over a 10-year period. Pursuant to the agreements between Applicant and Oklahoma Natural and Champlin, the former will receive $175,000 for its interests and the latter will receive $1,878 for its interests.

Applicant states that although the peak day firm demands of its existing customers are steadily increasing, its peak day supply of gas is steadily decreasing in certain areas south of the Blackwell and Barker County areas and the Eureka Field. Applicant states further that by utilization of the proposed Webb Storage Field, it will increase its peak day deliverability of gas required to serve the peak day requirements of its customers. Applicant proposes to be able to fill partially the storage reservoir with gas during the off-peak months in 1964 so as to utilize from Webb Storage, on the peak day of 1964–65, approximately 50,000 Mcf of gas. The application indicates that the field will be able to deliver ultimately 200,000 Mcf per day with a 10,000 MMcf working gas volume at a capacity pressure of 1,040 psia. Applicant will develop such capacity commensurate with the deliverability required to meet its increasing peak day demands.

The total estimated cost of Phase II of the proposed project is $4,985,000, which cost will be financed by treasury cash.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application, as amended and supplemented, (Phase II) has been filed.

At a hearing held on December 20, 1963, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, amendment, supplements and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G–298 (4 FPC 471).

(2) The facilities and leasehold interests hereinbefore described, as more fully described in the application, as amended and supplemented, in this proceeding (Phase II), are subject to the jurisdiction of the Commission, and the construction, acquisition and operation of such facilities and the acquisition of such leasehold interests by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The construction, acquisition and operation of the proposed facilities and the acquisition of the subject leasehold interests by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinbefore ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c), (d) and (e) of Section 157.20 of such Regulations.

(6) The certificate hereinafter issued should be further conditioned upon the maximum top storage pressure of 1040 psia at the wellhead (shut-in) not being exceeded without further Commission authorization.

(7) The certificate hereinafter issued should be further conditioned upon Applicant's submitting to the Commission semi-annual reports, coinciding with the termination of two injection and withdrawal cycles, containing the information hereinafter specified:

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Cities Service Gas Company, to construct, acquire and operate the proposed facilities and to acquire the subject leasehold interests and remaining gas reserves all as hereinbefore described, all as more fully described in the application, as amended and supplemented, in this proceeding (Phase II), upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c), (d) and (e) of Section 157.20 of such Regulations.

(C) The facilities referred to in paragraph (A) above shall be constructed, or acquisition consummated, and the acquisition of leasehold interests shall be consummated, and all facilities placed in actual operation, all as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12 months from the date on which this order issues.

(D) The certificate issued by paragraph (A) above is hereby further conditioned upon the maximum top storage pressure of 1040 psia at the wellhead (shut-in) not being exceeded without further Commission authorization.

(E) The certificate issued by paragraph (A) above is hereby further conditioned upon Applicant's submitting to the Commission semi-annual reports, coinciding with the termination of two injection and withdrawal cycles, containing the following information:

(1) the total volume of gas in the reservoir;

(2) the volumes of gas injected or withdrawn by months;

(3) the daily maximum injection and withdrawal volumes experienced during the reporting interval;

(4) the shut-in wellhead pressure for each well;

(5) the top storage pressure (wellhead and reservoir) experienced during the reporting interval;

(6) structure maps of the reservoir (when revised); and,

(7) a brief discussion of current operations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

COLORADO INTERSTATE GAS COMPANY, DOCKET NO. CP61-143; NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP61-149; ARKANSAS LOUISIANA GAS COMPANY, DOCKET NO. CP61-163

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND ACCEPTING TARIFF FILINGS

(Issued December 30, 1963)

On September 16, 1963, September 13, 1963, and September 20, 1963, Colorado Interstate Gas Company (Colorado) in Docket No. CP61-143, Natural Gas Pipeline Company of America (Natural) in Docket No. CP61-149 and Arkansas Louisiana Gas Company (Arkansas Louisiana) in Docket No. CP61-163, filed, respectively, applications to amend the Commission's order issued January 3, 1963, in Docket No. CP61-143, *et al.*, 29 FPC 8, to authorize the extension of the duration of the certificates of public convenience and necessity, issued by said order, to May 1, 1964, all as more fully set forth in the respective applications to amend.

The order of January 3, 1963, issued certificates authorizing Colorado to sell up to 25,000 Mcf of natural gas per day at 14.5 cents per Mcf to Arkansas Louisiana and authorizing the exchange of natural gas among Colorado, Arkansas Louisiana and Natural in order to effect said sale of gas. Said certificates were limited in duration to a period extending through December 31, 1963.

The gas sold by Colorado is delivered to Arkansas Louisiana by Natural in Grady County, Oklahoma; Colorado delivers equivalent volumes to Natural at an interconnecting point between their two systems in the Mocane field, Oklahoma. Colorado states that it has an excess supply of gas and, therefore, desires to continue to make the subject sale to Arkansas Louisiana until May 1, 1964, in order to comply with minimum take provisions of its gas purchase and lease agreements; further, Applicant estimates that by the end of 1964 it will not have taken its minimum take supply obligations to the accumulated extent of 114,319 MMcf. Arkansas Louisiana states that it has need for gas under the subject arrangement through the forthcoming heating season.

On December 13, 1963, Natural tendered for filing its First Revised Sheet No. 32 and Third Revised Sheet Nos. 33 and 34 to its FPC Gas Tariff, Second Revised Volume No. 2, covering the subject extension of the exchange arrangement. Natural requests that the thirty day notice period provided by the Commission's Regulations under the Natural Gas Act for the filing of proposed tariff changes, be waived with respect to the subject filings.

On November 29, 1963, Colorado tendered for filing its Third Revised Sheet No. 49 to its FPC Gas Tariff, Second Revised Volume No. 2, covering the subject extension of the exchange arrangement. Also on November 29, 1963, Colorado tendered for filing its Third Revised Sheet No. 36, Second Revised Sheet Nos. 37 and 39, Fourth Revised Sheet No. 38 and First Revised Sheet No. 39A to its FPC Gas Tariff, Second Revised Volume No. 2, covering the subject extension of the sale of gas to Arkansas Louisiana.

Due notice of the filing of the applications to amend and opportunity for hearing thereon has been given by publication in the Federal Register on November 22, 1963 (28 F.R. 12373). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

(1) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued January 3, 1963, in Docket No. CP61–143, *et al.*, be amended as hereinafter ordered.

(2) The public convenience and necessity require that the revised tariff filings of Natural and Colorado, hereinabove described, be accepted for filing to become effective January 1, 1964.

The Commission orders:

(A) The Commission's order issued January 3, 1963, in Docket No. CP61–143, *et al.*, be and the same is hereby amended to authorize the extension of the duration of the certificates of public convenience and necessity issued by said order, to May 1, 1964, all as hereinbefore described and as set forth in the respective applications to amend.

(B) Natural's First Revised Sheet No. 32 and Third Revised Sheet Nos. 33 and 34 to its FPC Gas Tariff, Second Revised Volume No. 2 are hereby accepted for filing to become effective January 1, 1964.

(C) Colorado's Third Revised Sheet Nos. 49 and 36, Second Revised Sheet Nos. 37 and 39, Fourth Revised Sheet No. 38 and First Revised Sheet No. 39A to its FPC Gas Tariff, Second Revised Volume No. 2, are hereby accepted for filing to become effective January 1, 1964.

(D) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

MINNESOTA POWER & LIGHT COMPANY, DOCKET NO. E–7094

DECLARATORY ORDER

(Issued December 30, 1963)

A petition was filed on April 25, 1963 by the Minnesota Power & Light Company (Petitioner), pursuant to Section 1.7(c) of the Commission's Rules of Practice and Procedure for a declaratory order to remove an uncertainty as to the necessity under the Federal Power Act to obtain a license for its Sylvan Project on the Crow Wing River in Cass, Crow Wing, and Morrison Counties, Minnesota.

Petitioner is a corporation which was organized under the laws of the State of Minnesota as Duluth Edison Electric Company on January 24, 1906 and reorganized as the Minnesota Power & Light Company on October 26, 1923. Petitioner is a public utility company engaged principally in the generation, purchase, transmission and distribution of electricity within the State of Minnesota.

The Sylvan hydroelectric project was constructed by the Cuyuna Range Power Company in 1913. It was constructed under Section 9 of the Rivers and Harbors Act of 1899 (30 Stat. 1151) as supplemented by the General Dam Act of June 23, 1910 (36 Stat. 593), which provided that such structures could be constructed under the authority of the legislature of a State, across rivers and other waterways, the navigable portions of which lie wholly within the limits of a single State, provided the location and plans thereof are sub-

mitted to and approved by the Chief of Engineers and by the Secretary of War before construction is commenced,

Section 2841, Chap. 58 of the Revised Laws of Minnesota for 1905 provided State authorization for the construction of the Sylvan Project, and on April 12, 1912 the original plans and location received the approval of the Chief of Engineers and the Secretary of War.

Petitioner is the successor in interest of the facilities constructed by the Cuyuna Range Power Company. Succession was by purchase in 1924. Apparently, there have been no modifications or departures from the originally approved plans at the project since it was completed in 1913.

The principal project works consist of a concrete gravity dam with spillway sections 168 feet and 20 feet in length with flashboards four feet high, earth dikes at each abutment and a powerhouse integral with a dam having a total installed capacity of 1800 KW consisting of three 600 KW units.

Pursuant to Section 23(b) of the Federal Power Act it is unlawful for a non-licensee to operate and maintain hydroelectric project works upon navigable waters of the United States unless they are operated and maintained under a Federal permit issued therefor prior to the passage of the Federal Water Power Act on June 10, 1920. Petitioner maintains and operates project works upon a navigable water of the United States. It submits, however, that it and its predecessor in interest have at all times complied with requirements of the law respecting the project and that it is not required to obtain a license from the Federal Power Commission as the authority given for the project under Section 9 of the Rivers and Harbors Act of 1899 is valid and continuing.

The authorization granted to Petitioner's predecessor by the Secretary of War on April 12, 1912 states that it is to be expressly understood that the approval given shall be subject to all other pertinent provisions of the General Dam Act, approved June 23, 1910 (36 Stat. 593). Section 4 of that Act provides in pertinent part as follows:

> . . . That the authority granted under or in pursuance of the provisions of this Act shall terminate at the end of a period not to exceed fifty years from the date of the original approval of the project under this Act, . . .

Petitioner contends that this provision is inapplicable to its project since the original authority was granted by Congress and the Minnesota Legislature under the Rivers and Harbors Act of 1899 and not pursuant to the Act of 1910.

If we were to adopt Petitioner's position that its project was authorized by an act of the State of Minnesota Legislature and not by a Federal permit pursuant to the Act of 1910 then we would be obliged to conclude that Petitioner has been maintaining and operating its project in violation of section 23(b) of the Federal Power Act since the amendment of August 26, 1935. We do not agree with Petitioner's position, however, that its April 12, 1912 authorization did not include the terms and conditions of the General Dam Act of 1910 (36 Stat. 593).

The legislative history of the Act of 1910 clearly supports this conclusion (H. Rept. 1160, 61st Cong. 2d Sess.). Mr. Stevens, floor leader of the bill, made the following remarks (45 Cong. Rec. 5683–5684), in explanation of the bill during floor debate:

> The changes in the present law are substantially these: The Act of 1899, which placed under the control of the Secretary of War the granting of the privileges for constructing dams across navigable streams wholely within the limits of one state, contained very few restrictions upon such privileges, not at all such as obtained as to dams authorized by Congress. This bill brings that class of dams within all the restrictions of this Act, just exactly the same as relate to dams in interstate navigable streams.

The Commission finds that the authority granted by the Secretary of War for the Sylvan Project was for a term not to exceed 50 years commencing on April 12, 1912. The 50 year term having expired, the Sylvan Project is currently being unlawfully operated and maintained without a valid Federal permit granted prior to June 10, 1920 or a license from this Commission.

Upon consideration of the facts presented in the petition, we therefore conclude that it will be necessary for petitioner to file application and obtain a license, pursuant to the provisions of the Federal Power Act and the Commission's Rules and Regulations thereunder, for the continued maintenance and operation of the Sylvan project on the Crow Wing River in the State of Minnesota.

The Commission orders:

Minnesota Power & Light Company shall, within ninety (90) days from the date of issuance of this order, file application for license, pursuant to the provisions of the Federal Power Act and the Commission's Rules and Regulations thereunder, for the continued maintenance and operation of its Sylvan project works on the Crow Wing River in Cass, Crow Wing and Morrison Counties, Minnesota.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

MINNESOTA POWER & LIGHT COMPANY, DOCKET NO. E-7095

DECLARATORY ORDER

(Issued December 30, 1963)*

A petition was filed on April 25, 1963, by the Minnesota Power & Light Company (Petitioner), pursuant to Section 1.7(c) of the Commission's Rules of Practice and Procedure, for a declaratory order to remove an uncertainty as to the necessity, under the Federal Power Act, to obtain a license for its Little Falls Project on the Mississippi River in Morrison County in the State of Minnesota.

Petitioner is a corporation which was organized under the laws of Minnesota, as Duluth Edison Electric Company on January 24, 1906 and reorganized as the Minnesota Power & Light Company on October 26, 1923. Petitioner is a public utility company engaged principally in the generation, purchase, transmission and distribution of electricity within the State of Minnesota.

The Little Falls Water Power Company in 1887 constructed a project at Little Falls pursuant to authorization granted by a Special Act of Congress of July 3, 1886, Chap. 623, 24 Stat. 123. Petitioner is the successor in interest to the Little Falls Water Power Company having acquired the facilities at Little Falls in 1924.

The initial construction at the Little Falls Project which was completed about 1887 comprised a timber crib dam at the present power house site, and a rock crib dam to provide a logging pond and divert water to a paper company canal. Also, mill buildings near the head of the canal were equipped with mechanical water power facilities. Some of such facilities were abandoned around 1910 and some of the facilities were razed about 1920.

Water power development at the Little Falls site continued after 1887 as manufacturing requirements increased. During this time, energy requirements for

*Order issued March 2, 1964 granted rehearing and stay, 31 FPC 476. See order denying application for rehearing, 31 FPC 592. Affirmed, *Minnesota Power & Light Co.* v. *F.P.C.*, 344 F. 2d 53 (CA4-1965)

manufacturing purposes were changing from mechanical to electrical so that the continuing development also included installation of hydroelectric power facilities. The Company in 1906 installed its first hydro-electric power equipment which included two generating units, each having a capacity of 400 kilowatts. The concrete structure in the center of the river which accommodates the log sluice gate, and two taintor gates and the concrete structure lying to the east of the #4 spillway and the retaining wall along the river bank were constructed in 1912. The #4 spillway was constructed in 1914. The present power house structure was erected in 1918, when the timber crib dam was substantially replaced by the present concrete structure, to accommodate three additional generators; two having a capacity of 800 kilowatts and one having a capacity of 1120 kilowatts. Construction at or around 1918 included the concrete and brick installation from the shop building to the log sluice, a stop log gate section and about 250 feet of flashboard section. The total installed capacity is 3520 kilowatts.

In the period of 1925 through 1927, which was subsequent to the enactment of the Federal Water Power Act, Petitioner states that a substantial amount of structural work was accomplished, including the replacement of portions of the power house and the wheel pits and portions of the dam itself. In the period of 1928–29, Petitioner constructed at 33/2.3 KV substation and in 1962, it replaced some spalled concrete on the dam structure. The foregoing construction was accomplished without a license from the Federal Power Commission.

Pursuant to Section 23(b) of the Federal Power Act it is unlawful for a nonlicensee to operate and maintain hydro-electric project works upon navigable waters of the United States unless they are operated and maintained under a Federal permit issued therefor prior to the passage of the Federal Water Power Act on June 10, 1920. Petitioner maintains and operates project works upon a navigable water of the United States. It submits, however, that it and its predecessor in interest have at all times complied with requirements of the law respecting the project and that it is not required to obtain a license from the Federal Power Commission as the authority given for the project under the Act of Congress of 1886 is valid and continuing.

The project works authorized and constructed under the special act of 1886 (24 Stat. 123) no longer substantially exist. The original project was rebuilt and modified a number of times since its initial construction. The original project authorized by Congress made no provisions for hydro-electric generating facilities, whereas, the project that exists today is comprised wholely of such facilities. In our view, it may not be presumed that the Congress by the Special Act of 1886 intended to authorize the replacement or modification of the originally authorized project works.

Upon consideration of the facts presented in the Petition, we conclude that Petitioner does not have a valid Federal permit for the replacement or modification of the original project works and that pursuant to Section 23(b) of the Federal Power Act, Petitioner is unlawfully maintaining and operating unlicensed project works on a navigable river of the United States. Accordingly, it will be necessary for Petitioner to file application and obtain a license, pursuant to the provisions of the Federal Power Act and the Commission's Rules and Regulations thereunder, for the continued maintenance and operation of its Little Falls Project on the Mississippi River in Morrison County in the State of Minnesota.

The Commission orders:

The Minnesota Power & Light Company shall, within 90 days from the date of issuance of this order file application for license, pursuant to the provisions

of the Federal Power Act and the Commission's Rules and Regulations thereunder, for the continued maintenance and operation of its Little Falls project works on the Mississippi River in Morrison County in the State of Minnesota.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, Harold C. Woodward, and David S. Black.

SINCLAIR OIL & GAS COMPANY, DOCKET NOS. G–9291 AND G–9292, ET AL.

ORDER APPROVING RATE SETTLEMENT PROPOSAL, TERMINATING PROCEEDINGS AND PRESCRIBING REFUNDS

(Issued December 30, 1963)

By order issued herein on July 1, 1963, we conditionally approved a settlement agreement tendered by Sinclair Oil & Gas Company (Sinclair). Sinclair accepted the settlement as conditionally approved by the Commission but rehearing was granted for the purpose of considering objections to the distribution of refunds required by the Order of July 1, 1963. No objection was made to the level of rates or the total amount of refunds required by that order. By order issued herein on November 19, 1963, we required Sinclair to place the refund amounts in escrow pending further order of the Commission.

Our orders herein required full refund of all amounts collected, subject to refund, under each rate schedule above the settlement rates from January 1, 1962, to July 1, 1963, with interest until August 1, 1963. None of the parties objected to calculation of the refund amount on this basis but objections were filed to distribution of refunds in that manner. Sinclair proposed three separate methods for distribution of refunds and we understand that no party objects to Proposal C as set forth in Sinclair's settlement proposal. Under that method, the total amount of refund dollars would be refunded to purchasers under each rate schedule in the same percentage as the total excess payments made under that rate schedule bore to the total excess payments made under all rate schedules. Since Proposal C would return to each purchaser refunds in the same proportion in which it contributed to the total excess earnings of the producers, it affords equitable treatment to each purchaser and we shall approve the same.

The Commission finds:

The proposed settlement of the subject proceedings on the basis approved by our order of July 1, 1963, and accepted by Sinclair, as modified herein for payment of refunds on the basis of Sinclair's Proposal C, is in the public interest, is appropriate in carrying out the provisions of the Natural Gas Act and is approved.

The Commission orders:

(A) The settlement of these proceedings on the basis of the Settlement Proposal filed April 8, 1963, as modified by our order of July 1, 1963, and accepted by Sinclair, with refunds to be made on the basis of Sinclair's Proposal C, is hereby approved.

(B) Paragraph F of the order of July 1, 1963, is amended to read as follows:

(F) Within 90 days from the date of this order, Sinclair shall (1) refund, with interest, as specified in each docket computed to August 1, 1963, the difference between the rates collected subject to refund, on and after January 1, 1962, and the related settlement rates to July 1, 1963 (at which time Sinclair made the settlement rates effective), distribution of such refunds

to be in accordance with Proposal C of Sinclair's settlement proposal; (2) calculate refunds for June, 1963, and for each preceding month until the refunds required by this order are made under each rate schedule; and (3) report to the Commission, in writing, the amount of refunds made to each of its purchasers, showing separately the amount of principal and interest so paid, and the bases used for such determination, together with releases from the purchasers showing receipt of the refunds in conformity with this order.

(C) The reports required to be filed by Sinclair shall be filed within 90 days from the date of this order.

(D) The order of November 19, 1963, herein requiring establishment of an escrow fund is rescinded.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

SKINNER CORPORATION (OPERATOR), ET AL., DOCKET NOS. G–17528, G–17720, G–20442, AND RI60–423

ORDER CONDITIONALLY ACCEPTING OFFERS OF SETTLEMENT, REQUIRING FILING OF NOTICES OF CHANGE AND CONTRACT AMENDMENTS, REQUIRING REFUNDS, AND TERMINATING PROCEEDINGS

(Issued December 30, 1963)

On October 9, 1963, Skinner Corporation (Operator), *et al.* (Skinner) submitted Offers of Settlement, pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure, in the above-designated proceedings which relate to the jurisdictional sale of natural gas by Skinner to Tennessee Gas Transmission Company, (TGT) in Texas Railroad Commission District Nos. 1, 2, and 4. The data pertinent to these sales are set forth in the following table:

Docket No.	Rate schedule No.	Rate in effect subject to refund [1]	Dates in effect subject to refund	Settlement rate
		Cents		*Cents*
G–17720	1	15.33333	Oct. 14, 1959 to present	15.0
G–17528	3	15.33333	Oct. 14, 1959 to present	15.0
G–20442	8	15.09520	May 28, 1960 to Nov. 26, 1960	15.0
RI60–423	8	17.24347	Nov. 27, 1960 to present	15.0
G–20442	9	[2] 15.09520	May 28, 1960 to Nov. 26, 1960	[2] 15.0
RI60–423	9	[2] 17.24347	Nov. 27, 1960 to present	[2] 15.0

[1] The pressure base is 14.65 psia.
[2] Subject to a deduction of 0.21931 cent per Mcf for dehydration.

Under the terms of the offers, Skinner proposes to delete the favored-nation, price redetermination and periodic escalation provisions from the rate schedules involved, and to establish a settlement rate of 15.0¢ per Mcf, inclusive of present tax reimbursement, for the remaining term of the contracts comprising the rate schedules involved. Skinner further offers to refund all amounts collected in excess of the settlement rates. The estimated total refund resulting from these settlement rates is approximately $124,000, plus interest. The estimated annual decrease in rates from the suspended rates is approximately $38,000.

Skinner's FPC Gas Rate Schedule No. 9 covers the sale of gas which requires dehydration by the buyer. The 15.0¢ per Mcf settlement rate is therefore subject to a deduction of 0.21931¢ per Mcf for dehydration.

The offers of settlement contains the following reservation:

> If Congress enacts any law which, by amendment of the Natural Gas Act or otherwise, removes, exempts, or releases from Commission jurisdiction sales of natural gas of the type covered hereby or any of the prices applicable thereto, or if Congress enacts any law pursuant to which Applicant would be entitled, but for this Settlement Proposal, to claim or receive a price or rate under any of the rate schedules covered hereby in excess of that specified as the settlement rate herein, Applicant shall have the right to claim and receive under any of such rate schedules the rate they would be entitled to claim and receive had this Settlement Proposal not be entered into, and nothing herein shall affect or prejudice such rights of Applicant.

The above reservation is similar to a reservation contained in an Offer of Settlement submitted by Warren Petroleum Corporation in Docket No. RI61–63 and rejected by order issued October 18, 1963. If accepted, Skinner would obtain a benefit that other producers in the same situation have not received. Further, such a reservation is basically inconsistent with the provision for "elimination of all price escalation clauses" in the Second Amendment to the Statement of General Policy No. 61–1, issued December 20, 1960, 24 FPC 1107, as amended by Order 264, issued March 27, 1963, in Docket No. R–234, 29 FPC 589. But this amendment gives a producer a higher price than he could otherwise secure without suspension if he agrees to eliminate all possible future increases by amending his contract to exclude the clauses therein giving him a *contractual* right to the increase. What Skinner seeks is to keep the *contractual* right to an increase in the event that Congress removes all possible regulatory bars thereto. Accordingly, we shall reject the proposed reservation.

In all other respects the proposed settlements are consistent with the provisions of the Second Amendment to the Commission's Statement of General Policy No. 61–1, issued December 20, 1960, 24 FPC 1107, as amended by Order No. 264, issued March 27, 1963, 29 FPC 589, and the Seventh Amendment issued November 27, 1963, 30 FPC 1370, for jurisdictional sales of natural gas in Texas Railroad Commission District Nos. 1, 2, and 4 and its acceptance would serve the public interest.

However, we desire to make it clear that acceptance of the Offers of Settlement shall not be construed as approval of any future rate increase filed in accordance with its reservation of the right to file increases to cover future tax increases.

The Commission finds:

The proposed settlement of the above-designated proceedings, on the basis described herein, as more fully set forth in the Offers of Settlement filed by Skinner with the Commission on October 9, 1963, are in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The Offers of Settlement filed by Skinner with the Commission on October 9, 1963, as herein conditioned, are hereby approved in accordance with the provisions of this order.

(B) Skinner shall, over the signature of a responsible officer, file with the Commission, within 15 days from the date of issuance of this order, in writing,

an original and one copy of its acceptance or rejection of the terms and conditions of this order.

(C) Skinner, shall file, within 30 days from the date of issuance of this order, notices of change, and contractual amendments, providing for the 15.0¢ per Mcf settlement rates, including present tax reimbursement specified in its Offers of Settlement. The 15.0¢ per Mcf settlement rate under Skinner's Rate Schedule No. 9, however, is subject to the deduction of 0.21931¢ for dehydration. Both the notices of change and the contractual amendments shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(D) Within 30 days from the date of issuance of this order, Skinner shall refund to TGT all amounts collected under its FPC Gas Rate Schedule Nos. 1, 3, 8, and 9, in Docket Nos. G–17528, G–17720, G–20442, and RI60–423, in excess of the applicable settlement rate including present tax reimbursement, as indicated in paragraph (C) above together with simple interest as specified in each docket, from the date of receipt of such excess amounts by Skinner to the date of refund. Skinner shall bear all costs incidental to the making of such refunds.

(E) Within 45 days from the date of issuance of this order, Skinner shall report to the Commission in writing the details of its calculations resulting in refunds ordered pursuant to paragraph (D) above, together with a copy of a release from TGT with respect to such refunds.

(F) Upon notification by the Secretary of the Commission that Skinner has complied with the terms and conditions of this order, the rate and charge of 15.0¢ per Mcf at 14.55 psia, including present tax reimbursement, specified in its Offers of Settlement, shall be effective as of the date of issuance of this order, the above-designated proceedings shall be deemed terminated, and Skinner's refund obligation with respect to the above-designated proceedings shall be deemed discharged.

Commissioner O'Connor *not participating*.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, Harold C. Woodward, and David S. Black.

SOHIO PETROLEUM COMPANY, DOCKET NO. G–8488, ET AL.[1]

ORDER CONDITIONALLY APPROVING RATE SETTLEMENT PROPOSAL, TERMINATING PROCEEDINGS, AND REQUIRING REFUNDS

(Issued December 30, 1963)

There is before us for consideration a Petition for Approval of Settlement Proposal and Termination of Proceedings filed on July 8, 1963, by Sohio Petroleum Company (Sohio) encompassing the rates for 47 of Sohio's currently effective FPC Gas Rate Schedules.[2]

Comments have been filed by some of the participants in the settlement negotiations, all of which have been given due consideration.

In summary, the settlement proposal as submitted by Sohio provides:

(1) Settlement rates, including tax reimbursement, are equal to or less than the Commission's applicable area ceilings, with two exceptions hereinafter discussed.

---

[1] The additional dockets involved herein are set forth in Appendices A and B hereto.
[2] Sohio filed amendments to its settlement proposal on September 6 and 13, 1963.

(2) Sohio waives the right to file for contractually authorized increased rates until January 8, 1966. Sohio reserves the right to file for any increased rate, if contractually authorized, up to the applicable area-rate levels determined through area hearings or by amendment of the Commission's Statement of General Policy No. 61–1, or any contractually authorized increase in tax reimbursement.

Amendment of Sohio's Rate Schedule Nos. 1, 3, 4, 6 and 28 to eliminate any favored nation, price redetermination or periodic price escalation clauses contained therein.

(4) Refunds, with interest at the applicable rates, under each rate schedule where rates were charged subject to refund and those which would have been collected at the settlement rate, in each instance, commencing with September 1, 1961, to the date of the issuance of this order, with the interest obligation heretofore provided for terminating on July 31, 1963.

(5) Exclusion from the Settlement Proposal of all Permian Basin sales, sales related to previous offers of settlement accepted by the Commission, one sale consolidated with *Amerada Petroleum Corp., et al.*, Docket No. CI62–1544, *et al.*, and all sales for which deliveries commenced after April 1, 1963.

In support of its proposal, Sohio states that the settlement rates, refunds, moratorium period and other provisions thereof, some of which are not specifically noted herein, are in the public interest in that they are reasonable and will provide price stability for a long period of time for natural gas moving in interstate commerce.

With respect to refunds, the parties to the settlement conferences have utilized cost-of-service studies and revenues based on contract rates to determine Sohio's revenue-cost relationship. These studies indicate that it is appropriate that we require that refunds should be computed for sales made on and after September 1, 1961, to the date of issuance of this order, with applicable interest to August 31, 1963.

In past settlements of this type we have required interest on refunds to the date of actual refunds. However, we in this case are approving the termination of Sohio's interest obligation on August 31, 1963, because if the question of the distribution of refunds in Sinclair Oil and Gas Company settlement Docket No. G–9291, *et al.*, precedent case had been resolved the order approving Sohio's proposal could have been issued on or about that date. The refunds will be approximately $1,600,000, exclusive of interest. Sohio's future revenues will be decreased approximately $700,000 annually as a result of the settlement.

Sohio's proposal contemplated full refunds to each purchaser of amounts collected, subject to refund, for the period from September 1, 1961, to date. Objections have been filed to this proposal and action has been withheld on the settlement proposal pending determination of a similar problem in the settlement of Sinclair Oil & Gas Company, Docket No. G–9291, *et al.* For the reasons set forth in our Sinclair order issued today, we shall order distribution of refunds by the same method as in Sinclair.

Sohio's total refund obligation under the settlement shall be computed as hereinbefore described. For the purpose of distributing the total refund amount, Sohio shall compute: (1) The excess revenue collected (subject to refund) above the settlement rate under each rate schedule to the date of this order; (2) The total of all excess revenues collected under (1) above. The total refund amount shall be refunded to each purchaser (where collections have been made

subject to refund) in the proportion that each rate schedule's excess revenue computed under (1) above bears to the total excess revenue computed under (2) above. When the refund obligation is determined, such refund shall be first applied to Sohio's sales in the most recent month and then to each preceding month until the full refund amount under that rate schedule is made.

For the reasons set forth in our order in *Hunt Oil Co.*, Docket No. G–9065, *et al.*, Order issued July 16, 1963, 30 FPC 220, we shall condition our approval of this Settlement Proposal to require United Gas Pipe Line Company to retain (without interest obligation) the proportionate share of the refunds it will receive from Sohio and would flow-through to its jurisdictional pipeline customers who may assert that they are not under an obligation to pass on the refunds, and shall require these pipeline customers to submit a report setting forth their intentions with respect to any refunds they may receive and, if they do not intend to pass such sums on to their customers, why they believe they are entitled to retain such funds.

Exceptions to the applicable area ceilings are proposed by Sohio with respect to two sales: one a sale to Tennessee Gas Transmission Company (TGT) in Southern Louisiana commonly known as Sohio's six parish sale, and the second is a sale in the Oklahoma Panhandle to Panhandle Eastern Pipe Line Company (Panhandle). The sale to TGT is made under Sohio's FPC Gas Rate Schedule No. 20 and was initiated under a contract dated May 2, 1949, whereby Sohio dedicated 93,000 acres to TGT spread through six South Louisiana parishes. Throughout the term of this contract Sohio has made substantial additional dedications of acreage. For example, during the 1955–1961 period, approximately 42,000 acres were added to the contract, and approximately 26,000 of these additional acres were added in 1959 or thereafter, subsequent to the date when the sales price under this contract had escalated to 22.8¢ per Mcf. The addition of acreage resulted in increased annual deliveries under this contract. The proposed settlement rate of 17.75¢ per Mcf exceeds the increased rate ceiling but is below the initial rate ceiling. In view of the above circumstances, we find the settlement rate for this sale to be proper, and approve the same.

As to the sale to Panhandle, made under Sohio's FPC Gas Rate Schedule No. 31, the proposed settlement rate is 12.2827747¢ per Mcf. This rate is the result of a periodic rate increase which was accepted for filing. However, it is above the applicable area increased rate ceiling, and for the reasons set forth in our order issued on April 25, 1963, in *Gulf Oil Corporation, et al.*, Docket No. G–9520, *et al.*, 29 FPC 837, we shall condition our approval of this settlement proposal so as to require Sohio to reduce its rate under its FPC Gas Rate Schedule No. 31 to 11.3894829¢ per Mcf, which was the initial rate under said contract. Refunds under the rate schedule shall be computed as the difference between the presently effective rate, subject to refund, and 12.2827747¢ per Mcf.

We shall not approve the proposed settlement of the rate under Sohio's FPC Gas Rate Schedule No. 30 which covers a sale of natural gas in Texas Railroad District No. 3 to Union Texas Petroleum, since this rate is by contract related to that of the producer purchaser from Sohio, the purchaser's rate also being subject to suspension proceedings. Therefore, we shall exclude this sale from the settlement proposal.

The settlement proposal includes five sales for which issuance of related permanent certificates is pending. The certificate applications in Docket Nos.

G–17791, G–19421 and G–20101 involve upward BTU price provisions, and are presently consolidated for hearing in the proceedings in Sunray DX Oil Company, *et al.*, Docket No. G–4281, *et al.*, relating to the BTU adjustment provisions. Accordingly, permanent certificates should be issued in such proceedings, and not through the abridged hearing procedure. We shall, however, condition our approval of the settlement proposal to require that the total rates in Docket Nos. G–19421 and G–20101 not exceed the applicable area ceiling (17¢ per Mcf) regardless of the BTU adjustment clauses contained in each of the respective rate schedules. Because most of the sales being made under temporary authority in Docket No. G–17791 are under refund condition based on the applicable area ceiling, we do not deem it necessary to further condition such authority.

Included in the settlement proposal is one sale being made under a temporary certificate, issued in Docket No. CI62–826, at 17.24¢ per Mcf in Texas Railroad Commission District No. 4 under Sohio's FPC Gas Rate Schedule No. 72 to TGT. We presently have under consideration in Amerada Petroleum Company, *et al.*, Docket No. CI62–1544, *et al.*, the issue of the proper initial in-line rate in District No. 4 subsequent to September 28, 1960. We shall approve the present settlement proposal conditioned on Sohio's agreement that the rate under such rate schedule shall be subject to the final determination in the Amerada proceeding. If by final order in the Amerada proceeding a lower rate is established than that set forth in the settlement proposal, Sohio shall make further refunds from the date of this order of the difference between the settlement rate and the rate ordered in the Amerada proceeding.

The settlement rates conditionally approved herein, shall be applicable, during the moratorium period herein provided for, to all sales of natural gas from all acreage dedicated as of the date of the issuance of this Order under each of the rate schedules currently on file with the Commission whether such sales are made by Sohio, its successors, or assigns.

The foregoing has discussed all of the major comments filed by Long Island Lighting Company and Philadelphia Gas Works. Comments were also filed by Public Service Electric and Gas Company and Northern Natural Gas Company. These latter companies indicated support and approval of the settlement proposal. We believe the instant settlement proposal, as herein modified, and in other particulars not specifically noted or set forth herein, meets the criteria previously set forth in other of our recent settlement orders and accordingly we find it to be in the public interest and should be approved as hereinafter provided.

Our action herein does not constitute approval of any future rate increase that may be filed under the subject rate schedules, and is without prejudice to any findings or orders of the Commission in any future proceedings, including area rate proceedings, involving Sohio's rates and rate schedules.

The Commission finds:

The proposed settlement of the subject proceedings on the basis described herein, as more fully set forth in the settlement proposal filed on July 8, 1963, as herein modified, is in the public interest and it is appropriate in carrying out the provisions of the Natural Gas Act that it be conditionally approved and conditionally made effective subject to the modifications hereinafter ordered, and good cause exists for approving the settlement rates.

The Commission orders:

(A) The settlement of these proceedings on the basis of the settlement proposal, filed July 8, 1963, as herein modified, is approved and made effective subject to the following terms and conditions.

(B) The applicable settlement rates set out in Appendices A and B are approved and such rates shall be effective as of the date of issuance of this order.

(C) The pending certificate proceedings indicated in Appendix B hereto shall not be terminated on the basis of the approval of the settlement proposal, but shall be determined after hearing as hereinabove provided in accordance with Section 7 of the Natural Gas Act.

(D) Sohio shall, over the signature of a responsible officer, file with the Commission, within 30 days from the date of the issuance of this order, an original and one copy of its acceptance or rejection of the terms and conditions of this order, including specifically the requirement for possible future refunds under its FPC Gas Rate Schedule No. 72.

(E) Within 45 days from the date of this order, Sohio shall make such filings under its rate schedules as are required to make effective the terms of the settlement proposal, as modified herein.

(F) Within 45 days from the date of this order, Sohio shall make refunds as hereinabove provided and shall report to the Commission, in writing the amount of refunds made to each of its purchasers showing the amount paid and the bases for such determinations, together with releases from its purchasers showing receipt of the refunds in conformity with the approved settlement.

(G) Within 15 days from date of receipt by it of the refunds herein provided, United Gas Pipe Line Company shall submit a report to the Commission, and serve a copy thereof upon each of its jurisdictional pipeline customers, setting forth a plan for distribution of such refunds to each of its pipeline customers. The report shall show separately the amount of principal and interest, together with a computation showing the manner in which such distribution was determined. United shall retain the refunds received pursuant to this order, subject to further order of the Commission, provided, however, that United shall not be required to pay interest on such funds.

(H) Any party to these proceedings or the settlement negotiations having objections to the terms of this order shall, within 30 days from the date of issuance of this order, set forth such objections to the Commission and shall serve copies of such objections on all other parties.

(I) Docket Nos. G–19538, RI61–217, RI62–89, RI62–269, RI62–320, RI62–507, RI63–118, RI63–121 and RI63–147 are hereby severed from the consolidated proceedings in Docket No. AR61–2, *et al.*; Docket Nos. G–12205, G–15399, G–19255, RI60–172, RI60–255, RI61–257, RI61–365, RI61–455, RI62–86, RI62–361, RI62–428, RI62–521 and RI63–174 are hereby severed from the consolidated proceedings in Docket No. AR64–1, *et al.*; and Docket Nos. G–11512, G–15211, G–16111, G–17133, G–19748, RI60–413, and RI60–424 are hereby severed from the consolidated proceedings in Docket No. AR64–2, *et al.*

(J) Upon full compliance by Sohio with all of the terms and provisions of this order applicable to it, the Section 4(e) proceedings listed in Appendices A and B hereof, and the Section 5(a) proceeding in Docket No. G–18355 shall terminate.

(K) This order is without prejudice to any findings or orders which have been or may be made hereafter by the Commission, and is without prejudice to claims or contentions which may be made by Sohio, the Commission Staff, or any affected party hereto, in any proceedings now pending, or hereafter instituted by or against Sohio or any other companies, person or parties affected by this Order.

APPENDIX A

SOHIO PETROLEUM CO. DOCKET NO. G–8488 ET AL.

Rate Schedule No.	Area, field, and purchaser	Docket No.		Last accepted rate [1]	Rate in effect [1]	Settlement rate [1]
		Certificate	Section 4(e) rate increase			
	TEXAS RAILROAD COMMISSION DISTRICT NO. 2					
9	El Ebanito, Tex., Tennessee Gas Transmission Co.	G–4419	G–19478, RI60–413.	12.12268	17.24347	[3]
28	Nordheim, Tex., Texas Eastern	G–9491	G–15211	11.6232	14.3733	[2] 14.3733
	TEXAS RAILROAD COMMISSION DISTRICT NO. 3					
1	Deckers Prairie, Tex., Tennessee Gas Transmission Co.	G–4208	G–17133	13.49751	16.16947	[2] 14.60
5	Nona Mills, Tex., Trunkline Gas Co.	G–4359		8.1924	8.1924	8.1924
19	Fairbanks, Tex., Natural Gas Pipeline Co.	G–4564	G–11512, G–16111.	15.1440	17.1531	[3]
	TEXAS RAILROAD COMMISSION DISTRICT NO. 4					
3	La Reforma, Tex., Tennessee Gas Transmission Co.	G–4361	G–19478, RI60–413.	12.12268	17.24347	[2] 14.60
4	Los Indios, Tex., Tennessee Gas Transmission Co.	G–4360	G–19478, RI60–413.	12.12268	17.24347	[2] 14.60
6	Rachal, Tex., Tennessee Gas Transmission Co.	G–4267	RI60–424	12.12268	17.24347	[2] 15.00
66	Sandia area, Tex., Trunkline Gas Co.	CI62–1268		13.3748	13.3748	13.3748
67	Tiger, Tex., Southern Coast Corp.	CI62–1268		8.00	8.00	8.28
68	do	CI62–1268		8.00	8.00	8.28
69	do	CI62–1268		8.00	8.00	8.28
70	Harry, Tex., Southern Coast Corp.	CI62–1268		7.7625	7.7625	7.7625
	TEXAS RAILROAD COMMISSION DISTRICT NO. 6					
40	Caledonia, Tex., Natural Gas Pipeline Co.	G–13602		13.10	13.10	13.10
	SOUTH LOUISIANA AREA					
14	S. Lewisburg, La., Texas Gas Transmission Co.	G–4602	G–11884, RI62–269.	11.6467	23.250	15.75
16	do	G–4603	G–11884, RI62–269.	11.6467	23.250	15.75
20	Six Parish Area, La., Tennessee Gas Transmission Co.	G–5214	G–16601, RI63–121.	10.72633	23.675	17.75
21	S. Lewisburg, La., Texas Gas Transmission Co.	G–5213	G–11884, RI62–269.	11.6467	23.250	15.75
24	do	G–5663	G–11884, RI62–269.	11.6467	23.250	15.75
26	Egan, La., Transco. Gas Pipe Line Co.	G–5928	G–8488, G–12660, G–18098.	10.29715	23.550	15.75
26	do	G–5928		9.37238	9.37238	9.37238
41	Egan, La., Texas Gas Transmission Co.	G–13829		12.7964	12.7964	12.7964
42	S. Lewisburg, La., United Gas Pipeline Co.	G–14247	RI62–320	20.25	22.25	[4] 20.25
43	Ramos, La., Texas Gas Transmission Co.	G–14569	RI62–320	20.75	21.75	[4] 20.625
54	Felice Bayou, La., Southern Natural Gas Co.	CI60–489	RI63–147	20.625	22.75	20.625
46	Bayou Boullion, La., Southern Natural Gas Co.	G–13135		23.25	23.25	20.00
49	Gross Tete, La., Coastal	G–11450	RI62–507	19.75	20.75	19.75
50	Timbalier Bay, La., Tennessee Gas Transmission Co.	G–18043	G–19538	18.50	23.09167	(5)
52	Calcasieu Pass, La., United Fuel Gas Co.	G–19457	RI61–217, RI62–89, RI63–118.	19.50	20.7	19.5
55	S. Pecan Lake, La., United Fuel Gas.	CI60–501		19.50	19.50	19.50

See footnotes at end of table.

APPENDIX A—continued

Rate Schedule No.	Area, field, and purchaser	Docket No.		Last accepted rate [1]	Rate in effect [1]	Settlement rate [1]
		Certificate	Section 4(e) rate increase			
56	Go Around Bayou, La., United Fuel Gas.	CI60-522		19.50	19.50	19.50
	NORTH LOUISIANA AREA					
11	Delhi, La., Texas Eastern Transmission Co.	G-4582	G-16634	15.2712	15.2712	15.2712
13	Hico Knowles, La., Mississippi River Fuel Co.	G-4583		13.703	13.703	13.703
35	Greenwood-Waskom, La., Texas Eastern Transmission Co.	G-11608	G-14375, G-16634, G-19772, R161-365, R162-263, R163-106.	15.3905	16.6212	15.75
	OKLAHOMA OTHER AREA					
8	West Edmond, Okla., Cities Service Gas Co.	G-4362		10.50	10.50	10.50
58	N.E. Waynoka, Okla., Cities Service Gas Co.	CI61-780		13.00	13.00	13.00
	OKLAHOMA PANHANDLE AREA					
29	McFarland Unit, Okla., Natural Gas Pipeline Co.	G-10274	R161-257	[9] 15.00	[9] 16.00	[7] 15.00
31	Clapp, Okla., Panhandle Eastern Pipe Line Co.	G-10623	R162-86	12.2827747	13.1760674	11.3894829
32	Wacker Unit, Okla., Natural Gas Pipeline Co.	G-10773	G-12205, G-19255, R160-172, R161-363, R162-361.	16.00	17.20	16.00
33	Robinson Unit, Okla., Natural Gas Pipeline Co.	G-11086	G-12205, G-19255, R160-172, R161-365, R162-361.	16.00	17.20	16.00
36	Mocane, Okla., Colorado Interstate Gas Co.	G-12719	R162-428	[6] 15.00	[6] 16.00	[7] 15.00
37	Camrick, Okla., Natural Gas Pipeline Co.	G-12839	G-15399, R160-255, R161-455, R162-428.	16.20	17.20	16.2
38	Light, Okla., Panhandle Eastern Pipe Line Co.	G-13334	R162-428	15.00	16.00	15.00
39	Loffland, Okla., Panhandle Eastern Pipe Line Co.	G-13393	R162-86	12.282775	13.1760674	12.282775
59	East Camrick, Okla., Natural Gas Pipeline Co.	CI61-1662	R162-361	17.00	17.20	17.00
61	Mocane, Okla., Panhandle Eastern Pipe Line Co.	CI62-596	R163-174 [8]	16.00	16.00	16.00
76	Beaver County, Okla., Northern Natural Gas Co.	CI63-411		17.00	17.00	17.00
	MONTANA-WYOMING AREA					
2	Manderson, Wyo., Montana-Dakota Utilities Co.	G-2588		11.65	11.65	11.65

[1] Louisiana and Wyoming rates at 15.025 psia; all other rates at 14.65 psia unless otherwise noted. All rates include tax reimbursement, if any.

[3] Sohio has not collected any refundable monies under any of these rate schedules subsequent to Sept. 1, 1961, and has either sold or abandoned the properties involved.

[5] Sohio shall eliminate the favored-nation and price redetermination provisions contained in these rate schedules.

[4] Sohio shall eliminate the favored-nation, price redetermination and periodic escalation clauses contained in this rate schedule.

[9] Refund provisions of this order shall apply to Supplement 6 of Rate Schedule No. 42 and Supplement 3 of Rate Schedule 43 since Sohio was not required to make refunds for these Supplements in the order issued Nov. 13, 1963, in *Union Texas Petroleum et al.*, Docket No. G-13221, *et al.*

[6] Subject to B.t.u. adjustment.

[7] Subject to B.t.u. adjustment but not to exceed the applicable area ceiling.

[8] The proposed increased rate of 17.00 cents per Mcf, which is the subject of this docket, has never been placed in effect, the suspension period having terminated June 1, 1963.

APPENDIX B

PENDING CERTIFICATE APPLICATIONS SOHIO PETROLEUM CO., DOCKET NO. G-8488 ET AL

Rate schedule No.	Area, field, and purchaser	Date of contract	Docket No.		Initial rate [1]	Increased rate [1]	Rate in effect [1]	Settlement rate [1]
			Certificate	Section 4(e) rate increase				
	OKLAHOMA PANHANDLE AREA							
47	Laverne, Okla., Michigan Wisconsin Pipe Line Co.	Dec. 24, 1958	G-17791	----------	[2] 17.00	----------	[2] 17.00	[2] 17.00
51	Mocane-Laverne, Northern Natural Gas Co.	Aug. 1, 1959	G-19421	RI62-521	[2] 15.00	[2] 16.00	[2] 16.00	[2] 15.00
53	Keyes, Okla., Colorado Interstate Gas Co.	Sept. 1, 1959	G-20101	----------	[2] 16.00	----------	[2] 16.00	[2] 16.00
	TEXAS RAILROAD COMMISSION DISTRICT NO. 4							
72	Lopena, Tex., Tennessee Gas Transmission Co.	Oct. 3, 1961	CI62-826	----------	17.24	----------	17.24	[4] 17.24

[1] All rates are at 14.65 psia. All rates include tax reimbursements, if any.
[2] The settlement rate, in each instance, is subject to adjustment for B.t.u. content in accordance with contractual provisions.
[3] Maximum rate including upward B.t.u. adjustment shall not exceed 17.0 cents per Mcf.
[4] Rate shall be subject to the final determination in Amerada Petroleum Corporation, Docket No CI62-1544, *et al.*, and to refund the difference between the settlement rate and rate ordered in *Amerada* from the date of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

SOUTH CAROLINA ELECTRIC & GAS COMPANY, DOCKET NO. E-7146

ORDER TO SHOW CAUSE

(Issued December 30, 1963)

The respondent, South Carolina Electric & Gas Company (Company) operates and maintains the Stevens Creek hydroelectric project in Georgia and South Carolina on the Savannah River, about 8.7 miles upstream from Augusta, Georgia. Under the provisions of an Act of Congress approved August 5, 1909 (36 Stat. 180), as extended by the Act of March 5, 1912 (37 Stat. 72) and the General Dam Act of June 23, 1910 (36 Stat. 593), the War Department issued a permit on July 20, 1910 to the Company's predecessors.

The permit was amended from time to time and the Stevens Creek project was constructed in 1913–1914. It appears, therefore, that the fifty-year permit term prescribed by the General Dam Act of 1910 has expired and the Company is operating and maintaining the Stevens Creek project works without a valid federal permit isued prior to June 10, 1920 or a license under the Federal Power Act in violation of Section 23(b) of that Act (16 U.S.C. 817). The Savannah River is a navigable water of the United States. See *United States* v. *Twin City Power Company*, 350 U.S. 222.

The Commission finds:

In view of the foregoing, it is necessary and appropriate for the purposes of the Federal Power Act, particularly Sections 4(e), 4(g) and 23 thereof, that

South Carolina Electric & Gas Company show cause why it should not apply for and secure a license.

The Commission orders:

South Carolina Electric & Gas Company shall show cause, under oath, within 60 days from the receipt of a copy of this order, why it should not apply for and secure a license under Section 4(e) of the Federal Power Act, and the Commission's Regulations, for its project works on the Savannah River in the vicinity of Stevens Creek.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TEXACO INC., DOCKET NO. G–8969, ET AL.[1]

ORDER APPROVING RATE SETTLEMENT PROPOSAL, TERMINATING PROCEEDINGS AND PRESCRIBING REFUNDS

(Issued December 30, 1963)

There is before us for consideration a Motion for Approval of Settlement Proposal and Termination of Proceedings filed on November 12, 1963, by Texaco Inc. (Texaco) encompassing the rates for 173 of Texaco's currently effective FPC Gas Rate Schedules.

Comments have been filed by some of the parties to these proceedings, all of which have been given due consideration.

In summary, the settlement proposal as filed by Texaco provides:

(1) Settlement rates, including tax reimbursement, are equal to or less than the Commission's applicable area ceilings, with four exceptions hereinafter discussed;

(2) Texaco waives the right to file for contractually authorized increased rates until March 1, 1966. Texaco reserves the right to file for any increased rates, if contractually authorized, up to the applicable area-rate levels established by any order or rule of the Commission, or to file for any contractually authorized increase in tax reimbursement;

(3) Amendment of Texaco's Rate Schedule Nos. 54, 55 (basic acreage) 56, 57, 58, 59, 128, 130, 131, 132, 137, 138, 139, 141, 150, 154, 193, 257, 260, 261, 262, and 263 to eliminate any favored nation, price redetermination or periodic price escalation clauses contained therein;

(4) Refunds with interest at the applicable rates, under rate schedules where collection was made subject to refund, of the difference between the revenues actually collected and those which would have been collected at the settlement rate, in each instance, commencing with January 1, 1961, to the date of issuance of this Order;

(5) Exclusion from the Settlement Proposal of all Permian Basin sales, sales related to previous offers of settlement accepted by the Commission, two sales recently certificated in *Texaco Seaboard Inc., et al.*, Docket No. CI61–118 *et al.*, Opinion No. 383, issued March 27, 1963, 29 FPC 593, two sales, and three proceedings which only involve added acreage, presently involved in Sunray DX Oil Co., *et al.*, Docket No. G–4281, *et al.*, one sale involved in separate settlement negotiations and one involving a sale to another producer whose resale rate is under suspension.

---

[1] The additional dockets involved herein are set forth in Appendices A, B, and C attached hereto.

In support of its proposal, Texaco states that the settlement rates, refunds, moratorium periods and other provisions thereof, not specifically noted herein, are in the public interest in that they are reasonable and will provide price stability for a long period of time for natural gas moving in interstate commerce.

With respect to refunds, the parties to the settlement conferences have utilized cost of service studies and revenues based on contract rates to determine Texaco's revenue-cost relationship. These studies indicate that it is appropriate that we require that refunds should be computed for sales made on and after January 1, 1961. Texaco proposes, as noted above that refunds be made up to and including the date of issuance of this Order, with applicable interest to be paid on the refunds to November 30, 1963. The refunds will be approximately $7,000,000 inclusive of interest. Texaco's future revenues will be decreased approximately $2,600,000 annually as a result of the settlement.

Under the refund provisions of this Order, Texaco would ordinarily have been required to refund certain sums of monies to Colorado Interstate Gas Company (Colorado Interstate) which may take the position that it is not presently under obligation to flow-through to its jurisdictional customers their proportionate share of the amount it will receive from Texaco. For the reasons set forth in our Order in *Hunt Oil Co.*, Docket No. G–9065, *et al.*, order issued July 16, 1963, 30 FPC 220, we shall condition our approval of this Settlement Proposal to require Texaco to retain (without further interest obligation) the refunds due to Colorado Interstate in a special account and shall direct Colorado Interstate to submit a report setting forth what it intends to do with the refunds if they are made to it, and, if it proposes not to pass them on to its customers, why it believes it was entitled to these funds. Additionally, and for the same reasons, we shall require United Gas Pipe Line Company to retain (without interest obligation) the proportionate share of the refunds it will receive from Texaco and would flow-through to its jurisdictional pipeline customers who may assert that they are not under an obligation to pass on the refunds, and shall require these pipeline customers to submit a report setting forth their intentions with respect to any refunds they may receive and, if they do not intend to pass such sums on to their customers, why they believe they are entitled to retain such funds.

Settlement rates which are exceptions to the applicable area ceilings are proposed by Texaco for four sales of natural gas made by it in South Louisiana, two covering sales to United and the other two covering sales to United Fuel Gas Company (United Fuel).[2]

One of the sales made to United is made under Texaco's FPC Gas Rate Schedule No. 223 from the Houma and Hollywood Fields, Terrebonne Parish, Louisiana. Prior to June 2, 1960, this sale was made under an eight-year contract which was to expire in 1960. On June 2, 1960, the parties entered into a new contract for a twenty-year term, under which Texaco dedicated substantial additional acreage, which resulted in increased annual deliveries under this contract of approximately thirty percent. The current rate for gas sold under the renegotiated contract is 23.25¢ per Mcf, while the settlement rate is 17.5¢ per Mcf. The proposed settlement rate, therefore, exceeds the increased rate ceiling, but is below the initial rate ceiling. In view of the above circumstances surrounding this sale, we find the settlement rate of 17.5¢ per Mcf to be proper and approved the same.[3]

[2] United and United Fuel each had representatives who attended and actively participated in the settlement negotiations herein.

[3] See: *Shell Oil Co., et al.*, Docket No. G–9446, *et al.*, 28 FPC 257; *Gulf Oil Corp., et al.*, Docket No. G–9520, *et al.*, 29 FPC 837; and *Sinclair Oil & Gas Co.*, Docket No. G–9291, *et al.*, *supra* p. 1620, for similar circumstances where exceptions to the applicable area ceiling were granted.

The second sale to United is made under Texaco's FPC Gas Rate Schedule No. 102 from the Duck Lake Field, St. Mary and St. Martin Parishes, Louisiana, where the increased rate of 22.95¢ per Mcf, now being charged subject to refund, is proposed to be reduced to 18¢ per Mcf. The initial rate under which this sale was made was 13.5¢ per Mcf, however, this rate was for a period of approximately one year, at which time the contract provided that the rate would escalate to 21.2¢ per Mcf. During that period of time, the Supreme Court issued its opinion in *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, and when Texaco subsequently filed for the agreed upon 21.2¢ it was suspended by order of the Commission, *The Texas Company*, Docket No. G–9576 (order issued October 28, 1955). The rate agreed upon by the parties is below the applicable area initial ceiling. We have considered all of the circumstances surrounding this sale and find them to be similar to others where we have in such circumstances, regarding other sales made in the same field, found the increased rate to be in the nature of an initial rate, *The Ohio Oil Company, et al.*, Docket No. RI60–92 *et al.*, 27 FPC 1373; *Cities Service Company, et al.*, Docket No. G–8921, *et al.*, 28 FPC 1108; *R. H. Goodrich, et al.*, Docket No. G–8977, *et al.*, 29 FPC 397; *and Hunt Oil Company*, Docket No. G–9065, *et al.* (order issued July 16, 1963) 30 FPC 220.

The first sale to United Fuel is made by Texaco under its Rate Schedule No. 2 from ten fields located in four South Louisiana parishes. This sale is made under a contract, dated May 22, 1953, which contained no acreage dedication, but contained a provision for a firm sales commitment of 15,000 Mcf per day. During 1960, Texaco developed additional reserves in the area and contractually increased the minimum contract to 30,000 Mcf per day. Texaco is presently selling and delivering approximately 70,000 Mcf per day to United Fuel at a rate of 20.7¢ per Mcf. Texaco proposes that the rate be reduced to 17.5¢ for the first 15,000 Mcf delivered daily (the initial contract quantity), and 19.9¢ per Mcf (the contract rate when the additional commitment was made) for the remaining daily deliveries. The assumption by Texaco of this contractual obligation to sell and deliver to United Fuel twice the original daily contract commitment, and the fact that it has been, and is now delivering twice that amount, was regarded by the parties to the settlement negotiations as being in the nature of a dedication of acreage, and an addition thereto. In view of the unique circumstances surrounding this sale, we find the settlement rates to be proper and approve the same.

The second sale to United Fuel is made by Texaco in the Valentine Field, La Fourche Parish, Louisiana. This sale is made under a contract entered into on May 22, 1953 (Texaco's Rate Schedule No. 3) and subsequent additions of acreage dedicated under said contract have substantially increased the dedicated reserves resulting in substantial increases in annual deliveries. For the reasons stated regarding Texaco's Rate Schedule No. 223, *supra*, and the exception approved for the proposed rate thereunder, and considering the circumstances surrounding this sale, we find Texaco's proposed reduction in rate from 20.7¢ to a settlement rate of 18.5¢ per Mcf to be proper and approve the same.

The Settlement Proposal also includes other rates for which issuance of related permanent certificates is pending; some of which are for deliveries presently being made under temporary authority.[4] We propose to set such proceedings for abridged hearing in accordance with Section 7 of the Natural Gas Act indicating that the settlement rates, as provided for herein shall be the initial price.

[4] See Appendix B attached hereto.

On December 12, 1963, The Public Service Commission of the State of New York (PSC) filed its response to Texaco's Settlement Proposal. PSC confined its response to four specific features of the proposal. We shall consider them seriatim. First, PSC states that Article III, paragraph 1.(a) "* * * purports to reserve unto Texaco the right to file for increases above the settlement levels if 'at any time' the applicable Statement of General Policy No. 61–1 levels are higher." We interpret this provision as reserving to Texaco only the right, if contractually authorized, to file an increase to the increased rate level provided by order or rule of the Commission and not to have any relation to initial price levels.[5]

Second, PSC notes that the settlement rate for Texaco's Rate Schedule No. 311, covering a sale in Duval County (Railroad District No. 4) Texas, in the Lundell Field is the permanently certificated rate of 16¢ per Mcf. The contract for this sale was entered into on March 3, 1963, and a permanent certificate was issued for this sale consistent with the guide line price established by the Fifth Amendment to our Statement of General Policy No. 61–1, issued August 30, 1962. Since no proceeding has ever been initiated under Section 5(a) of the Act against Texaco alone, the only proceeding wherein the subject rate is under review by this Commission is the *Texas Gulf Coast Area Proceedings*, AR64–2 (order issued November 27, 1963, 30 FPC 1354), and the lawfulness of the rate will be determined in that proceeding. Therefore, pending our final determination in that proceeding, we shall accept the settlement rate.

Third, PSC comments upon Texaco's Rate Schedule No. 6 involving a sale to United Fuel from the Erath Field in Southern Louisiana. Texaco proposes to reduce its rate for this sale from 23.675¢ to 21.25¢ per Mcf. And, fourth, PSC notes that Texaco proposes to settle its Rate Schedule No. 186, covering a sale to Southern Natural Gas Company from the Felice Bayou Field in Southern Louisiana at the permanently certificated price of 20.75¢ per Mcf. In regard to both of these sales it must be emphasized that both are permanently certificated, that the proposed moratorium period will apply to these sales, that the Erath Field settlement rate will result in a reduction in purchased gas cost annually of $315,000 to United Fuel, that no Section 5(a) proceeding respecting these rates is pending against Texaco other than area rate proceeding, Docket No. AR61–2, and, therefore, any action to be taken by this Commission other than approval of the proposed settlement rates must await the outcome of that area proceeding. Consequently, since each of said rates are subject to the outcome of that proceeding, and by approving the proposed settlement rates a substantial and immediate benefit will enure to the consuming public, we find that the proposed rates are proper and approve the same.

Further, PSC notes that in its Settlement Proposal (Article V, paragraph 3, page 10) Texaco states that by submitting its proposal "Texaco is not to be bound or prejudiced in any proceeding, negotiation or matter as to any principle or method involved or presumed to be involved in determining the settlement rates provided for * * *." PSC states that it has been of the belief that the same privilege must pertain to any other party to proceedings in which a settlement proposal is filed, whether a participant in conferences, a silent bystander or signatory. PSC is correct. Section 1.18(e) of our Rules of Practice and Procedure so provide, and in each of our orders approving a settlement we specifically so order

[5] On December 13, 1963, Texaco filed a telegram in answer to PSC's response stating: "Texaco has never considered the referenced language (Article III, Paragraph 1(a)) as granting the right for immediate filing of settlement prices under initial price ceilings and has reserved only the right for increased price filings under the then applicable increased price ceiling."

(see for example, the order in *Hunt Oil Company*, Docket No. G-9065, *et al.*, issued July 16, 1963, 30 FPC 220). Certainly, neither PSC by being a "silent bystander" in past settlement negotiations, whether they are successful or not, nor may any other party or participant, can be said to have agreed or disagreed to any principle or method involved in attempting to reach agreement. Nor do settlements prevent parties in other proceedings from arguing their positions as to the legal effect of settlements on the rates in such other proceedings.

The foregoing has discussed all of the major comments filed by the Memphis Light, Gas and Water Division of the City of Memphis, Tennessee, Long Island Lighting Company and the Philadelphia Electric Company. Comments were also filed by the Minnesota Valley Natural Gas Company. The latter company indicated support and approval of the Settlement Proposal.

We believe the instant settlement proposal as herein modified, and in other particulars not specifically noted or set forth herein, meets the criteria previously set forth in other of our recent settlement orders and accordingly we find it to be in the public interest and should be approved as hereinafter provided.

Our action herein should not be construed as constituting approval of any future rate increases, if any, that may be filed under the subject rate schedules, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate proceedings, involving Texaco's rates and rate schedules.

The Commission finds:

The proposed settlement of the subject proceedings on the basis described herein, as more fully set forth in the Settlement Proposal filed on November 12, 1963, is in the public interest and it is appropriate in carrying out the provisions of the Natural Gas Act that it be approved and made effective as hereinafter ordered, and good cause exists for approving the settlement rates, for terminating certain proceedings and providing for refunds.

The Commission orders:

(A) The Settlement of these proceedings on the basis of the Settlement Proposal, filed November 12, 1963, is approved and made effective subject to the following terms and conditions.

(B) The applicable settlement rates set out in Appendix A hereto are approved and such rates shall be effective as of the date of issuance of this Order.

(C) The settlement rates approved herein shall be applicable during the moratorium period herein provided for to all sales of natural gas from all acreage dedicated as of the date of issuance of this Order under each of the rate schedules currently on file with the Commission whether such sales are made by Texaco, its successors or assigns.

(D) The pending certificate proceedings indicated in Appendix B hereto shall not be terminated on the basis of the approval of the Settlement Proposal, but shall be determined after hearing in accordance with Section 7 of the Natural Gas Act.

(E) Within 90 days from the date of this Order, Texaco shall make such filings under its rate schedules as are required to make effective the terms of the Settlement Proposal.

(F) Within 90 days from the date of this Order, Texaco shall (1) refund (except as provided by Paragraph I hereof), with interest as specified in each docket computed to November 30, 1963, the difference between the rates collected subject to refund, on and after January 1, 1961, and the related settlement rates to the date of this Order; and (2) report to the Commission, in writing, the

amount of refunds made to each of its purchasers or withheld under Paragraph I hereof, showing separately the amount of principal and interest so paid, and the bases used for such determination, together with releases from its purchasers showing receipt of the refunds in conformity with the Settlement Proposal as approved herein.

(G) Docket Nos. G–13155, G–13162, G–13190, G–14062, G–14096, G–16413 and G–16536 (related to sales made by Texaco in the Permian Basin) are hereby severed from the consolidated proceedings in Docket No. G–8969, *et al.*

(H) Within 15 days from date of receipt by it of the refunds herein provided, United Gas Pipe Line Company shall submit a report to the Commission, and serve a copy thereof upon each of its jurisdictional pipeline customers, setting forth a plan for distribution of such refunds to each of its pipeline customers. The report shall show separately the amount of principal and interest, together with a computation showing the manner in which such distribution was determined. United shall retain the refunds received pursuant to this order, subject to further order of the Commission, provided, however, that United shall not be required to pay interest on such funds.

(I) Texaco shall retain the refund due to Colorado Interstate Gas Company, which it shall have computed in accordance with Paragraph (F) above, in a special account, with no further interest obligation after November 30, 1963, pending Commission action and further order respecting such monies.

(J) Any party to the proceedings or settlement negotiations having objections to the terms of this Order shall within 30 days from the date of issuance of this Order set forth such objections in writing to the Commission (original and one copy), and by serving copies on the other parties.

(K) If as a result of any objections filed pursuant to Paragraph J hereof, the Commission by subsequent order changes Texaco's duties and obligations hereunder, Texaco's acceptance of this settlement order shall not be binding on it without its express agreement.

(L) Upon full compliance by Texaco with all the terms and provisions of this Order applicable to it, the Section 4(e) proceedings listed in Appendix A hereto shall terminate.

(M) Upon termination of the Section 4(e) proceedings listed in Appendix C hereto, in accordance with Paragraph (L) above, said proceedings shall be severed from the consolidated proceedings in Docket Nos. AR61–2, AR64–1 and AR64–2, respectively.

(N) This Order is without prejudice to any findings or orders which have been or may be made hereafter by the Commission, and is without prejudice to claims or contentions which may be made by Texaco, the Commission Staff, or any affected party hereto, in any proceedings now pending, or hereafter instituted by or against Texaco or any other companies, person or parties affected by this Order.

APPENDIX A

TEXACO INC., DOCKET NO. G–8969, ET AL.

FPC GRS No.	FPC rate area and pressure base field	Purchaser	Docket No.		Rates, cents per Mcf at area pressure base (inclusive of tax reimbursement)		
			Certificate	Rate	Not subject to refund	In effect subject to refund July 1, 1963	Proposed settlement rate
	Colorado—15.025 psia						
45	Hiawatha	Mountain Fuel	G–4650		12.0		12.0
46	Mt. Hope-Padroni	Kansas-Nebraska	G–4651	G–18702	*12.826	13.742	13.0
[1] 127	Greenwood	Colorado Inter	G–8087		*15.384		[3] 15.0
135	Graylin, Luft, NW Graylin	Kansas-Nebraska	G–9166		*3.66		3.66
174	Hiawatha	Mountain Fuel	G–13814		12.0		12.0
[1] 207	Surveyor Creek	Kansas-Nebraska	G–20132		*12.826		12.826
[1] 206	do	do	G–20105		*9.17		9.17
197	Ignacio Blanco	El Paso Natural	G–18902		*12.00465		[3] 13.0
	Wyoming—15.025 psia						
[1] 149	Table Rock	Colorado Inter	G–10339	RI63–225	*15.384	16.410	15.384
196	Garland	Montana Dakota	G–18822		*8.5		8.5
211	La Barge	El Paso Natural	CI60–32(T)	RI61–16	15.384	[4] 18.974	15.384
[1] 288	Patrick Draw	Colorado Inter	CI61–1760	RI63–347	*15.384	[5] 16.410	15.384
307	State Line Unit	Mountain Fuel	CI63–688		*15.0		15.0
[1] 310	Table Rock	Colorado Inter	CI63–1196(T)		*15.384		15.384
	Alkali Butte	Kansas-Nebraska	CI63–1206(A)		*15.384		15.384
	New Mexico-San Juan Basin—15.025 psia						
22	Gallegos Canyon Unit	El Paso Natural	G–4616		11.00124		11.00124
26	Blanco (Mesa Verde)	do	G–4616		12.00135		[3] 13.0
27	San Juan Basin—(Picture Cliffs)	do	G–4616		11.00124		11.00124
205	Blue Hills Paradox	do	G–20028		*11.0		11.0
210	Bisti	do	CI60–9		*13.0		13.0
290	Basin Dakota	do	CI62–1181(T)		[6] 13.0		13.0
	Undesignated						
[7] 183	Aneth Ismay	do	G–15153		17.7		17.7
[8] 298	Aneth	do	CI62–1315(T)		17.7		17.7
[9] 297	Lignite Plant	Montana-Dakota	CI61–1687		16.0		16.0

See footnotes at end of table.

TEXACO INC., DOCKET NO. G–8969, ET AL.—Continued

FPC GRS No.	FPC rate area and pressure base field	Purchaser	Docket No.		Rates, cents per Mcf at area pressure base (inclusive of tax reimbursement)		
			Certificate	Rate	Not subject to refund	In effect subject to refund July 1, 1963	Proposed settlement rate
	Texas RR Comm. Dist. No. 2—14.65 psia						
61	So. Cottonwood Creek	Texas Eastern	G–4820		10.86048		10.86048
124	McFaddin	United Gas	G–5933	G–15007	6.32494	14.7125	14.0
				RI62–434		15.7825	
220	North Fannin	Valley Gas	CI61–65		[2]12.0		12.0
265	So. Cottonwood Creek	Texas Eastern	G–7057		10.86048		10.86048
283	Boyce	United Gas	G–7054		12.1848		12.1848
284	Boyce (Altman)	do	G–7053		12.1848		12.1848
285	South Porter	do	G–7392		12.1848		12.1848
	Texas RR Comm. Dist. No. 3—14.65 psia						
91	Old Ocean	Natural Gas PL	G–4820		11.5539		11.5539
132	Chesterville	Tenn. Gas. Trans	G–4820	G–18518	13.2782	15.95016	[10] [11] 14.6
131	Deckers Prairie	do	G–4820	G–18563	13.49751	16.16947	[11] 14.6
1	Chocolate Bayou	Natural Gas PL	G–3648	G–9161 [33]	[2]15.3459	15.5478	15.3459
				G–10884 [33]		15.7496	
				G–13065 [33]		15.952	
				G–15999 [33]		17.153	
128	S. W. Hutchins	Tenn. Gas Trans	G–8389	G–18518	[2]13.49751	16.16947	[11] 14.6
137	Nelsonville	do	G–9493	G–17283	13.2782	14.41778	[10] [11] 14.6
				G–18518		15.95016	
141	Rock Island	do	G–9743	G–17283	[2]13.2782	14.41778	[10] [11] 14.6
				G–18518		15.95016	
235	Nelsonville	do	CI61–1078(T)		[2] [10] 16.16947		[10] 16.0
248	Pheasant and So. Pheasant	Valley Gas	CI62–280		[2]14.0		14.0
257	Chesterville	Tenn. Gas Trans	G–7056	G–18519	[2]13.2782	15.95016	[10] [11] 14.6

Texas RR Comm. Dist. No. 4—14.65 psia

59	Government Wells	do	G-4820	G-19897	*12.12268	15.0952	[11] 14.6
				RI60-268		17.24347	
58	Hagist Ranch	do	G-4820	G-19897	*12.12268	17.24347	[11] 14.6
57	do	do	G-4820	G-19897	*12.12268	17.24347	[11] 14.6
56	La Reforma	do	G-4820	G-19897	*12.12268	15.0952	[11] 14.6
				RI60-268		17.24347	
55	Raymondville	do	G-4820	G-19897	*12.12268	17.24347	[11] 14.6
	Raymondville—Added acreage		G-4820		17.24247		15.0
54	Santellana	do	G-4820	RI60-233	13.125	17.24347	[11] 14.6
94	La Gloria	Transco	G-4820		8.890883		8.890883
93	do	Natural Gas PL	G-4820		9.9989		[12] 10.8198
130	Magnolia City	Tenn. Gas Trans	G-8718	RI60-366	*12.12268	17.24347	[11] 14.6
134	Alfred	Alfred Prod	G-8831		*9.0864		9.0864
139	Odem	Tenn. Gas Trans	G-9691	RI60-180	13.125	17.24347	[11] 14.6
138	No. Rincon	do	G-9705	RI60-180	13.125	17.24347	[11] 14.6
150	Piedre Lumbre	do	G-10547	RI60-180	13.125	17.24347	[11] 14.6
154	La Copita	do	G-10992	RI60-180	13.125	17.24347	[11] 14.6
157	Alfred	Alfred Prod	G-11478		11.1056		11.1056
143	Seeligson	Tenn. Gas Trans	G-17971	G-19897	*12.12268	15.0952	[11] 14.6
				RI60-268		17.24347	
199	Corpus Channel N.W	United Gas	G-19018		15.0		15.0
208	East Plymouth	Banquete Gas	G-20137		*7.0896		7.0896
212	East Taft	Texas Eastern	CI61-70		*14.6		14.6
228	Thompsonville N.E	Natural Gas PL	CI61-677(T)		18.0		15.0
245	Guiterrez	So. Texas Nat'l	CI62-63(T)		*15.0		15.0
258	Odem	Transco	G-7064		8.890883		8.890883
259	Luby-Petronilla	do	G-7063		8.890883		8.890883
260	Plymouth	Tenn. Gas Trans	G-7065	G-19898	*12.12268	15.0952	[11] 14.6
				RI60-269		17.24347	
261	Spartan	do	G-7069	G-19898	*12.12268	15.0952	[11] 14.6
				RI60-269		17.24347	
262	Riverside	do	G-7066	G-19898	11.90337	17.02416	[10] 14.0
263	Seven Sisters	do	G-7067	G-19898	*12.12268	15.0952	[11] 14.6
				RI60-269		17.24347	
279	E. Mustang Island	Florida Gas	G-18887(T)	RI62-486	*16.5	17.5	15.0
281	So. Clara Driscoll	do	G-11213	RI62-486	*16.5	17.5	15.0
302	Rolling Hills	Texas Eastern	CI63-266		*15.0		15.0
311	Lundell	Natural Gas PL	CI63-1364		*16.0		16.0

See footnotes at end of table.

TEXACO INC., DOCKET NO. G–8969, ET AL.—Continued

FPC GR8 No.	FPC rate area and pressure base field	Purchaser	Docket No.		Rates, cents per Mcf at area pressure base (inclusive of tax reimbursement)		
			Certificate	Rate	Not subject to refund	In effect subject to refund July 1, 1963	Proposed settlement rate
	South Louisiana—15.025 psia						
102	Duck Lake	United Gas PL	G–4821	G–8969 [35]	14.25	15.25	18.0
				G–9576 [35]		21.95	
				G–11333 [35]		22.15	
				G–13466 [35]		22.95	
223	Houma	do	G–4821	RI61–89 [36]	10.4970	23.25	17.5
6	Erath	United Fuel Gas	G–3646	G–9609 [35]	21.5	21.7	21.25
				G–11391 [35]		21.9	
				G–13579 [35]		22.1	
				G–16597 [35]		22.3	
				G–20012 [36]		23.675	
4	East Mud Lake	do	G–3643	G–9595 [35]	17.5	17.9	17.5
				G–11322 [35]		18.3	
				G–13435 [35]		18.7	
				G–16596 [35]		19.1	
				G–19917 [36]		19.5	
				RI61–150 [36]		19.9	
				RI62–157 [36]		20.3	
				RI63–79		20.7	
3	Valentine	do	G–3644	G–9593 [35]	17.5	17.9	18.5
				G–11324 [35]		18.3	
				G–13434 [35]		18.7	
				G–16597 [35]		19.1	
				G–19916 [36]		19.5	
				RI61–149 [36]		19.9	
				RI62–156 [36]		20.3	
				RI63–78		20.7	
5	Bayou Sale and Horseshoe Bayou	do	G–3645	G–9596 [35]	17.5	17.9	17.5
				G–11323 [35]		18.3	
				G–13435 [35]		18.7	
				G–16596 [35]		19.1	
				G–19917 [36]		19.5	
				RI61–150 [36]		19.9	
				RI62–157 [36]		20.3	
				RI63–79		20.7	

2	Paradis	do	G-3647	G-9594 [35]	17.5	17.9	17.5 1st 15MMCF/D. 19.9 All Over 15 MMCF/D.
				G-11321 [35]		18.3	
				G-13433 [35]		18.7	
				G-16598 [35]		19.1	
				G-19918 [35]		19.5	
				RI61-148 [36]		19.9	
				RI62-155 [36]		20.3	
				RI63-77		20.7	
146	Bayou Penchant	Tenn. Gas Trans	G-10021	G-19897 [35]	18.5	23.09167	18.5
				RI61-237 [36]		23.6	
145	Main Pass Blk. 35	do	G-10026	G-19897 [35]	18.5	23.09167	18.5
				RI61-237 [36]		23.6	
186	Felice Bayou	Southern Nat'l	G-15038		*20.75		20.75
187	Atchafalaya	Tenn. Gas Trans	G-16988	G-19897 [35]	*18.5	23.09167	18.5
				RI61-237 [36]		23.6	
190	Ragley	Trunkline	G-17380	G-20433 [35]	*18.1	23.5	18.1
194	Welsh	United Gas PL	G-18174	RI63-424	*20.25	[13] (22.25)	20.25
200	Midland	United Fuel Gas	G-19121	G-19917 [35]	*19.1	19.5	19.1
				RI61-150 [36]		19.9	
				RI62-157 [36]		20.3	
				RI63-79		20.7	
252	Big Lake	Am.-La. PL Co	CI62-544		19.75		19.75
270	Live Oak	Transco	G-8438	G-17613 [36]	18.05	23.55	17.5
275	Maurice	United Gas PL	G-11970	RI62-416	20.25	22.25	20.25
	Oklahoma-Panhandle Area—14.65 psia						
164	N.E. Greenough (see Kansas Area)	Panhandle East	G-12455	RI62-486	*16.0	17.0	16.0
172	South Greenough	do	G-13750	RI62-374	*15.0	16.0	15.0
214	S.E. Griggs (see Kansas Area)	Transwestern	G-17379(T)		*17.0		17.0
195	Camrick S.E	Natural Gas PL	G-18652	RI61-394	*16.6	17.0	16.6
				RI62-347		17.2	
				RI63-347		[14] (17.4)	
198	do	do	G-18898	RI61-394	*16.6	17.0	16.6
				RI62-347		17.2	
				RI63-347		[14] (17.4)	
224	N.E. Carthage	Panhandle East	CI61-288		*15.0		15.0
229	N.W. Dower	Natural Gas PL	CI61-763	RI62-347	*16.8	17.2	16.8
				RI63-347		[14] (17.4)	
255	Guymon-Hugoton	Cities Service	CI62-712		*11.0		11.0
289	Mocane	Panhandle East	CI62-1018(T)		*17.0		17.0
10	Guymon-Hugoton	Northern Nat'l	G-4616	G-15538	*9.8262	12.0	11.0
11	do	do	G-4616	G-15538	*9.8262	12.0	11.0
12	do	do	G-4616		*15.0		15.0
13	do	Kansas-Nebraska	G-4616		11.0		11.0
136	do	Panhandle East	G-4616		*9.8262		[15]10.8262
15	do	Cities Service	G-4616	G-14251 [34]	*9.8262	13.0	11.0
				G-20080		20.0	
42	Hugoton (see RR Comm. Dist. 10)	Phillips	G-4616		*6.1949056		6.1949056

See footnotes at end of table.

TEXACO INC., DOCKET No. G–8969, ET AL.—Continued

FPC GRS No.	FPC rate area and pressure base field	Purchaser	Docket No.		Rates, cents per Mcf at area pressure base (inclusive of tax reimbursement)		
			Certificate	Rate	Not subject to refund	In effect subject to refund July 1, 1963	Proposed settlement rate
	Oklahoma-Panhandle Area—Continued						
133	Camrick S.E. (see RR Comm. Dist. 10)	Natural Gas PL	G–8820	G–11710 [35]	[14] 16.0	16.2	16.0
				G–12207 [35]		16.2	
				G–12506 [35]		16.2	
				G–12635 [35]		16.2	
				G–14248 [35]		16.4	
				G–14620 [35]		16.4	
				G–14935 [35]		16.4	
				G–15071 [35]		16.4	
				G–17430		16.6	
				G–17996		16.6	
				G–18413		16.6	
				G–18564		16.6	
				RI60–21		16.8	
				RI60–183		16.8	
				RI60–326		16.8	
				RI60–359		16.8	
				RI61–333		17.0	
				RI61–393		17.0	
				RI61–450		17.0	
				RI61–507		17.0	
				RI62–284		17.2	
				RI62–346		17.2	
				RI62–410		17.2	
				RI62–434		17.2	
				RI63–297		17.4	
				RI63–349		[16] (17.4)	
				RI63–404		[16] (17.4)	
				RI63–418		[16] (17.4)	
142	Guymon-Hugoton	Panhandle East	G–9779		[14] 9.8262		[15] 10.8262
148	Mocane	Colorado Inter	G–10202	RI62–430	[14] [15] 15.0/MMBTU	17.0/MMBTU	[17] 15.0/MMBTU
152	Forgan	Panhandle East	G–10724		[14] 15.0		15.0
166	Camrick	Kansas-Nebraska	G–12568	G–16796	[14] 16.0	16.2	16.0
				G–19949		16.4	
				RI61–149		16.6	
				RI62–76		16.8	
				RI63–124		17.0	
[18] [20] 125	Keyes	Colorado Inter	G–8087	G–17422	15.0 MMBTU	16.0/MMBTU	[17] 15.0/MMBTU

	Carter-Knox—14.65 psia						
249	Carter-Knox	Lone Star Gas	C162-335		*16.8		16.8
	Other Oklahoma—14.65 psia						
103	Doyle-Harrell "B"	do	G-4824		*5.36		5.36
161	N.E. Waynoka	Cities Service	G-12244	G-20080	* [20] 12.0	13.0	12.0
	N.E. Waynoka-Added Acreage	do	G-12244		* [20] 13.0		13.0
	do	do	G-12244		* [20] 13.0		13.0
	do	do	G-12244(T)		* [20] 13.0		13.0
	do	do	G-12244(T)		* [20] 13.0		13.0
	do	do	G-12244		* [20] 13.0		13.0
163	Medford	do	G-12162	G-20080	* [20] 12.0	13.0	12.0
165	Waterloo No.	do	G-12534	RI63-220	*11.0	12.0	11.0
253	Ringwood	Okla. Nat'l.	C162-569		*11.0		11.0
301	West Marlow	Ark.-La. Gas Co.	C163-55		*15.0		15.0
305	Stage Stand S.E.	Lone Star Gas	C163-397		*15.0		15.0
312	Sterling S.E.	Cities Service	C163-1438		*15.0		15.0
[19] [21] 188	S.W. Enville	Cimarron Trans.	G-17015	RI63-466	15.0/MMBTU	[22] 16.0/MMBTU	[23] 15.0/MMBTU
	Kansas—14.65 psia						
100	Moscow & Pleasant Valley	Cities Service	G-4824	G-19319	*11.0	20.0	11.0
98	Hugoton	Kansas-Nebraska	G-4824		*11.0		11.0
112	do	Northern Nat.	G-4824		*11.0		11.0
111	do	do	G-4824		*11.0		11.0
110	do	do	G-4824	G-15538	*11.0	12.0	11.0
109	do	do	G-4824	G-15538	*11.0	12.0	11.0
108	do	do	G-4824	G-15538	*11.0	12.0	11.0
107	do	do	G-4824	G-15538	*11.0	12.0	11.0
106	do	do	G-4824	G-15538	*11.0	12.0	11.0
72	do	do	G-4824	RI61-282	*11.0	15.0	11.0
242	do	Panhandle East.	G-4824		*11.0		11.0
126	Greenwood	Colorado Inter.	G-8087	G-17422	* [25] 15.0/MMBTU	16.0/MMBTU	[24] 15.0/MMBTU
129	Hugoton	Northern Nat.	G-8609	RI61-102	*12.0	17.0	12.0
147	Hugoton-Friend	do	G-10083	RI61-108	*12.0	17.0	12.0
164	N.E. Greenough (Singley-Sanders)—(see Oklahoma-Panhandle).	Panhandle East.	G-12455	RI62-486	*16.0	17.0	16.0
[26] 167	Adams Ranch	Colorado Inter.	G-12710	RI63-126	15.0/MMBTU	16.0/MMBTU	[24] 15.0/MMBTU
171	Hugoton	Panhandle East.	G-13752	RI63-220	*12.0	13.0	12.0
173	Richfield	do	G-13751	RI62-364	*16.0	17.0	16.0
214	S.E. Griggs (Snake Creek) (see Oklahoma-Panhandle).	Transwestern	G-17379 (T)		*16.0		16.0
247	Traffas	Cities Service	C162-256		*13.0		13.0
251	Hugoton	do	C162-519		*12.0		12.0
256	do	Panhandle East.	C162-842		*11.0		11.0
303	South Kismet	do	C163-349		*16.0 (NAG)		16.0 (NAG)
					*14.0 (AG)		14.0 (AG)
304	Mohler	do	C163-374		*16.0		16.0

See footnotes at end of table.

TEXACO INC., DOCKET NO. G–8969, ET AL.—Continued

FPC GRS No.	FPC rate area and pressure base field	Purchaser	Docket No.		Rates, cents per Mcf at area pressure base (inclusive of tax reimbursement)		
			Certificate	Rate	Not subject to refund	In effect subject to refund July 1, 1963	Proposed settlement rate
	Texas RR Comm. Dist. No. 6—14.65 psia						
264	No. Lansing	Ark.-La. Gas Co	G–7062		12.5541		12.5541
287	Lassater	do	CI61–1589		12.5541		12.5541
300	Manziel	Lone Star Gas	CI62–1374	RI63–463	[4] 14.49	[27] (16.56)	14.49
299	West Chapel Hill	do	CI62–1370	RI63–463	[4] 14.49	[28] (16.56)	14.49
48	Bethany	United Gas PL	G–4822		[29] 10.8876		[29] 10.8876
47	Carthage	Texas Gas Trans	G–4822		11.6288		11.6288
	Texas RR Comm. Dist. No. 10—14.65 psia						
185	E. & W. Panhandle	El Paso Natural	G–16287	RI63–237	[4] 12.0	13.0	12.0
215	No. Stratford	Transwestern	G–17378(T)		17.0		17.0
201	Texas Hugoton	Phillips	G–19127		[4] 12.0		12.0
213	do	do	CI60–313		[4] 8.0		8.0
216	Hansford	Natural Gas PL	CI60–479	RI61–337	16.5	17.0	16.5
				RI62–294		17.2	
				RI63–297		17.4	
219	Texas Hugoton	Phillips	CI60–725		[4] 8.0		8.0
225	Twin Morrow	Natural Gas PL	CI61–456	RI62–347	[4] 16.0	17.0	16.0
226	West Panhandle	do	CI61–459		[4] 13.2		13.2
286	Dude Wilson	Transwestern	CI61–895(T)		17.0		17.0
309	Hansford	Panhandle East	CI63–1111		[4] 17.0		17.0
7	No. Hutchinson	Northern Nat	G–4616	G–13735 [30]	[4] 12.0768	13.0832	12.0768
				RI63–237		14.0896	
[30] 9	West Panhandle	do	G–4616	G–20433	10.7458	11.7518	11.0
				RI60–446		11.3057	
				RI61–309		11.5530	
				RI61–529		11.6292	
				RI62–229		11.7168	
				RI62–486		11.8067	
				RI63–449		[31] (12.1116)	
8	do	Northern Nat	G–4616	RI61–337	[4] 8.0512	12.0768	11.0
42	Texas Hugoton (see Oklahoma Panhandle)	Phillips	G–4616		6.1949056		6.1949056
156	Texas Hugoton	do	G–4616		[32] 9.5		[32] 9.5
[30] 39	do	do	G–4616		4.4665		4.4665

133	Hansford (Blakemore) (see Oklahoma Panhandle).	Natural Gas PL.	G–8820	G–11710 [33]	*16.1536	16.3536	16.1536
				G–14248 [33]		16.55744	
				G–17430		16.75936	
				RI60–21		16.96128	
				RI61–333		17.1632	
				RI62–284		17.36512	
				RI63–297		17.56704	
143	West Panhandle	Northern Nat.	G–9778	RI61–337	*8.0	12.0	11.0
153	do	Phillips	G–10945		*9.0		9.0
155	East Panhandle	do	G–11205		*7.0		7.0
158	Barlow	Northern Nat.	G–11682	RI62–252	*15.5	[33] 16.5	15.5
				RI63–190	[33] 16.5	17.5	
159	Daniel	do	G–11683	RI63–237	*15.5	16.5	15.5
180	No. Hutchinson and East Spearman	do	G–14359	RI63–407	*16.5	[34] (17.5)	16.5
184	Horizon	do	G–16107		*16.5		16.5
	Mississippi—15.025 psia						
101	Baxterville	United Gas PL.	G–4823	G–19430	11.9787	22.773	14.0
121	Maxie	do	G–4984	G–20186	*20.0	24.0	20.0

*Initial rate.
(T) Temporary Authority Issued. Permanent certificate not issued.
(A) Application for Certificate. Permanent certificate not issued.
[1] Rates shown are at 15.025 psia. Contract pressure base is 14.65 psia.
[2] Rate not to exceed 15 cents per Mcf with upward B.t.u. adjustment.
[3] Total price 13 cents per Mcf inclusive of tax reimbursement and minimum guarantee for liquids.
[4] Increase to 18.974 cents applicable to only the initial acreage under contract. 15.384 cents applicable to added acreage.
[5] Change to 16.410 cents tendered Jan. 25, 1963. Suspended to July 28, 1963 in RI63–347.
[6] Original rate filed was 13.00135 inclusive of tax reimbursement and minimum guarantee for liquids.
[7] Contract pressure base—15.025 psia.
[8] Contract pressure base—15.025 psia.
[9] Contract pressure base—14.73 psia.
[10] Subject to 0.21931 deduction for dehydration.
[11] Price is consistent with the Statement of General Policy No. 61–1, as amended, for sales under contracts w/o flexible price provisions. Texaco will amend its contracts accordingly and substitute 1 cent per Mcf fixed escalation for each five (5) year period until the end of the contract. (Not applicable to added acreage under Rate Schedule No. 55.)
[12] Filed for increase to 10.8198 cents per Mcf on Oct. 14, 1963.
[13] Change to 22.25 cents tendered Apr. 16, 1963. Suspended to Nov. 5, 1963 in RI63–424.
[14] Change to 17.4 cents tendered Jan. 29, 1963. Suspended to Aug. 21, 1963 in RI63–347.
[15] Change to 10.8262 cents per contract filed.
[16] Change to 17.4 cents tendered Jan. 29, 1963. Suspended to Sept. 27, 1963 in RI63–349.
Change to 17.4 cents tendered Mar. 25, 1963. Suspended to Oct. 10, 1963 in RI63–404.
Change to 17.4 cents tendered Apr. 17, 1963. Suspended to Nov. 5, 1963 in RI63–418.
[17] Total price inclusive of upward B.t.u. adjustment not to exceed 17.0 cents per Mcf.
[18] Average B.t.u. content—1120.
[19] Base acreage only. Added acreage consolidated in proceedings G–4281 et al.
[20] Prices shown are gross. Purchaser deducts 0.75 cents for dehydration.
[21] Average B.t.u. content—1050.
[22] Increase to 16.0 cents tendered May 28, 1963. Suspended to Dec. 1, 1963 in RI63–468.
[23] Total price inclusive of upward B.t.u. adjustment not to exceed 15.0 cents per Mcf.
[24] Total price inclusive of upward B.t.u. adjustment not to exceed 16.0 cents per Mcf.
[25] Average B.t.u. content—985.
[26] Average B.t.u. content—1054.
[27] Change to 16.56 cents tendered May 27, 1963. Suspended until Dec. 1, 1963 in RI63–463.
[28] Change to 16.56 cents tendered May 31, 1963. Suspended until Dec. 1, 1963 in RI63–463.
[29] Rate shown for gas well gas. Tax reimbursement varies with ratio of compressed gas versus gas well gas.
[30] Rates shown are at 14.65 psia. Contract pressure base is 16.4 psia.
[31] Change to 12.1116 cents tendered May 17, 1963. Suspended until Dec. 1, 1963 in RI63–449.
[32] 9.5 cents per Mcf before 0.5 cent reduction for sour gas.
[33] Increase of 1 cent to 16.5 cents for waiver of processing rights.
[34] Change to 17.5 cents tendered Mar. 29, 1963. Suspended until Oct. 2, 1963 in RI63–407.
[35] Consolidated in Texaco Rate Proceeding Docket No. G–8969, *et al.*
[36] Consolidated in Area Rate Proceeding Docket No. AR61–2, *et al.*

APPENDIX B

TEXACO INC., DOCKET NO. G-8969, ET AL.

PENDING CERTIFICATE APPLICATIONS AND AMENDMENTS INCLUDED IN PROPOSED SETTLEMENT

Rate schedule-supplement No.	Area and field	Purchaser	Date of contract	Docket No.	Initial price*	Settlement price*
	Texas R.R. District 3					
235	Nelsonville	Tennessee Gas Transmission Co.	Sept. 1, 1955	CI61-1078	[1] 16.16947	[1] 16.0
	Texas R.R. District 4					
228	Thompsonville, N.E.	Natural Gas Pipeline Co. of America.	Sept. 1, 1960	CI61-677	18.0	15.0
245	Guiterrez	South Texas Natural Gas Gathering Co.	June 1, 1961	CI62-63	15.0	15.0
279	E. Mustang Island	Florida Gas Transmission Co.	June 16, 1959	G-18887	16.5	15.0
	Texas R.R. District 10					
215	No. Stratford	Transwestern Pipeline Co.	Dec. 10, 1958	G-17378	17.0	17.0
286	Dude Wilson	Transwestern Pipeline Co.	Dec. 10, 1958	CI61-895	17.0	17.0
	Oklahoma—Other					
161-5	N.E. Waynoka	Cities Service Gas Co.	June 8, 1961	G-12244 [2]	13.0	13.0
161-6	N.E. Waynoka	Cities Service Gas Co.	Mar. 22, 1961	G-12244 [2]	13.0	13.0
	Oklahoma—Panhandle					
289-1	Mocane	Panhandle Eastern Pipeline Co.	Nov. 21, 1962	CI62-1018 [3]	17.0	17.0
	Kansas					
214	S.E. Griggs	Transwestern Pipeline Co.	Dec. 10, 1958	G-17379	16.0	16.0
	Wyoming					
211-7	LaBarge	El Paso Natural Gas Co.	May 9, 1963	CI60-32 [2]	15.384	15.384
310	Table Rock	Colorado Interstate Gas Co.	Feb. 12, 1963	CI63-1196	15.384	15.384
321	Alkali Butte	Kansas Nebraska Natural Gas Co.	Jan. 14, 1963	CI63-1206	15.384	15.384
	San Juan Basin					
290	Basin Dakota	El Paso Natural Gas Co.	Mar. 28, 1962	CI62-1181	[4] 13.00135	[4] 13.0
290-2	Basin Dakota	El Paso Natural Gas Co.	Sept. 24, 1962	CI62-1181 [3]	[4] 13.00135	[4] 13.0
290-3	Basin Dakota	El Paso Natural Gas Co.	Apr. 30, 1963	CI62-1181 [3]	[4] 13.00135	[4] 13.0
290-4	Basin Dakota	El Paso Natural Gas Co.	June 28, 1963	CI62-1181 [3]	[4] 13.00135	[4] 13.0
290-6	Basin Dakota	El Paso Natural Gas Co.	Oct. 16, 1963	CI62-1181 [3]	[4] 13.00135	[4] 13.0
298	Aneth	El Paso Natural Gas Co.	May 12, 1959	CI62-1315	17.7	17.7

*Inclusive of applicable tax reimbursement. Sales from San Juan and Wyoming are at 15.025 psia, other sales are at 14.65 psia.

[1] Subject to 0.21931 cent per Mcf dehydration charge deduction.

[2] Petition to amend certificate to include additional acreage.

[3] Petition to amend certificate application to include additional acreage.

[4] Includes 1.0 cent minimum for liquids.

APPENDIX C

TEXACO INC., DOCKET NO. G–8969, ET AL.

Dockets consolidated in AR61–2		Dockets consolidated in AR64–1			Consolidated in AR64–2
G–8969	G–17613	G–13735	RI60–326	RI62–294	G–9161
G–9576	G–19897	G–14248	RI60–359	RI62–346	G–10884
G–9593	G–19916	G–14251	RI60–446	RI62–347	G–13065
G–9594	G–19917	G–14620	RI61–102	RI62–364	G–15007
G–9595	G–19918	G–14935	RI61–108	RI62–374	G–15999
G–9596	G–20012	G–15071	RI61–149	RI62–410	G–17283
G–9609	G–20433	G–15538	RI61–282	RI62–430	G–18518
G–11321	RI61–89	G–16796	RI61–309	RI62–434	G–18519
G–11322	RI61–148	G–17422	RI61–333	RI62–486	G–18563
G–11323	RI61–149	G–17430	RI61–537	RI63–124	G–19897
G–11324	RI61–150	G–17996	RI61–393	RI63–126	G–19898
G–11333	RI61–237	G–18413	RI61–394	RI63–199	RI60–180
G–11391	RI62–155	G–18564	RI61–450	RI63–220	RI60–233
G–13433	RI62–156	G–19319	RI61–507	RI63–297	RI60–268
G–13434	RI62–157	G–19949	RI61–529	RI63–349	RI60–269
G–13435	RI62–416	G–20080	RI62–76	RI63–404	RI60–366
G–13466	RI63–77	G–20433	RI62–229	RI63–407	RI62–434
G–13579	RI63–78	RI60–21	RI62–252	RI63–418	RI62–486
G–16596	RI63–79	RI60–183	RI62–284	RI63–463	
G–16597	RI63–424				
G–16598					

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

TEXAS GULF PRODUCING COMPANY, DOCKET NO. G–9476, ET AL.;[1] TEXAS GULF PRODUCING COMPANY, DOCKET NO. G–14832

ORDER APPROVING RATE SETTLEMENT PROPOSAL TERMINATING PROCEEDINGS AND PRESCRIBING REFUNDS

(Issued December 30, 1963)

We have before us for consideration a Motion for Approval of Settlement Proposal and Termination of Proceedings filed on December 6, 1963, by Texas Gulf Producing Company (Texas Gulf) encompassing the rates for nineteen of Texas Gulf's currently effective gas rate schedules.

In summary, the settlement proposal as filed by Texas Gulf provides:

(1) Settlement rates, including tax reimbursement, equal to or less than the Commission's applicable area ceilings, with two exceptions hereinafter discussed;

(2) Texas Gulf waives the right to file for contractually authorized increased rates until April 1, 1966. Texas Gulf reserves the right to file for any increased rate, if contractually authorized up to the applicable area-rate levels determined through area hearings or amendment of the Commission's Statement of General Policy No. 61–1, or any contractually authorized increase in tax reimbursement;

(3) Amendment of Texas Gulf's Rate Schedule Nos. 3, 4, 6, 24 and 33 to eliminate any favored nation, price redetermination or periodic price escalation clauses contained therein;

(4) Refunds, with interest at the applicable rates, under each rate schedule where the collection was made subject to refund, of the difference between the revenues actually collected and those which would have been collected at the settlement rate, in each instance, commencing with July 1, 1961, to the date of issuance of this order;

[1] The additional dockets involved herein are set forth in the Appendix hereto.

(5) Extension of the make-up period clauses in the take-or-pay provisions in its Rate Schedule Nos. 25, 31 and 32 from the present period to ten years;

(6) Exclusion from the Settlement Proposal of all Permian Basin sales, one rate for which Texas Gulf filed a separate settlement proposal, and one rate for which Texas Gulf has filed an application for authority to abandon.

In support of its proposal, Texas Gulf states that the settlement rates, refunds, moratorium periods and other provisions thereof, some of which are not specifically noted herein, are in the public interest in that the rates are reasonable and will provide price stability for a long period of time for natural gas moving in interstate commerce.

With respect to refunds, the various parties to the settlement conferences utilized cost-of-service studies. Their studies revealed that during the first half of 1961, increased sales, and higher initial rates started to equalize Texas Gulf's revenue-cost relationship. In view of that and all the terms of the settlement proposal, it is appropriate that refunds should be computed for sales made on and after July 1, 1961, to the date of issuance of this order, with interest to be paid on the refunds to December 31, 1963. The refunds will be approximately $833,000 exclusive of interest. Texas Gulf's future revenues will be decreased approximately $410,000 per annum as a result of the settlement.

For the reasons set forth in our order in *Hunt Oil Co.*, Docket No. G–9065, *et al.*, Order issued July 16, 1963, 30 FPC 220, we shall condition our approval of this Settlement Proposal to require United Gas Pipe Line Company to retain (without interest obligation) the proportionate share of the refunds it will receive from Texas Gulf and would flow-through to its jurisdictional pipeline customers who may assert that they are not under an obligation to pass on the refunds, and shall require these pipeline customers to submit a report setting forth their intentions with respect to any refunds they may receive and, if they do not intend to pass such sums on to their customers, why they believe they are entitled to retain such funds.

The two exceptions to the applicable area ceilings are proposed by Texas Gulf with respect to two sales made to United Gas Pipe Line Company (United)[1] in the DeLarge Field (Rate Schedule No. 31) and the Dulac Field (Rate Schedule No. 32) which are related to the sale from Bayou Rambio Field (Rate Schedule No. 25). All of the sales are in Terrebonne Parish, South Louisiana. The presently effective rate under each of the Rate Schedules is 22.05¢ per Mcf. The rates under Rate Schedule Nos. 31 and 32 are subject to Section 4(e) proceedings; the rate under Rate Schedule No. 25, an initial rate, is not. Texas Gulf proposes to reduce the effective rate under each of said Rate Schedules to a settlement rate of 17.75¢ per Mcf.

Texas Gulf states in its proposal, that the participants to the negotiations considered the three sales to United as a unit. In support, Texas Gulf states that it entered into two contracts for its DeLarge and Dulac sales to United in 1949 and 1952 respectively. The contracts were for a term of ten years. Thereafter, Texas Gulf discovered substantial new reserves in the adjacent Bayou Rambio Field. After being advised by United that it would enter into twenty-year contracts for its DeLarge and Dulac sales, Texas Gulf, in 1957, entered into a twenty-year contract with United for the Bayou Rambio sale. As a result of the interdependent negotiations, Texas Gulf's reserve commitment to United in these contiguous fields increased from 43 BCF to 240 BCF; the number of leases dedicated under the contracts increased from 5 to 17; and

[1] Representatives of United attended and actively participated in the settlement conferences, excepting for some discussion of an alleged claim Texas Gulf has for deficiencies in takes, not considered relevant to the negotiations.

the dedicated acreage increased from 7,850 to 9,951. Consideration of all of the circumstances surrounding these sales, and the interdependence of the renegotiation of the DeLarge and Dulac sales with the dedication of the Bayou Rambio acreage, causes us to believe them to be similar to others where we have considered such a unique situation to warrant exceptions to the applicable area ceiling, *Gulf Oil Corporation, et al.*, Docket No. G–9520, *et al.*, 29 FPC 837. Therefore, we find the settlement rates for these three sales of 17.75¢ per Mcf to be proper, and approve the same.

The Public Service Commission of the State of New York has filed comments respecting the 16¢ rate under Texas Gulf's Rate Schedule No. 35 for a sale from Texas Railroad Commission District No. 4. The contract for this sale was entered into on March 3, 1963, and was permanently certificated at the guide line price established by the Fifth Amendment to our Statement of General Policy No. 61–1.

The Settlement Proposal includes one rate (Rate Schedule No. 30) for which issuance of a related permanent certificate is pending in Docket No. G–14832 and service is being rendered. Docket No. G–14832 is consolidated in the proceedings in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, wherein the hearings were concluded on July 25, 1963. We shall sever Docket No. G–14832 from the consolidated proceedings, and shall issue Texas Gulf a certificate of public convenience and necessity herein at an initial rate of 10.297¢ per Mcf, the rate which was in effect at the time Texas Gulf filed its certificate application. The settlement rate for this sale is 15.75¢ per Mcf.

The settlement rates approved herein shall be applicable during the moratorium period herein provided for all sales of natural gas from all acreage dedicated as of the date of issuance of this order under each of the rate schedules currently on file with the Commission whether such sales are made by Texas Gulf, its successors or assigns.

We believe the settlement proposal, as herein described, and in other particulars not specifically noted, meets the criteria previously set forth in other of our recent settlement orders and accordingly we find it to be in the public interest and should be approved as hereinafter provided.

Our action herein should not be construed as constituting approval of any future rate increase, if any, that may be filed under the subject rate schedules, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate proceedings, involving Texas Gulf's rates and rate schedules.

The Commission finds:

(1) The proposed settlement of the subject proceedings on the basis described herein, as more fully set forth in the settlement proposal filed on December 6, 1963, as herein modified, is in the public interest and it is appropriate in carrying out the provisions of the Natural Gas Act that it be conditionally approved and conditionally made effective subject to the modifications hereinafter ordered, and good cause exists for approving the settlement rates, for terminating certain proceedings and providing for refunds.

(2) The sale of natural gas by Texas Gulf, as more fully described in its application, will be made in interstate commerce, subject to the jurisdiction of the Commission and such sale by Texas Gulf together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The sale of natural gas by Texas Gulf together with the construction and operation of any facilities subject to the jurisdiction of the Commission neces-

sary therefor, are required by the public convenience and necessity and a certificate therefor should be issued.

(4) Texas Gulf is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

The Commission orders:

(A) The Settlement of these proceedings on the basis of the Settlement proposal filed December 6, 1963, as herein modified, is approved and made effective subject to the following terms and conditions.

(B) The applicable settlement rates set out in the appendix hereto are approved and such rates shall be effective as of the date of issuance of this order.

(C) Within 90 days from the date of this order, Texas Gulf shall make such filings under its rate schedules as are required to make effective the terms of the Settlement Proposal, as modified herein.

(D) Within 90 days from the date of this order, Texas Gulf shall (1) refund, with interest as specified in each docket computed to December 31, 1963, the difference between the rates collected subject to refund, on and after July 1, 1961, and the related settlement rates to the date of this order; and (2) report to the Commission, in writing, the amount of refunds made to each of its purchasers, showing separately the amount of principal and interest so paid, and the bases used for such determination, together with releases from its purchasers showing receipt of the refunds in conformity with the Settlement Proposal as modified and approved herein.

(E) Within 15 days from date of receipt by it of the refunds herein provided, United Gas Pipe Line Company shall submit a report to the Commission, and serve a copy thereof upon each of its jurisdictional pipeline customers, setting forth a plan for distribution of such refunds to its jurisdictional pipeline customers. The report shall show separately the amount of principal and interest, together with a computation showing the manner in which such distribution was determined. United shall retain the refunds received pursuant to this order, subject to further order of the Commission, provided, however, that United shall not be required to pay interest on such funds.

(F) Texas Gulf shall, over the signature of a responsible officer, file with the Commission, within 30 days from the date of the issuance of this order, an original and one copy of its acceptance or rejection of the terms and conditions of this order applicable to it.

(G) The proceeding in Docket No. G–14832 is hereby severed from the consolidated proceedings in *Union Texas Petroleum, et al.* Docket No. G–13221, *et al.*, Docket Nos. G–9476, G–11536, G–13848, G–17158, G–19910, RI61–223, RI62–75, RI63–143 (except as they pertain to the interest of Pan American Petroleum Corporation) G–14069, G–14112, G–15056, G–17372, G–17373, G–17884, G–17925, RI60–402, RI60–403 and RI62–90 are hereby severed from the consolidated area proceedings in Docket No. AR61–2, *et al.* Docket Nos. G–16177, G–16240, G–19899, RI60–204, RI60–437 and RI63–390 are hereby severed from the consolidated area proceedings in Docket No. AR64–2, *et al.* Docket No. G–17925 is hereby severed from the consolidated proceedings in *Texaco Inc., et al.*, Docket No G–17613, *et al.*

(H) A certificate of public convenience and necessity be and the same is hereby issued in Docket No. G–14832, upon the terms and conditions of this order, authorizing the sale by Texas Gulf of natural gas in interstate commerce for resale together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary for such sale, all as fully described in its application and exhibits thereto.

(I) The certificate granted in paragraph (H) above is not transferable and shall be effective only so long as Texas Gulf continues the acts or operations

hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(J) The grant of the certificate issued in paragraph (H) above shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's Regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Texas Gulf. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contracts herein involved. Nor shall the grant of the certificate aforesaid for service to the particular customer involved imply approval of all of the terms of the respective contracts, particularly as to the cessation of service upon termination of said contracts, as provided by Section 7(b) of the Natural Gas Act. Nor shall the grant of the certificate aforesaid be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sales of natural gas subject to said certificate.

(K) Upon full compliance by Texas Gulf with all the terms and provisions of this order applicable to it, the Section 4(e) proceedings listed in the appendix hereto shall terminate, except as to the interest of Pan American Petroleum Corporation in Docket Nos. G–9476, G–11536, G–13848, G–17158, G–19910, RI61–223, RI62–75 and RI63–143.

(L) This order is without prejudice to any findings or orders which have been or may be made hereafter by the Commission, and is without prejudice to claims or contentions which may be made by Texas Gulf, the Commission Staff, or any affected party hereto, in any proceedings now pending, or hereafter instituted by or against Texas Gulf or any other companies, person or parties affected by this order.

APPENDIX

TEXAS GULF PRODUCING COMPANY, DOCKET NO. G–9476, ET AL.

FPC GRS No.	FPC rate area and pressure base field	Purchaser	Docket No.		Rates—Cents Mcf at area pressure base (inclusive of tax reimbursement)		
			Certificate	Rate	Last accepted rate	Rate in effect	Settlement rate [1]
	Texas RR Comm. Dist. 2—14.65 psia						
2	Coquat	Transcontinental.	G–2826	None	8.87904	8.87904	8.87904
6	N. McFaddin	United Gas	G–2829	RI63–390	14.60	15.60	[2] 15.00
	Texas RR Comm. Dist. 3—14.65 psia						
3	Columbus	Trunkline	G–4319	G–16177, RI60–204.	9.25312	20.00	[2] 15.00
4	Columbus	do	G–3056	G–16240, RI60–204.	9.25312	20.00	[2] 15.00
1	N. Port Neches	Texas Gas	G–2830	None	11.05	11.05	11.05
	Texas RR Comm. Dist. 4—14.65 psia						
24	Peidre Lumbre	Tennessee	G–10849	G–19899, RI60–437.	12.12268	17.243247	[2] 15.00
33	Seeligson	do	G–4288	G–19899, RI60–437.	12.12268	17.243247	[2] 15.00
35	Lundell	Natural Gas Pipe Line.	CI64–54	None	16.00	16.0	16.00

See footnotes at end of table.

APPENDIX—continued

TEXAS GULF PRODUCING COMPANY, DOCKET NO. G-9476, ET AL.—Continued

FPC GRS No.	FPC rate area and pressure base field	Purchaser	Docket No.		Rates—Cents Mcf at area pressure base (inclusive of tax reimbursement)		
			Certificate	Rate	Last accepted rate	Rate in effect	Settlement rate [1]
	Mississippi—15.025 psia						
29	Gwinville	Southern Natural.	G-3146	G-14756, RI63-378.	8.1456	21.00	14.00
	South Louisiana—15.025 psia						
10	Lake Long	United Fuel	G-2793	G-9476, [3] G-11536, [3] G-13848, [3] G-17158, [3] G-19910, [3] RI61-223, [3] RI62-75, [3] RI63-143. [3]	17.50	20.70	[4] 17.50
26	Gueydan	Transcontinental.	G-12309 [5]	G-17925	17.50	23.55	17.50
30	Abbeville	United Gas	G-14832	G-15056, RI62-90.	10.297	22.25	15.75
31	DeLarge	do	G-3010	G-17884	10.497	22.05	17.75
32	Dulac	do	G-5009	G-17884	10.497	22.05	17.75
25	Bayou Rambio	do	G-12128	None	22.05	22.05	[6] 17.75
22	Clear Creek	Trunkline	G-10355	G-14069, G-17373, RI60-402.	17.70	23.5	17.70
23	Ragley	do	G-11019	G-14112, G-17372, RI60-403.	17.70	23.5	17.70
	North Louisiana—15.025 psia						
17	Cotton Valley	United Gas	G-3910	None	13.05076	13.05076	13.05076
	Colorado—15.025 psia						
21	Piceance Creek	El Paso	G-10228	None	11.00	11.00	11.00

[1] The total settlement rates set out above as applicable to each sale to United Gas Pipe Line Company include a commodity rate and tax reimbursement. The tax reimbursement portion of each such total settlement rate shall be that portion expressed as tax reimbursement in each respective contract, and the remaining balance of such total settlement rate shall be considered as the commodity rate.

[2] Texas Gulf shall eliminate the favored nation, redetermination and periodic clauses from these rate schedules.

[3] Proceedings terminated except for the interest of Pan American Petroleum Corporation.

[4] Settlement rate applicable to the interest of Texas Gulf only.

[5] Settlement rate applicable to the interest of Texas Gulf only. Interest of non-operator, Clegg and Hunt, is depleted and an application to abandon is pending before the Commission.

[6] Reduction is effective rate of 22.05 cents to 17.75 cents as part of unit settlement of Rate Schedule Nos. 31, 32, and 25.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

MORRIS MIZEL, ET AL., DOCKET NO. RI63-205

ORDER DENYING APPLICATION FOR REHEARING

(Issued December 31, 1963)

On November 29, 1963, Morris Mizel, *et al.*, filed an application for rehearing of the Commission's Opinion No. 407 and accompanying order issued October 29,

1963, 30 FPC 1103, in the above-entitled matter, in which the Commission determined that the correct rate effective as of June 7, 1954, for the sale of natural gas by the applicants to Elizabeth P. Henderson Trusts No. 2 is 11 cents per Mcf, and that the escalation clause in the applicants' contract with the buyer was not triggered on or prior to June 7, 1954. The petition for rehearing presents nothing which was not fully argued, and carefully considered by the Commission, prior to the aforesaid order of October 1963. After full reconsideration, we adhere to the said order for the reason stated in Opinion No. 407.

The Commission finds:

No new facts or principles of law have been presented by the applicants in their application for rehearing which either were not fully considered by the Commission prior to its order herein or, having now been considered, warrant further hearing, modification, or revocation of said order.

The Commission orders:

The Application for Rehearing herein by Morris Mizel, *et al.*, be and the same hereby is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

NORTHERN NATURAL GAS COMPANY, DOCKET NOS. G–13875 AND CP61–190

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 31, 1963)

On October 29, 1963, Northern Natural Gas Company (Applicant) filed in Docket Nos. G–13875 and CP61–190 an application to amend the certificate issued on October 5, 1961, 26 FPC 557, in the above entitled proceeding, as hereinafter described, all as more fully described in the application.

Applicant requests deletion of Ordering Paragraph (D) of said order issued October 5, 1961, which reads: "Northern shall continue to furnish reports heretofore required with respect to Redfield Storage."

Applicant has been making monthly reports in compliance with paragraph (2) of the temporary certificate issued on July 10, 1958, in Docket No. G–13875. The temporary certificate granted Applicant authority to test the Mt. Simon Reservoir and limited the maximum inventory to 8 billion cubic feet of gas. This maximum has been revised or affected by several later amendments and has recently been increased to 70 billion cubic feet.

The record shows that Mt. Simon's proven ability to hold and supply large volumes of gas has made the monthly Redfield reports unnecessary but some reporting should be continued, as provided hereinafter.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and public convenience and necessity require that the aforementioned Ordering Paragraph (D) of the order issued October 5, 1961, in Docket No. G–13875 and CP61–190 be modified as hereinafter ordered.

The Commission orders:

(A) Ordering Paragraph (D) of the Commission's order issued October 5, 1961, in the instant dockets be and the same is hereby modified to read as follows: "Northern shall continue to furnish the reports heretofore required

with respect to Redfield Storage on a semi-annual basis with the first 6-month report period ending April 30, 1964, and with the second and last 6-month report period ending October 31, 1964."

(B) In all other respects, said order issued October 5, 1961, in Docket Nos. G–13875 and CP61–190 shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

PACIFIC POWER & LIGHT COMPANY, DOCKET NO. E–7141

ORDER AUTHORIZING ACQUISITION AND MERGER OR CONSOLIDATION OF FACILITIES

(Issued December 31, 1963)

Pacific Power & Light Company (Applicant) incorporated under the laws of the State of Maine and doing business as a qualified foreign corporation in the States of California, Oregon, Washington, Wyoming, Montana, and Idaho, with its principal place of business at Portland, Oregon, filed an application on November 22, 1963, for an order, pursuant to Section 203 of the Federal Power Act, authorizing it to acquire and merge or consolidate with its own facilities certain electric facilities of Columbia Basin Electric Cooperative, Inc. (Columbia Basin), in exchange for certain electric facilities which Applicant will transfer to Columbia Basin.

Applicant is engaged principally in the business of generating, purchasing, transmitting, distributing, and selling electric energy in California, Oregon, Washington, Wyoming, Montana and Idaho. Applicant also supplies water, steam-heating and telephone service in various communities in its service area. Columbia Basin is an electric cooperative operating in Wheeler, Gilliam, Morrow, Sherman and Umatilla Counties, Oregon, with its principal place of business in Heppner, Oregon.

Applicant and Columbia Basin each own facilities for distribution and sale of electric energy in substantially the same geographical areas of Wheeler, Gilliam and Morrow Counties, Oregon. The application states that Applicant and Columbia Basin are of the opinion that the existing duplication of facilities in such areas is contrary to sound electric utility practice and to the interest of their respective customers. In support of this position, the application refers to Chapter 727 of the Revised Statutes of Oregon which provides that the elimination of presently existing duplicate utility facilities and the prevention of the future duplication of facilities is a matter of state-wide concern.

Accordingly, Applicant and Columbia Basin entered into an agreement, dated November 12, 1963, in which a service area boundary line was agreed to and the parties agreed to exchange certain electric facilities to bring their properties within the confines of their respective service areas according to the boundary line.

Pursuant to the agreement, the facilities to be acquired by Applicant from Columbia Basin are located in Sherman, Morrow, and Gilliam Counties, Oregon and consist of approximately 16.6 miles of 69 kv transmission line and a minor portion of the distribution facilities of Columbia Basin, serving generally residential and small commercial customers. They include poles, conductors, transformers, and all appurtenances used in rendering the service affected, together with all other property, real, personal and mixed, related thereto. Approximately 60 customers are served by these facilities and Applicant will continue to operate the facilities acquired in the same manner as heretofore.

The facilities which Applicant will sell and transfer to Columbia Basin will constitute all of the electric facilities owned by Applicant in Morrow and Gilliam Counties, Oregon, south of the service area boundary line and all of the facilities owned by Applicant in Wheeler County, Oregon. These facilities include among others approximately 18 miles of 69 kv and 80 miles of 23 kv transmission lines; about 132 pole miles of distribution lines; five transmission and distribution substations with capacity totaling 16,200 kva; appurtenant facilities used to transform and distribute electric energy and franchises to serve five small towns. The facilities which Applicant will transfer to Columbia Basin serve approximately 2,000 customers. The agreement provides that Columbia Basin will continue to serve these customers at the rates presently charged by the Applicant.

The application indicates that the facilities to be exchanged, have original cost, accumulated provision for depreciation and depreciated original cost as follows:

	Original cost	*Provision for depreciation*	*Depreciated original cost*
(1) Facilities to be purchased by Applicant and sold by Columbia Basin:			
Transmission plant	$80,552	$9,096	$71,456
Distribution plant	155,713	45,875	109,838
Total	236,265	54,971	181,294
(2) Facilities to be sold by Applicant and acquired by Columbia Basin:			
Transmission plant	575,286	123,118	452,168
Distribution plant	1,055,978	191,768	864,210
General plant	7,591	2,320	5,271
Total	1,638,855	317,206	1,321,649

Applicant in consideration for the sale of facilities having a depreciated original cost of $1,321,649 will receive in payment therefore (1) other facilities having a depreciated original cost of $181,294; and (2) cash and a note receivable in the total amount of $1,492,000 and subject to adjustment for any change between March 15, 1963 and the closing date on the book amounts of the facilities involved in the exchange.

The over-all total consideration of $1,673,294 ($181,294 in plant, + $1,492,000 in cash and a note receivable) will result in a gain of $351,645 ($1,673,294 consideration —$1,321,649 depreciated original cost) on the books of Applicant. Applicant proposes to credit the gain to its Unappropriated Earned Surplus Account. Applicant also proposes to debit Unappropriated Earned Surplus with $87,911 and to credit Taxes Accrued with the same amount for the estimated Federal Income Tax Liability on the gain of $351,645. Therefore, the amount of the gain, $351,645, less estimated taxes of $87,911, will result in a net gain of about $263,734.

The consideration in cash and a note receivable in the total amount of $1,492,000 referred to above will be made up of a certified or cashier's check in the amount of $650,000 and a 6% secured promissory note payable not less than $150,000 annually until the entire amount plus interest has been paid.

Written notice of the application has been given to the California Public Utilities Commission, the Public Utility Commissioner of Oregon, the Washington Utilities and Transportation Commission, the Public Service Commission of Wyoming, the Board of Railroad Commissioners of Montana, and the Idaho Public Utilities Commission, and to the Governor of each of those States. Notice of the application has also been given by publication in the Federal Register on

December 13, 1963 (28 F.R. 13520) stating that any person desiring to be heard or to make any protest with reference to the application should on or before December 30, 1963, file with the Federal Power Commission, Washington, D.C., 20426, petitions or protests. No petition or protest or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued March 28, 1962, *Pacific Power & Light Company*, Docket No. E-7025, (27 FPC 620).

(2) By the proposed acquisition as described above, Applicant will acquire and merge or consolidate its facilities subject to the jurisdiction of the Commission with facilities of Columbia Basin, another person within the meaning and subject to the requirements of Section 203 of the Act.

(3) By the proposed sale of facilities, Applicant will dispose of a part of its facilities subject to jurisdiction of the Commission within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(4) The proposed acquisition and merger or consolidation of facilities and the proposed sale of facilities, all as described above upon the terms and conditions set forth in the application and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act for the reasons set forth above.

The Commission orders:

(A) The proposed acquisition and merger or consolidation of the facilities of Columbia Basin with those of its own by Applicant and the proposed sale by Applicant of part of its facilities to Columbia Basin, all as described above are authorized and approved upon the terms and conditions and for the purposes set forth in the application, subject to the provisions of this order.

(B) Applicant shall acccount for the proposed transaction in accordance with the provisions of this Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) This authorization shall expire unless the transactions herein authorized are consummated within 90 days from the issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuations, estimates or determinations of cost, or any other matter whatsoever which is now pending or may come before this Commission, and nothing in this order shall be construed as an acquiescence by this Commission in any estimate or determination of cost of any valuation of properly claimed or asserted.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

SOCONY MOBIL OIL COMPANY, INC., DOCKET NO. G-15451

ORDER DENYING MOTION

(Issued December 31, 1963)

On July 22, 1963, the Minneapolis Gas Company (Minneapolis), an intervener in this proceeding,[1] filed a motion requesting that the Commission fix a date

[1] Order issued herein on October 18, 1958.

for hearing of the matters and issues in this proceeding. The proceeding concerns the justness and reasonableness of proposed increased rates being charged Northern Natural Gas Company (Northern) by Socony-Mobil Oil Company, Inc. (Socony) for natural gas sold and delivered by Socony to Northern in the Hugoton Field of Kansas, under two of its FPC Gas Rate Schedules.[2] Northern is the sole supplier of natural gas to Minneapolis.

The proposed increased rates were tendered for filing on June 19, 1958 by Republic Natural Gas Company (Republic), and were suspended by Commission order issued July 18, 1958. By order of March 9, 1959, the proposed increased rates became effective, subject to refund, as of December 20, 1958. By order issued October 22, 1962, in Docket No. G–7637, *et al.*, Socony succeeded to the rate schedules of Republic involved herein, was substituted as respondent, and assumed the duties and obligations under undertakings theretofore filed by Republic, as of December 28, 1961.

In its motion, Minneapolis states that no hearing date has been fixed by the Commission to determine the justness and reasonableness of the increased rates, which Socony continues to charge Northern under the rate schedules involved herein. Minneapolis states that the presently effective rates exceed the applicable area ceiling fixed by the Statement of General Policy No. 61–1, on September 28, 1960, and it avers that the actual cost of producing gas from Socony's wells in the Kansas Hugoton ". . . is less than the area price . . .".

As we stated in the *Phillips* decision[3] and the *Statement of General Policy No. 61–1*, it is our intention to establish just and reasonable rates for sales by independent producers on an area basis. We have recently instituted an area rate proceeding (Docket No. AR64–1) which will determine the just and reasonable rate for the sales by Socony and by other producers in the area. Unlike the situations involved in those producer cases that we have set for individual hearing[4] subsequent to the *Phillips* decision, there are no exceptional circumstances presented here which would warrant similar action in this proceeding. We therefore conclude that determination of the just and reasonable rate for this sale by Socony should be made in the area rate proceeding.

The Commission finds:

For the reasons set forth above, the motion of the Minneapolis Gas Company should be denied.

The Commission orders:

The motion filed by the Minneapolis Gas Company for an order fixing date of hearing herein is denied.

Commissioner Ross *not participating.*

---

[2] Socony's FPC Gas Rate Schedules Nos. 281 and 282; formerly Republic Natural Gas Company's FPC Gas Rate Schedules Nos. 8 and 9 respectively.

[3] Opinion No. 338, *Phillips Petroleum Company*, Docket No. G–1148, *et al.*, issued September 28, 1960, 24 FPC 537.

[4] See, for instance, *H. L. Hunt, et al.*, Docket No. RI62–467, *et al.*, Order issued June 14, 1962, and *Southeastern Public Service Company*, Docket No. RI63–361, order issued March 7, 1963.

FORM L-3*

(REVISED NOVEMBER 1, 1963)

TERMS AND CONDITIONS OF LICENSE FOR CONSTRUCTED PROJECT AFFECTING NAVIGABLE WATERS OF THE UNITED STATES

Article 1. The entire project, as described in the order of the Commission, shall be subject to all the provisions, terms, and conditions of the license.

Article 2. No substantial change shall be made in the maps, plans, and statements described and designated as exhibits and approved by the Commission in its order as part of the license, until such change shall have been approved by the Commission: *Provided, however,* that if the Licensee or the Commission deems it necessary or desirable that said approved exhibits, or any of them, be changed, there shall be submitted to the Commission for approval amended, supplemental, or additional exhibit or exhibits covering the proposed change which, upon approval by the Commission, shall become a part of the license and shall supersede, in whole or in part, such exhibit or exhibits theretofore made a part of the license as may be specified by the Commission.

Article 3. The project area and project works shall be in conformity with the approved exhibits referred to in Article 2 hereof. If the Licensee shall contemplate any substantial alteration in or addition to the project works, the Licensee shall submit to the Commission for approval amended, supplemental, or additional exhibits as provided in Article 2 hereof to show and describe such alteration or addition, together with the statement in writing setting forth the reasons which necessitate or justify such alteration or addition. Except when emergency shall require for the protection of life, health, or property, no substantial alteration or addition not in conformity with the approved exhibits shall be made to any dam or other project works under the license without the prior approval of the Commission; and any emergency alteration or addition so made shall thereafter be subject to such modification and change as the Commission may direct.

Article 4. The project, including its operation and maintenance and any work incident to additions or alterations, shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall furnish to said representative such information as he may require concerning the operation and maintenance of the project, and of any alteration thereof, and shall notify him of the date upon which work with respect to any alteration will begin, and as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall allow him and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties.

Article 5. Insofar as any material is dredged or excavated in the prosecution of any work authorized under the license, or in the maintenance of the project, such material shall be removed and deposited so it will not interfere with naviga-

*Inadvertently omitted from publication with Opinion No. 411 (30 FPC 1338) and accompanying Order (30 FPC 1346) issued November 21, 1963.

tion, and will be to the satisfaction of the District Engineer, Department of the Army, in charge of the locality.

Article 6. The United States specifically retains and safeguards the right to use water in such amount, to be determined by the Secretary of the Army, as may be necessary for the purposes of navigation on the navigable waterway affected; and the operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Secretary of the Army may prescribe in the interest of navigation, and as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes; and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Secretary of the Army may prescribe in the interest of navigation, or as the Commission may prescribe for the other purposes hereinbefore mentioned.

Article 7. Whenever the United States shall desire to construct, complete, or improve navigation facilities in connection with the project, the Licensee shall convey to the United States, free of cost, such of its lands and its rights-of-way and such right of passage through its dams or other structures, and permit such control of pools as may be required to complete and maintain such navigation facilities.

Article 8. The Licensee shall furnish free of cost to the United States power for the operation and maintenance of navigation facilities at the voltage and frequency required by such facilities and at a point adjacent thereto whether said facilities are constructed by the Licensee or by the United States.

Article 9. The operation of any navigation facilities which may be constructed as a part of or in connection with any dam or diversion structure constituting a part of the project works shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including the control of the level of the pool caused by such dam or diversion structure, as may be made from time to time by the Secretary of the Army.

Article 10. The Licensee shall for the protection of navigation, construct, maintain and operate at its own expense such lights and other signals on fixed structures in or over navigable waters of the United States as may be directed by the Secretary of the Department in which the Coast Guard is operating.

Article 11. The actual legitimate original cost, estimated where not known, and the accrued depreciation of the project as of the effective date of the license shall be determined by the Commission in accordance with the Act and the rules and regulations of the Commission, and such cost less such accrued depreciation, so determined, shall be the net investment in the project as of such effective date.

Article 12. After the first twenty (20) years of operation of the project under the license, six (6) percent per annum shall be the specified rate of return on the net investment in the project for determining surplus earnings of the project for the establishment and maintenance of amortization reserves, pursuant to Section 10(d) of the Act; one-half of the project surplus earnings, if any, accumulated after the first twenty years of operation under the license, in excess of six (6) percent per annum on the net investment, shall be set aside in a project amortization reserve account as of the end of each fiscal year, provided that, if and to the extent that there is a deficiency of project earnings below six (6) percent per annum for any fiscal year or years after the first twenty years of operation under the license, the amount of such deficiency shall be deducted from the amount of any surplus earnings accumulated thereafter

until absorbed, and one-half of the remaining surplus earnings, if any, thus cumulatively computed, shall be set aside in the project amortization reserve account; and the amounts thus established in the project amortization reserve account shall be maintained therein until further order of the Commission.

Article 13. The Licensee shall install additional capacity or make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so, after notice and opportunity for hearing.

Article 14. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

Article 15. The Licensee shall, for the conservation, and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance and operation of such facilities and comply with such reasonable modifications of the project structures and operation as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing and upon findings based on substantial evidence that such facilities and modifications are necessary and desirable, reasonably consistent with the primary purpose of the project, and consistent with the provisions of the Act.

Article 16. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of Licensee's lands and interest in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be prescribed by the Commission, reasonably consistent with the primary purpose of the project, in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

Article 17. The Licensee shall construct, maintain and operate or shall arrange for the construction, maintenance and operation of such recreational facilities including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities and utilities, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal and State agencies, after notice and opportunity for hearing and upon findings based upon substantial evidence that such facilities are necessary and desirable, and reasonably consistent with the primary purpose of the project.

Article 18. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and recreational purposes, including fishing and hunting, and shall allow to a

reasonable extent for such purposes the construction of access roads, wharves, landings, and other facilities on its lands the occupancy of which may in appropriate circumstances be subject to payment of rent to the Licensee in a reasonable amount: *Provided*, that the Licensee may reserve from public access, such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property and *Provided further*, that the Licensee's consent to the construction of access roads, wharves, landings, and other facilities shall not, without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities. These facilities are in addition to the facilities that the Licensee may construct and maintain as required by the license.

Article 19. The Licensee shall be responsible for and shall minimize soil erosion and siltation on lands adjacent to the stream resulting from construction and operation of the project. The Commission upon request, or upon its own motion, may order the Licensee to construct and maintain such preventive works to accomplish this purpose and to revegetate exposed soil surface as the Commission may find to be necessary after notice and opportunity for hearing.

Article 20. No lease of the project or any part thereof whereby the lessee is granted the occupancy, possession, or use of the project, or any part thereof, shall be made without prior written approval of the Commission; and the Commission may, if in its judgment the situation warrants, require that all the conditions of the license, of the Act, and of the rules and regulations of the Commission shall be applicable to such property so leased to the same extent as if the lessee were the Licensee: *Provided*, that the provisions of this article shall not apply to leases of land or buildings or other property while not required to achieve the purposes of the license.

Article 21. The Licensee, its successors and assigns shall, during the period of the license, retain the possession of all project property covered by the license as issued or as later amended, including the project area, the project works, and all franchises, easements, water rights, and rights of occupancy and use; and none of such properties necessary or useful to the project and to the development, transmission, and distribution of power therefrom will be voluntarily sold, transferred, abandoned, or otherwise disposed of without the approval of the Commission: *Provided*, that a mortgage or trust deed or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning of this article. In the event the project is taken over by the United States upon the termination of the license, as provided in Section 14 of the Act, or is transferred to a new license under the provisions of Section 15 of the Act, the Licensee, its successors and assigns will be responsible for and will make good any defect of title to or of right of user in any of such project property which is necessary or appropriate or valuable and serviceable in the maintenance and operation of the project, and will pay and discharge, or will assume responsibility for payment and discharge, of all liens or incumbrances upon the project or project property created by the Licensee or created or incurred after the issuance of the license: *Provided*, that the provisions of this article are not intended to prevent the abandonment or the retirement from service of structures, equipment, or other project works in connection with replacements thereof when they become obsolete, inadequate, or inefficient for further service due to wear and tear, or to require the Licensee, for the purpose of transferring the project to the United States or to a new Licensee, to acquire any different title to or right of user in any of such subject property than was necessary to acquire for its own purposes as Licensee.

Article 22. For the purpose of determining the stage and flow of the stream or streams from which water is diverted for the operation of the project works, the amount of water held in and withdrawn from storage, and the effective head on the turbines, the Licensee shall install and thereafter maintain such gages and stream-gaging stations as the Commission may deem necessary and best adapted to the requirements; and shall provide for the required readings of such gages and for the adequate rating of such stations. The Licensee shall also install and maintain standard meters adequate for the determination of the amount of electric energy generated by said project works. The number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, shall at all times be satisfactory to the Commission and may be altered from time to time if necessary to secure adequate determinations, but such alteration shall not be made except with the approval of the Commission or upon the specific direction of the Commission. The installation of gages, the ratings of said stream or streams, and the determination of the flow thereof, shall be under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region of said project, and the Licensee shall advance to the United States Geological Survey the amount of funds estimated to be necessary for such supervision or cooperation for such periods as may be mutually agreed upon. The Licensee shall keep accurate and sufficient record of the foregoing determinations to the satisfaction of the Commission, and shall make return of such records annually at such time and in such form as the Commission may prescribe.

Article 23. In the maintenance of the project works, the Licensee shall place and maintain suitable structures and devices to reduce to a reasonable degree the liability of contact between its transmission lines and telegraph, telephone, and other signal wires or power transmission lines constructed prior to its transmission lines and not owned by the Licensee, and shall also place and maintain suitable structures and devices to reduce to a reasonable degree the liability of any structures or wires falling and obstructing traffic and endangering life on highways, streets, or railroads.

Article 24. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without replacement, or shall abandon or discontinue good faith operation of the project for a period of 3 years, or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address to the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license, and not less than 90 days after public notice may in its discretion terminate the license.

Article 25. Upon abandonment of the project the Licensee shall remove all buildings, equipment and power lines from lands of the United States and restore said lands to a condition satisfactory to agency having jurisdiction over the lands and shall fulfill such other obligations under the license as the Commission may prescribe.

Article 26. The right of the Licensee and of its transferees and successors to use or occupy navigable waters of the United States under the license for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless a new license is issued pursuant to the then existing laws and regulations.

Article 27. The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly set forth herein.

APPLICATIONS OF PRODUCERS OF NATURAL GAS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY DISPOSED OF DURING THE PERIOD OF JULY 1, 1963 THROUGH DECEMBER 31, 1963; SERVICE BEGINNING SUBSEQUENT TO JUNE 7, 1954.

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
ABC Drilling Co., Inc., et al.:					
CI63-1500 Hope Natural Gas Co.	Greenbrier District	W. Va.	Doddridge	10 11 63	Iss.
Mike Abraham:					
CI63-1429 El Paso Natural Gas Co.	Tapacito Pictured Cliffs.	N. Mex.	Rio Arriba	10 11 63	Iss.
Adair & Jenkins, et al.:					
CI64-389 Cities Service Gas Co.	S.W. Prairie Gem	Okla.	Lincoln	11 29 63	Iss.
Robert W. Adams & Assoc.:					
CI64-82 Hope Natural Gas Co.	Triadelphia District.	W. Va.	Logan	8 30 63	Iss.
Lionel Adkins, et al.:					
CI64-128 South Penn Oil Co.	Jefferson District	W. Va.	Lincoln	9 6 63	Iss.
Aikman Brothers:					
CI64-62 Northern Natural Gas Co.	Bechtold	Tex.	Lipscomb	8 30 63	Iss.
Alamo Corp.:					
CI63-1554 Panhandle Eastern Pipe Line Co.	Undesignated	Kans.	Morton	10 11 63	Iss.
Edwin Allday:					
CI64-471 Texas Eastern Transmission Corp.	Deweyville	Tex.	Newton	12 5 63	Iss.
William H. Allen, et al.:					
CI63-1540 Northern Natural Gas Co.	Kiowa Creek	Tex.	Lipscomb	10 11 63	Iss.
Amax Petroleum Corp.:					
CI63-1218 Natural Gas Pipeline Co. of America.	S.E. Floris Gas	Okla.	Beaver	8 6 63	Iss.
CI63-1338 Northern Natural Gas Co.	Thomas Wilson Unit.	Okla.	Beaver	9 13 63	Iss.
Amax Petroleum Corp., Operator, et al.:					
CI63-628 El Paso Natural Gas Co.	Bar-X Area	Colo.	Mesa	10 11 63	Iss.
CI63-719 El Paso Natural Gas Co.	Bar-X Area	Colo.	Mesa	7 29 63	Iss.
Amerada Petroleum Corp.:					
G-18346 Coastal Transmission Corp.	Lake Chicot Area	La.	St. Martin*	10 29 63	Iss.
CI61-727 Texas Gas Transmission Corp.	Bayou Chevreuil	La.	Lafourche*	10 29 63	Iss.
CI62-216 American Louisiana Pipe Line Co.	Veltin	La.	St. Landry	10 29 63	Iss.
CI62-525 Tennessee Gas Transmission Co.	La Blanc	La.	Vermilion	10 29 63	Iss.
CI62-805 Transcontinental Gas Pipe Line Corp.	Vermilion Area	La.	Offshore	10 29 63	Iss.
CI63-1369 Cities Service Gas Co.	Southeast Hardtner	Okla.	Woods	9 13 63	Iss.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Amerada Petroleum Corp—Con.					
CI63-1401 Arkansas Louisiana Gas Co.	East Kremlin	Okla.	Garfield	9 13 63	Iss.
CI64-403 El Paso Natural Gas Co.	Humble Pembrook Unit.	Tex.	Upton	11 18 63	Iss.
CI64-440 Cities Service Gas Co.	Sawyer Unit	Okla.	Grant	11 18 63	Iss.
Amerada Petroleum Corp., Operator, et al.:					
G-20200 Coastal Transmission Corp.	Port Allen	La.	West Baton Rouge.	10 29 63	Iss.
CI60-688 Transcontinental Gas Pipe Line Corp.	Raceland	La.	Lafourche	9 6 63	Iss.
American Metals Climax, Inc.:					
CI63-1064 North Central Gas Co.	Boone Dome Area	Wyo.	Natrona	7 29 63	Iss.
CI64-357 Mountain Fuel Supply Co.	Nitchie Gulch Unit Area.	Wyo.	Sweetwater	10 31 63	Iss.
American Natural Gas Producing Co., Operator, et al.:					
CI61-1246 Tennessee Gas Transmission Co.	South Crowley	La.	Acadia	11 12 63	Iss.
Anadarko Production Co.:					
CI63-1545 Cities Service Gas Co.	North Quinlan	Okla.	Woodward	7 25 63	Iss.
CI63-1580 Northern Natural Gas Co.	Carthage Field Area	Okla.	Texas	8 6 63	Iss.
CI64-437 Northern Natural Gas Co.	Ivanhoe*	Okla.	Beaver	11 18 63	Iss.
Anadarko Production Co., Operator & Agent, et al.:					
CI63-1368 Colorado Interstate Gas Co.	Greenwood	Kans.	Morton	9 13 63	Iss.
An-Son Corp.:					
CI64-442 Cities Service Gas Co.	Northeast Selman	Okla.	Harper	11 18 63	Iss.
Ancon Oil & Gas, Inc.:					
CI63-1451 Florida Gas Transmission Co.	Jones Creek	Tex.	Wharton	10 11 63	Iss.
Apache Corp.:					
CI63-596 Transwestern Pipeline Co.	Undesignated	Tex.	Ochiltree	7 12 63	Dis.
CI63-1457 Northern Natural Gas Co.	Undesignated	Tex*	Lipscomb*	9 17 63	Iss.
CI64-412 Cities Service Gas Co.	Deer Creek North	Okla.	Grant	11 18 63	Iss.
Apache Corp., Operator, et al.:					
CI64-18 Northern Natural Gas Co.	Farnsworth East	Tex.	Ochiltree	8 21 63	Iss.
CI64-293 Northern Natural Gas Co.	N.W. Dover	Okla*	Beaver*	10 15 63	Iss.
Carl M. Archer:					
CI63-854 Northern Natural Gas Co.	Hansford	Tex.	Hansford*	8 5 63	Iss.
Sam D. Ares:					
CI63-1194 El Paso Natural Gas Co.	Jalmat	N. Mex.	Lea	9 13 63	Iss.
Agnes Cullen Arnold, et al.:					
G-17207 United Gas Pipe Line Co.	Yellow Bayou Area	La.	St. Mary	8 23 63	Iss.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[2] DOCKET NO. AND PURCHASER [3]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Isaac Arnold, et al.:					
CI60-237 Tennessee Gas Transmission Co.	Lower Mud Lake	La.	Cameron	8 23 63	Iss.
CI64-6 United Fuel Gas Co.	Garden City	La.	St. Mary	11 15 63	Iss.
J. H. Arrington:					
CI63-1253 Cities Service Gas Co.	Undesignated	Okla.	Logan	8 6 63	Iss.
Ashland Oil & Refining Co.:					
CI63-401 Michigan Wisconsin Pipe Line Co.	N.E. Selling	Okla.	Major	12 18 63	Iss.
CI63-489 Michigan Wisconsin Pipe Line Co.	West Valley Center	Okla.	Dewey	12 18 63	Iss.
CI64-423 Transwestern Pipeline Co.	Undesignated	Okla.	Ellis	11 18 63	Iss.
CI64-446 Arkansas Louisiana Gas Co.	East Kremlin	Okla.	Garfield	11 29 63	Iss.
Associated Oil & Gas Co.:					
CI63-1560 Valley Gas Transmission, Inc.	Koopman*	Tex.	Kum Wells*	8 23 63	Iss.
The Atlantic Refining Co.:					
G-11904 United Fuel Gas Co.	Bourg Field	La.	Terrebonne*	11 27 63	Iss.
G-16234 El Paso Natural Gas Co.	Langlie-Mattix	N. Mex.	Lea	9 10 63	Wtd.
G-17411 United Gas Pipe Line Co.	Sunrise	La.	Terrebonne	11 27 63	Iss.
G-18399 United Gas Pipe Line Co.	Jeanerette	La.	St. Mary	11 27 63	Iss.
G-18804 United Gas Pipe Line Co.	Bayou Sale	La.	St. Mary	11 27 63	Iss.
G-20492 Florida Gas Transmission Co.	Fulton Beach	Tex.	Aransas	12 26 63	Wtd.
CI61-450 Transcontinental Gas Pipe Line Corp.	Chegby	La.	Lafourche	11 27 63	Iss.
CI61-652 Texas Gas Transmission Corp.	Bayou Sale	La.	St. Mary	11 27 63	Iss.
CI62-8 Hope Natural Gas Co.	Jefferson Island	La.	Iberia	11 27 63	Iss.
CI62-416 Trunkline Gas Co.	S.E. Mermentau	La.	Acadia	11 27 63	Iss.
CI62-435 Trunkline Gas Co.	Esther	La.	Vermilion	11 27 63	Iss.
CI62-1276 United Fuel Gas Co.	Thornwell	La.	Jefferson Davis	11 27 63	Iss.
CI63-819 Cities Service Gas Co.	Northwest Lovedale.	Okla.	Harper	8 5 63	Iss.
CI63-890 Texas Eastern Transmission Corp.	Karon	Tex.	Live Oak	8 5 63	Iss.
CI63-1197 Transcontinental Gas Pipe Line Corp.	San Miguel Creek	Tex.	McMullen	7 29 63	Iss.
CI63-1222 Valley Gas Transmission, Inc.	South Spanish Camp.	Tex.	Wharton	8 6 63	Iss.
CI63-1400 Banquete Gas Co., a Division of Crestmont.	East Plymouth	Tex.	San Patricio	9 13 63	Iss.
CI63-1437 Arkansas Louisiana Gas Co.	W. Vixen	La.	Caldwell	10 11 63	Iss.
CI63-1496 El Paso Natural Gas Co.	West Jal	N. Mex.	Lea	10 11 63	Iss.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
The Atlantic Refining Co.—Con.					
CI64-206 Natural Gas Pipeline Co. of America.	Camrick	Okla.	Beaver	9 19 63	Iss.
CI64-207 Southern Union Gathering Co.	Basin Dakota	N. Mex.	San Juan	9 27 63	Iss.
The Atlantic Refining Co., Operator, et al.					
CI64-48 Texas Eastern Transmission Corp.	Houdman	Tex.	Live Oak	8 23 63	Iss.
Atlas Corp.:					
CI63-1509 El Paso Natural Gas Co.	Gallegos-Gallup Pool.	N. Mex.	San Juan	8 6 63	Iss.
Atlas Exploration Co., Operator:					
CI62-760 Consolidated Gas Gathering Corp.	Undesignated	Pa.	Erie*	7 16 63	Iss.
Austral Oil Co., Inc.:					
G-17563 Transcontinental Gas Pipe Line Corp.	Sorrento	La.	Ascension	9 19 63	Iss.
CI62-395 Southern Natural Gas Co.	Bayou Long Area	La.	St. Martin	9 13 63	Iss.
CI63-342 Trunkline Gas Co.	Lake Side	La.	Cameron	10 31 63	Iss.
CI63-884 El Paso Natural Gas Co.	Huerfanito	N. Mex.	San Juan	8 5 63	Iss.
Aztec Oil & Gas Co.:					
CI64-413 El Paso Natural Gas Co.	Barker Creek Dome	N. Mex.	San Juan	11 18 63	Iss.
B. E. Oil, Inc.:					
CI63-1173 Mountain Fuel Supply Co.	Six Mile Spring	Wyo.	Sweetwater	7 2 63	Iss.
BTA Oil Producers, Agent:					
CI64-447 El Paso Natural Gas Co.	Spraberry Trend Area.	Tex.	Reagan	11 29 63	Iss.
BTA Oil Producers, Operator, Agent:					
CI63-1268 El Paso Natural Gas Co.	Spraberry Trend Area.	Tex.	Reagan	8 6 63	Iss.
BTA Oil Producers, Operator, et al.:					
CI64-154 El Paso Natural Gas Co.	Spraberry Trend Area.	Tex.	Reagan	9 12 63	Iss.
CI64-231 El Paso Natural Gas Co.	Spraberry Trend Area.	Tex.	Reagan	9 27 63	Iss.
R. S. Baker, Operator, et al.:					
CI64-89 Arkansas Louisiana Gas Co.	West Enid	Okla.	Garfield	8 30 63	Iss.
E. A. Ballengee:					
CI63-1246 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	8 6 63	Iss.
H. E. Bangert, et al.:					
CI61-1822 Cities Service Gas Co.	Hardtner	Kans.	Barber	8 6 63	Iss.
H. E. Bangert, Operator, et al.:					
CI61-890 Cities Service Gas Co.	N.E. Greenburg	Kans.	Kiowa	7 29 63	Iss.
Banquete Gas Co., a Division of Crestmont:					
CI60-625 United Gas Pipe Line Co.	Morgan*	Tex.	San Patricio	8 5 63	Iss.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Mary Barillaro, Agent.:					
CI63-1464 Hope Natural Gas Co.	New Milton District.	W. Va.	Doddridge	10 11 63	Iss.
Mary Barillaro, et al.:					
CI64-320 Hope Natural Gas Co.	New Milton District.	W. Va.	Doddridge	10 31 63	Iss.
Earl E. Barnes, Operator, et al.:					
CI64-123 Cities Service Gas Co.	Undesignated	La.	Lincoln	9 19 63	Iss.
Wardie Barnett.:					
CI63-1442 Kentucky West Virginia Gas Co.	Undesignated	Ky.	Martin	10 30 63	Iss.
Barnwell, Inc.:					
CI63-792 Arkansas Louisiana Gas Co.	Greenwood-Waskom.	La.	Caddo	8 5 63	Iss.
Barnwell Production Co.:					
CI63-1075 Tennessee Gas Transmission Co.	Bethany Area	Tex.	Harrison*	7 2 63	Iss.
C. E. Beardmore.:					
CI62-1339 Hope Natural Gas Co.	Grant District	W. Va.	Ritchie	9 17 63	Iss.
CI64-329 Hope Natural Gas Co.	Grant District	W. Va.	Ritchie	10 31 63	Iss.
Bell Oil & Gas Co.:					
CI62-1035 Cabot Corp.	Dekalb District	W. Va.	Gilmer	8 28 63	Iss.
Benedum-Trees Oil Co., et al.:					
CI62-695 Consolidated Gas Gathering Corp.	Undesignated	Pa.	Crawford*	7 16 63	Iss.
Benedum-Trees Oil Co., Operator, et al.:					
CI62-694 Consolidated Gas Gathering Corp.	Undesignated	Pa*	Crawford*	7 16 63	Iss.
Paul G. Benedum.:					
CI62-696 Consolidated Gas Gathering Corp.	Undesignated	Ohio	Ashtabula	7 16 63	Iss.
Claire Benz-Stoddard Falkin, Operator, et al.:					
CI63-832 Tennessee Gas Transmission Co.	Beaurline	Tex.	Hidalgo	8 28 63	Iss.
Thomas E. Berry, Operator, et al.:					
CI60-341 Colorado Interstate Gas Co.	Mocane	Okla.	Beaver	7 2 63	Iss.
CI63-1059 Western Gas Service Co.	Guymon-Hugoton	Okla.	Texas	11 22 63	Iss.
Big Chief Drilling Co.:					
CI62-1449 Oklahoma Natural Gas Gathering Corp., et al.	Ringwood	Okla.	Major	9 17 63	Iss.
Big 6 Drilling Co., Operator, et al.:					
BG-17815 Sylo Gas Co.	Maetze	Tex.	Goliad	7 10 63	Wtd.
David C. Bintliff:					
CI61-1804 Natural Gas Pipeline Co. of America.	Baileys Prairie	Tex.	Brazoria	8 5 63	Iss.
Harry L. Blackstock, Jr., Operator, et al.:					
CI63-1166 Arkansas Louisiana Gas Co.	Ames Area	Okla.	Major	8 28 63	Iss.
Thomas J. Blaho, Jr., et al.:					
CI64-536 Hope Natural Gas Co.	Troy District	W. Va.	Gilmer	12 26 63	Iss.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Joe Blalack, et al.:					
CI63-1385 Arkansas Louisiana Gas Co.	Bellevue	La.	Bossier	9 13 63	Iss.
Bogle Farms, Inc.:					
CI63-1318 El Paso Natural Gas Co.	Jalmat	N. Mex.	Lea	9 13 63	Iss.
Bolin Oil Co.:					
CI63-774 El Paso Natural Gas Co.	Blanco	N. Mex.	Rio Arriba	8 5 63	Iss.
Bowers Drilling Co., Inc.:					
CI64-468 Cities Service Gas Co.	Undesignated	Kans.	Barber	12 5 63	Iss.
Bowser Gas & Oil Co.:					
CI63-1463 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	10 11 63	Iss.
Bradco Properties, Inc., et al.:					
CI60-88 Transcontinental Gas Pipe Line Corp.	Leleux	La.	Acadia*	12 23 63	Iss.
Braden Drilling Co., Inc.					
CI63-1096 Cities Service Gas Co.	Davis-Ranch Area	Kans.	Barber	11 22 63	Iss.
Edwin G. Bradley, et al.:					
CI60-695 Cities Service Gas Co.	Hardtner	Kans.	Barber	8 6 63	Iss.
The Bradley Producing Corp.:					
CI63-1411 Oklahoma Natural Gas Gathering Corp.	Ringwood	Okla.	Major	9 13 63	Iss.
C. F. Braun & Co.:					
CI63-15 Panhandle Eastern Pipe Line Co.	Undesignated	Okla.	Woods	12 18 63	Iss.
Bridwell Oil Co.:					
CI60-224 Texas San Juan Oil Corp.	Miller*	Tex.	Duval	8 5 63	Iss.
Powel Briscoe, Inc., Operator, et al.:					
CI61-365 Michigan Wisconsin Pipe Line Co.	Laverne	Okla.	Harper	7 2 63	Iss.
M. E. Brister, et al.:					
CI63-1345 Northern Natural Gas Co.	Gate Lake	Okla.	Harper	9 13 63	Iss.
The British-American Oil Producing Co.					
G-18445 Florida Gas Transmission Co.	Shuteston	La.	St. Landry	11 18 63	Iss.
G-18963 Transcontinental Gas Pipe Line Corp.	Wildcat Bayou	La.	Terrebonne	11 18 63	Iss.
CI60-322 Tennessee Gas Transmission Co.	Block 20	La.	Cameron	11 18 63	Iss.
CI61-649 Texas Gas Transmission Corp.	Bayou Sale	La.	St. Mary	11 18 63	Iss.
CI62-1016 Texas Gas Transmission Corp.	Ramos	La.	St. Mary	11 18 63	Iss.
CI63-1470 Michigan Wisconsin Pipe Line Co.	N.E. Cederdale	Okla.	Major	10 30 63	Iss.
Paul L. Britton, Jr., Operator, et al.:					
CI62-732 Consolidated Gas Gathering Corp.	Undesignated	Pa.	Crawford*	7 16 63	Iss.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
George R. Brown, et al.:					
G-18131 Transcontinental Gas Pipe Line Corp.	Sorrento	La.	Ascension	12 26 63	Iss.
George R. Brown, Operator, et al.:					
CI60-580 United Gas Pipe Line Co.	Abbeville	La.	Vermilion	12 26 63	Iss.
Herman Brown:					
CI61-700 Texas Gas Transmission Corp.	North Rousseau	La.	Lafourche	12 26 63	Iss.
James A. Brown, et al.:					
CI64-59 El Paso Natural Gas Co.	Canyon Largo	N. Mex.	Rio Arriba	8 23 63	Iss.
James G. Brown & Assoc.:					
G-18048 Northern Natural Gas Co.	North Richland Center.	Okla.	Texas	10 9 63	Iss.
George L. Buckles:					
CI63-678 El Paso Natural Gas Co.	Langley-Mattix	N. Mex.	Lea	8 5 63	Iss.
Bobby M. Burns:					
CI63-1548 Kansas-Nebraska Natural Gas Co., Inc.	Bijou-South	Colo.	Morgan	7 25 63	Iss.
W. H. Busch, et al.:					
CI64-477 Equitable Gas Co.	Dekalb District	W. Va.	Gilmer	12 5 63	Iss.
Harry D. Bush, et al.:					
CI64-327 Hope Natural Gas Co.	Dekalb District	W. Va.	Gilmer	10 31 63	Iss.
Cabot Corp.:					
CI60-414 United Gas Pipe Line Co.	St. Martinville	La.	St. Martin	10 25 63	Iss.
CI60-499 Southern Natural Gas Co.	Bayou Long	La.	Iberia*	10 25 63	Iss.
Francis E. Cain:					
CI62-1274 Goodnight Gas Co.	Sheridan District	W. Va.	Calhoun	8 6 63	Iss.
Francis E. Cain, et al.:					
CI64-409 Hope Natural Gas Co.	Sheridan District	W. Va.	Calhoun	11 18 63	Iss.
N. Bruce & Curtis E. Calder, Jr.:					
CI63-860 Northern Natural Gas Co.	Horizon	Tex.	Ochiltree	8 5 63	Iss.
N. Bruce Calder & Curtis E. Calder, Jr:					
CI63-1157 Northern Natural Gas Co.	Hansford	Tex.	Hansford	7 02 63	Iss.
CI63-1474 Transwestern Pipeline Co.	Dude Wilson	Tex.	Ochiltree	10 30 63	Iss.
The California Co., A Div. of the California Oil Co.:					
G-16167 Southern Natural Gas Co.	North Bayou Long.	La.	Iberia	8 7 63	Iss.
G-19343 United Gas Pipe Line Co.	Jeanerette	La.	St. Mary	8 7 63	Iss.
CI61-348 Southern Natural Gas Co.	Franklin	La.	St. Mary	8 7 63	Iss.
CI61-628 Texas Gas Transmission Corp.	Bayou Piquant	La.	Terrebonne	8 7 63	Iss.
CI61-629 Texas Gas Transmission Corp.	North Duson	La.	Acadia *	8 7 63	Iss.
CI61-630 Texas Gas Transmission Corp.	S. Thornwell *	La.	Calcasieu *	8 7 63	Iss.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION 1
The California Co., A Division of the California Co.—Con.					
CI63-1224 Texas Gas Transmission Corp.	Downsville	La.	Union	8 28 63	Iss.
CI63-1225 Arkansas Louisiana Gas Co.	Hayti Area	La.	Caddo	8 28 63	Iss.
California College of Arts & Crafts:					
CI63-1527 El Paso Natural Gas Co.	Pegasus Gasoline Plant	Tex.	Midland *	11 12 63	Iss.
Callery Properties, Inc.:					
G-17340 Hope Natural Gas Co.	Little Bayou Pigeon	La.	Iberia	7 17 63	Iss.
G-17341 Hope Natural Gas Co.	West Rayne	La.	Acadia	7 17 63	Iss.
Cal-Ray Petroleum Corp.:					
CI63-16 Panhandle Eastern Pipe Line Co.	Undesignated	Okla.	Woods	12 18 63	Iss.
A. A. Cameron:					
CI64-466 Arkansas Louisiana Gas Co.	Beaver	Okla.	Stephens	12 5 63	Iss.
R. J. Caraway, Operator, et al.:					
CI63-1040 Arkansas Louisiana Gas Co.	Manziel	Tex.	Wood	7 29 63	Iss.
W. T. Carrender:					
CI64-194 Kentucky West Virginia Gas Co.	Undesignated	Ky.	Lawrence	11 12 63	Iss.
Carter-Jones Drilling Co., Operator, et al.:					
CI63-1535 Rio Sabine, Inc.	N. Carthage	Tex.	Panola *	10 31 63	Iss.
Carter-Jones Drilling Co., Inc., Operator:					
G-13245 Texas Eastern Transmission Corp.	Cherokee Lake Area	Tex.	Rusk *	10 9 63	Iss.
Lee Carter, Operator, et al.:					
CI62-360 Banquete Gas Co., a Division of Crestmont	Odem *	Tex.	San Patricio	8 5 63	Iss.
Carthay Land Co.:					
CI64-473 Tennessee Gas Transmission Co.	Frelsburg	Tex.	Colorado	12 5 63	Iss.
Caulkins Oil Co., Operator Agent:					
CI64-209 El Paso Natural Gas Co.	Undesignated	N. Mex.	Rio Arriba	10 15 63	Iss.
Caulkins Oil Co., Operator, et al.:					
CI63-1428 El Paso Natural Gas Co.	Undesignated	N. Mex.	Rio Arriba	10 11 63	Iss.
Champlin Oil & Refining Co.:					
CI62-1389 Oklahoma Natural Gas Gathering Corp.	Ringwood	Okla.	Major	9 17 63	Iss.
Champlin Oil & Refining Co., Operator, et al.:					
CI64-221 Cities Service Gas Co.	Northeast Enid Area	Okla.	Garfield	10 9 63	Iss.
CI64-378 Kansas-Nebraska Natural Gas Co., Inc.	Undesignated	Kans.	Hamilton	11 12 63	Iss.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Cities Service Co., Operator, et al.:					
CI64-341 Texas Eastern Transmission Corp.	London	Tex	Nueces	10 31 63	Iss.
Cities Service Oil Co.:					
G-19559 Trunkline Gas Co	Chocolate Bayou	Tex	Brazoria	10 31 63	Iss.
CI64-136 Arkansas Louisiana Gas Co.	S.E. Guymon	Okla	Kingfisher	11 12 63	Iss.
CI64-482 Northern Natural Gas Co.	Camp Creek	Okla	Beaver	12 5 63	Iss.
N. G. Clark:					
CI63-1232 Equitable Gas Co	Undesignated	W.Va	Lewis	8 6 63	Iss.
Cleary Petroleum, Inc., Operator et al.:					
CI63-1269 Natural Gas Pipeline Co. of America.	S.E. Boyd	Okla	Beaver	8 6 63	Iss.
CI64-183 Natural Gas Pipeline Co. of America.	Camrick	Okla	Beaver	9 19 63	Iss.
CI64-309 Cities Service Gas Co.	Knowles Gas Area	Okla	Beaver	10 31 63	Iss.
Coastal States Gas Producing Co.:					
CI64-133 Trunkline Gas Co	Hayes Field Area	La	Calcasieu [9]	9 6 63	Iss.
Coastal Trend Oil & Gas Corp., Operator, et al.:					
CI63-1510 Tennessee Gas Transmission Co.	Magnet Withers	Tex	Wharton	10 11 63	Iss.
Marvin J. Coles, Agent, et al.:					
CI64-64 Arkansas Louisiana Gas Co.	Northwest Okeene	Okla	Blaine	11 18 63	Iss.
Colorado Oil & Gas Corp.:					
CI60-720 Coastal Transmission Corp.	Opelousas	La	St. Landry	12 18 63	Iss.
CI63-813 Texas Gas Transmission Corp.	North Hayes	La	Calcasieu	12 18 63	Iss.
CI63-1372 Cities Service Gas Co.	Palmer-Mississippian Pool.	Kans	Barber	9 13 63	Iss.
CI63-1565 Trunkline Gas Co	Cage Ranch	Tex	Brooks	11 22 63	Iss.
Colorado Oil & Gas Corp., Operator, et al.:					
CI64-94 Florida Gas Transmission Co.	Savoy	La	St. Landry	9 6 63	Iss.
Columbian Fuel Corp.:					
CI62-1068 Texas Gas Transmission Corp.	Trahan Gas Sand Unit.	La	Lafayette	12 23 63	Iss
CI63-1226 Panhandle Eastern Pipe Line Co.	Undesignated	Okla	Texas	8 6 63	Iss.
CI63-1312 Equitable Gas Co	Undesignated	W. Va	Clay	8 28 63	Iss.
CI63-1317 Texas Gas Transmission Corp.	Midland	La	Acadia	9 13 63	Iss.
CI63-1454 Panhandle Eastern Pipe Line Co.	Guymon-Hugoton	Okla	Texas	10 11 63	Iss.
CI64-425 Northern Natural Gas Co.	Undesignated	Kans	Stevens	11 18 63	Iss.
Commercial Minerals, Inc.:					
CI63-189 Michigan Wisconsin Pipe Line Co.	Laverne	Okla	Harper	8 5 63	Iss.
Commonwealth Gas Corp.:					
CI63-1243 Pampas Petroleum Corp.	Butler District	W. Va	Wayne	10 30 63	Iss.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION 1
Compass Exploration, Inc., Operator, et al.:					
CI64-270 Southern Union Gathering Co.	Basin Dakota	N. Mex.	San Juan	10 15 63	Iss.
CI64-271 Southern Union Gathering Co.	Basin Dakota	N. Mex.	San Juan	10 15 63	Iss.
Glendon Conner:					
CI63-1443 Pennzoil Co.	Jefferson District	W. Va.	Lincoln	12 13 63	Iss.
Consolidated Oil & Gas, Inc.:					
CI63-1061 El Paso Natural Gas Co.	Tapacito*	N. Mex.	Rio Arriba	8 6 63	Iss.
CI63-1310 El Paso Natural Gas Co.	Ignacio-Blanco	Colo.	La Plata	8 28 63	Iss.
Consolidated Oil & Gas, Inc., Operator, et al.:					
CI63-1578 Southern Union Gathering Co.	Blanco Mesaverde*	N. Mex.	San Juan*	8 13 63	Iss.
CI64-4 Southern Union Gathering Co.	Basin Dakota	N. Mex.	San Juan	8 13 63	Iss.
CI64-24 Southern Union Gathering Co.	Blanco Mesaverde*	N. Mex.	San Juan	8 21 63	Iss.
CI64-238 El Paso Natural Gas Co.	Blanco Mesaverde*	N. Mex.	San Juan	10 9 63	Iss.
Continental Oil Co.:					
G-17649 Tennessee Gas Transmission Co.	East Cameron Block 62.	La.	Cameron	8 7 63	Iss.
CI62-1504 Southern Natural Gas Co.	Bayou Pigeon	La.	Iberia	10 31 63	Iss.
CI62-1507 Gas Gathering Co.	Happytown	La.	St. Martin	10 31 63	Iss.
CI62-1513 Texas Gas Transmission Corp.	East Lake Palourde	La.	Assumption	10 31 63	Iss.
CI63-816 El Paso Natural Gas Co.	North Justis	N. Mex.	Lea	8 5 63	Iss.
CI63-1266 Northern Natural Gas Co.	North Hokit	Tex.	Pecos	8 6 63	Iss.
CI63-1512 Cities Service Gas Co.	S.W. Winchester	Okla.	Woods	10 11 63	Iss.
CI64-264 Cities Service Gas Co.	S. Burlington	Okla.	Alfalfa	10 15 63	Iss.
CI64-393 Arkansas Louisiana Gas Co.	West Vixen	Tex.	Caldwell	11 12 63	Iss.
Continental Oil Co., Operator, et al.:					
CI63-1188 Southern Natural Gas Co.	Merit	Miss.	Simpson	7 29 63	Iss.
Cosden Petroleum Corp.:					
CI63-1143 Texas Eastern Transmission Corp.	Saint Armo*	Tex.	Goliad	7 2 63	Iss.
Cowper Brothers Production Co.:					
CI63-902 Cabot Corp.	Murphy District	W. Va.	Ritchie	8 6 63	Iss.
Edwin L. Cox:					
CI63-1520 Cimarron Transmission Co.	Undesignated	Okla.	Love	10 11 63	Iss.
Edwin L. Cox, Operator, et al.:					
CI63-1223 Lone Star Gas Co.	Sho-Vel-Tum	Okla.	Stephens	8 6 63	Iss.
John L. Cox:					
CI63-1283 El Paso Natural Gas Co.	Spraberry Trend Area.	Tex.	Reagan	8 28 63	Iss.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[2] DOCKET NO. AND PURCHASER [3]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
John L. Cox, Operator, et al.:					
CI61-1435 El Paso Natural Gas Co.	Spraberry Trend Area.	Tex	Reagan	7 2 63	Iss.
Crescent Oil & Gas Co., Operator, et al.:					
CI63-1382 Texas Eastern Transmission Corp.	Garwood	Tex	Colorado	9 13 63	Iss.
Crest Exploration Co.:					
CI63-1390 Natural Gas Pipeline Co. of America.	N.W. Dower	Okla	Beaver	9 13 63	Iss.
CI64-306 Northern Natural Gas Co.	Ellis Ranch	Tex	Ochiltree	10 31 63	Iss.
Crown Central Petroleum Corp.:					
G-16907 United Gas Pipe Line Co.	N. Leroy	La	Vermilion	9 13 63	Iss.
Cushing Gas Transmission Co.:					
CI63-38 Cities Service Gas Co.	Undesignated	Okla	Lincoln*	7 29 63	Iss.
Beulah K. Darby:					
CI64-518 United Gas Pipe Line Co.	Cotton Valley	La	Webster	12 13 63	Iss.
Virgil E. Dougherty, et al.:					
CI64-319 Hope Natural Gas Co.	Washington District.	W. Va	Calhoun	10 31 63	Iss.
Davidor & Davidor, Inc.:					
CI63-775 Cities Service Gas Co.	N.W. Doby Springs	Okla	Harper	8 5 63	Iss.
Davidor & Davidor, Inc., Operator, et al.:					
CI64-456 Cities Service Gas Co.	N.E. Selman	Okla	Harper	11 29 63	Iss.
Daryl Davis, et al.:					
CI64-448 Colorado Interstate Gas Co.	S.E. Burton	Okla	Cimarron	11 29 63	Iss.
William K. Davis, Operator, et al.:					
CI64-356 Texas Eastern Transmission Corp.	Cosden	Tex	Bee	10 31 63	Iss.
Davon Drilling Co., et al.:					
CI63-726 Panhandle Eastern Pipe Line Co.	Northwest Oakdale*	Okla	Woods*	12 18 63	Iss.
C. W. Day, Jr., et al.:					
CI63-827 Hope Natural Gas Co.	Central District	W. Va	Doddridge	8 5 63	Iss.
Devonian Gas & Oil Co.:					
CI63-1440 Equitable Gas Co.	Birch District	La	Braxton	10 11 63	Iss.
J. C. Dicks:					
CI64-85 Hope Natural Gas Co.	McClellan District	W. Va	Doddridge	8 30 63	Iss.
A. R. Dillard, Operator, et al.:					
CI64-396 Panhandle Eastern Pipe Line Co.	Hansford Lower Missouri.	Tex	Hansford	11 29 63	Iss.
Herbert L. Dillon, Jr., Operator, et al.:					
CI63-1365 Valley Gas Transmission, Inc.	Lissie	Tex	Wharton	10 30 63	Iss.
Dixie Natural Gas Corp.:					
CI63-31 Equitable Gas Co.	Glenville District	W. Va	Gilmer	8 5 63	Iss.
Dorchester Gas Producing Co.:					
CI63-1146 Western Gas Service Co.	Guymon-Hugoton	Okla	Texas	11 22 63	Iss.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION !
Dorchester Gas Producing Co.—Continued					
CI63-1306 Northern Natural Gas Co.	White Deer	Tex.	Gray	8 28 63	Iss.
Elizabeth F. Dorfman Trust, et al.:					
CI62-1279 Arkansas Louisiana Gas Co.	Willow Springs	Tex.	Gregg	8 5 63	Iss.
CI62-1280 Arkansas Louisiana Gas Co.	South Hallesville	Tex.	Harrison	8 5 63	Iss.
CI62-1281 Arkansas Louisiana Gas Co.	North Lensing	Tex.	Harrison	8 5 63	Iss.
D. A. Dorward, et al.:					
CI64-331 Hope Natural Gas Co.	Glenville District	W. Va.	Gilmer	10 31 63	Iss.
Leslie F. Dotson:					
CI64-77 Penova Interests.	Murphy District	W. Va.	Ritchie	8 30 63	Iss.
Claude Drake, Jr., et al.:					
CI63-1579 United Fuel Gas Co.	Undesignated	W. Va.	Roane	8 6 63	Iss.
CI64-422 United Fuel Gas Co.	Geary District	W. Va.	Roane	11 18 63	Iss.
Walter Duncan:					
CI64-49 El Paso Natural Gas Co.	Basin Dakota	N. Mex.	San Juan	9 6 63	Iss.
Duquesne Natural Gas Co., Operator:					
CI62-923 United Fuel Gas Co.	Undesignated	Ky.	Lawrence	8 28 63	Iss.
Earlsboro Oil & Gas Co., Inc., Agent, et al.:					
CI63-1506 Arkansas Louisiana Gas Co.	S. W. Hurter	Okla.	Garfield	10 11 63	Iss.
Eason Oil Co., et al.:					
CI63-1314 United Fuel Gas Co.	Bourg	La.	Lafourche*	9 13 63	Iss.
E. K. Edmiston:					
CI64-397 Cities Service Gas Co.	Aetna Mississippi Gas Pool.	Kans.	Barber	11 12 63	Iss.
El Paso Natural Gas Products Co.:					
CI64-227 Arkansas Louisiana Gas Co.	Ames Area	Okla.	Major	9 27 63	Iss.
Nancy Lee Elliott:					P
CI63-1237 El Paso Natural Gas Co.	Undesignated	N. Mex.	Rio Arriba	8 6 63	Iss.
R. W. Fair, Operator, et al.:					
CI64-58 Arkansas Louisiana Gas Co.	Manziel	Tex.	Wood	8 30 63	Iss.
Fairfax Oil & Gas Corp.:					
CI64-200 Colorado Interstate Gas Co.	Hugoton	Kans.	Kearny*	10 9 63	Iss.
Falcon Seaboard Drilling Co.:					
CI63-904 Panhandle Eastern Pipe Line Co.	S. Lenora	Okla.	Dewey	12 18 63	Iss.
Falcon Seaboard Drilling Co., Operator, et al.:					
CI61-433 American Louisiana Pipe Line Co.	Shuteston	La.	St. Landry	10 25 63	Iss.
CI63-1484 Northern Natural Gas Co.	Kiowa Creek	Tex.	Lipscomb	10 30 63	Iss.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
John O. Farmer, Inc., Operator, et al.:					
CI64-417 Cities Service Gas Co.	Undesignated	Kans	Barber	11 18 63	Iss.
Martha Featherstone:					
CI63-1433 Colorado Interstate Gas Co.	Patrick Draw Area	Wyo	Sweetwater	8 12 63	Rej.
Olen F. Featherstone:					
CI64-20 El Paso Natural Gas Co.	Gallegos Gallup Sand Unit.	N. Mex	San Juan	8 21 63	Iss.
Felmont Oil Corp.:					
CI64-308 The Manufacturers Light and Heat Co., et al.	Five Forks	Pa	Bedford	10 31 63	Iss.
Bill Ferguson:					
CI63-1336 Northern Natural Gas Co.	McMinimy Unit 1-A.	Kans	Clark	9 13 63	Iss.
CI64-402 Panhandle Eastern Pipe Line Co.	Undesignated	Kans	Kingman	11 12 63	Iss.
Ferguson Oil Co., Inc.:					
CI64-517 Lone Star Gas Co.	Undesignated	Okla	Stephens	12 13 63	Iss.
R. H. Feuille:					
CI64-434 El Paso Natural Gas Co.	San Juan	N. Mex	San Juan	11 18 63	Iss.
First Transportation Gas Corp., Inc.:					
CI63-346 Michigan Wisconsin Pipe Line Co.	Laverne	Okla	Harper*	9 13 63	Iss.
J. M. Flaitz, et al.:					
CI63-225 Coastal Transmission Corp.	Bayou Mallet	La	Acadia	9 13 63	Iss.
Flanigan Bros., Operator and Agent, et al.:					
CI62-999 Consolidated Gas Gathering Corp.	Undesignated	Pa	Erie*	7 16 63	Iss.
S. L. Florsheim, et al.:					
CI63-1541 Rio Sabine, Inc.	North Carthage	Tex	Panola	9 12 63	Iss.
Flournoy Production Co., Operator, et al.:					
CI63-1305 United Gas Pipe Line Co.	N. McFaddin area	Tex	Victoria	8 28 63	Iss.
Durl Fluharty, et al.:					
CI63-896 Hope Natural Gas Co.	Center District	W. Va	Calhoun	8 5 63	Iss.
James A. Ford.:					
CI63-838 Texas Gas Transmission Corp.	Northeast Bethany	Tex	Panla*	8 5 63	Iss.
CI64-441 Texas Gas Transmission Corp.	N.E. Bethany	Tex	Panla	11 29 63	Iss.
J. W. Frame, Operator, et al.:					
CI63-1471 United Fuel Gas Co.	Elk District	W. Va	Kanawha	10 30 63	Iss.
J. R. Frankel, et al.:					
G-13197 Transcontinental Gas Pipe Line Corp.	N. Thibodaux	La	Lafourche	7 17 63	Iss.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION ‡
John Franks, Operator, et al.:					
CI62-1091 Arkansas Louisiana Gas Co.	Bear Creek	La.	Bienville	9 17 63	Iss.
CI62-1099 Arkansas Louisiana Gas Co.	Bear Creek	La.	Bienville	9 17 63	Iss.
CI63-1109 Texas Gas Transmission Corp.	Terryville-Ruston Area	La.	Lincoln	7 29 63	Iss.
CI64-190 Texas Gas Transmission Corp.	N.E. Cotton Valley Area.	La.	Webster	9 19 63	Iss.
Stanley Fritz & Harold Pyle, Operator, et al.:					
CI63-1252 Texas Gas Transmission Corp.	Midland Area	Ky.	Muhlenberg	8 6 63	Iss.
Roy Fulks, et al.:					
CI64-531 Hope Natural Gas Co.	Baileysville District.	W. Va.	Wyoming	12 26 63	Iss.
E. L. Fundingsland, Operator, et al.:					
CI63-1536 El Paso Natural Gas Co.	Dakota Formation	N. Mex.	Rio Arriba	11 22 63	Iss.
D. L. Gainer:					
CI64-421 Cabot Corp.	Sheridan District	W. Va.	Calhoun	11 18 63	Iss.
D. L. Gainer, et al.:					
CI63-1499 Hope Natural Gas Co.	Sheridan District	W. Va.	Calhoun	10 11 63	Iss.
J. B. Gardner:					
CI62-381 Banquete Gas Co., a Division of Crestmont.	Odem*	Tex.	San Patricio	8 5 63	Iss.
H. J. Geerlings:					
CI63-1214 El Paso Natural Gas Co.	Basin Dakota	N. Mex.	San Juan	8 6 63	Iss.
General American Oil Co. of Texas:					
CI61-54 Transcontinental Gas Pipe Line Corp.	Block 45	La.	Cameron	10 31 63	Iss.
CI61-217 Tennessee Gas Transmission Co.	West Delta Farms	La.	Lafourche	10 31 63	Iss.
CI61-316 United Gas Pipe Line Co.	Crescent Farms*	La.	Terrebonne	10 31 63	Iss.
CI64-30 Ashland Oil & Refining Co.	Undesignated	La.	Union	8 21 63	Iss.
Geological, Geophysical Assoc., Inc., Operator, et al.:					
CI61-1519 Tennessee Gas Transmission Co.	Brenton Sound Area.	La.	St. Bernard	12 26 63	Iss.
H. M. Gillespie:					
CI63-1422 Cities Service Gas Co.	Hugoton Gas	Kans.	Kearny	10 31 63	Iss.
Delbert Goff, et al.:					
CI63-828 Hope Natural Gas Co.	Glenville District.	W. Va.	Gilmer	8 5 63	Iss.
CI63-829 Hope Natural Gas Co.	Court House District.	W. Va.	Lewis	8 5 63	Iss.
CI63-859 Hope Natural Gas Co.	Court House District.	W. Va.	Lewis	8 5 63	Iss.
J. Everett Goffinet, et al.:					
CI64-491 Hope Natural Gas Co.	Grant District	W. Va.	Ritchie	12 13 63	Iss.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[3] DOCKET NO. AND PURCHASER [3]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
I. B. Goodman:					
G-20050 El Paso Natural Gas Co.	Rhodes Pool	N. Mex.	Lea	8 5 63	Dis.
George W. Graham, Inc.:					
CI63-1326 Texas Eastern Transmission Corp.	West Rockport	Tex.	Aransas	9 13 63	Iss.
Graham-Michaelis Drilling Co., Inc.:					
CI61-175 Panhandle Eastern Pipe Line Co., et al.	Greenwood	Kans.	Morton	10 9 63	Iss.
CI63-1070 Kansas-Nebraska Natural Gas Co., Inc.	Camrick	Okla.	Texas	8 6 63	Iss.
CI63-1330 Colorado Interstate Gas Co.	Mocane	Okla.	Beaver	10 11 63	Iss.
CI63-1516 Natural Gas Pipeline Co. of America.	Southwest Hooker	Okla.	Texas	10 31 63	Iss.
Graham-Michaelis Drilling Co., Operator, et al.:					
CI63-711 Colorado Interstate Gas Co.	Greenwood	Kans.	Morton	9 13 63	Iss.
The Grantley Co.:					
CI62-731 Consolidated Gas Gathering Corp.	Undesignated	Pa*	Erie*	7 16 63	Iss.
CI64-104 Lake Shore Pipe Line Co.	Conneaut Township.	Pa.	Erie	9 6 63	Iss.
The Grantley Co., Operator, et al.:					
CI64-138 Lake Shore Pipe Line Co.	Conneaut Township.	Pa.	Erie	9 19 63	Iss.
Graridge Corp.:					
G-19246 Texas Gas Transmission Corp.	Mallard Bay	La.	Cameron	10 31 63	Iss.
Great Lakes Natural Gas Co., Inc.:					
CI62-730 Consolidated Gas Gathering Corp.	Undesignated	Pa.	Erie*	7 16 63	Iss.
Melba Jean Davis Greenlee:					
CI63-1378 El Paso Natural Gas Co.	Undesignated	Tex.	Reagan	10 11 63	Iss.
Jack W. Grigsby, Operator, et al.:					
CI64-29 United Gas Pipe Line Co.	Bear Creek	La.	Bienville	8 21 63	Iss.
CI64-469 Florida Gas Transmission Co.	Opelousas	La.	St. Landry	12 5 63	Iss.
William Gruenerwald & Association, Inc., et al.:					
CI64-22 Colorado Interstate Gas Co.	Panhandle Field of Texas.	Tex.	Moore	8 21 63	Iss.
William Gruenerwald, Operator, et al.:					
CI63-1352 Panhandle Eastern Pipe Line Co.	Kismet	Kans.	Seward*	9 13 63	Iss.
Gulf Coast Minerals Management Corp., Operator, et al.:					
CI60-283 Texas San Juan Oil Corp.	Miller*	Tex.	Duval	8 5 63	Iss.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[2] DOCKET NO. AND PURCHASER [2]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Gulf Oil Corp.:					
G–16949 El Paso Natural Gas Co.	Anna	Utah	San Juan	8 6 63	Iss.
G–18019 Texas Eastern Transmission Corp.	Willow Springs	Tex	Gregg	10 9 63	Wtd.
G–19062 Tennessee Gas Transmission Co.	Lake Washington	La	Plaquemines	10 9 63	Iss.
G–19435 El Paso Natural Gas Co.	Dry Piney	Wyo	Sublette	8 6 63	Iss.
G–19467 Tennessee Gas Transmission Co.	Southeast Pass	La	Plaquemines	10 9 63	Iss.
G–20383 Trunkline Gas Co.	Sarah White	Tex	Galveston	8 6 63	Iss.
CI60–43 United Gas Pipe Line Co.	Bastian Bay	La	Plaquemines	7 17 63	Iss.
CI60–54 Tennessee Gas Transmission Co.	Lower Mud Lake	La	Cameron	10 9 63	Iss.
CI60–361 Panhandle Eastern Pipe Line Co.	Boyer Pool	Kans	Meade	8 28 63	Iss.
CI60–440 Southern Natural Gas Co.	Felice Bayou	La	Plaquemines	10 9 63	Iss.
CI60–824 Trunkline Gas Co.	Lake Misere Field Area.	La	Cameron	10 9 63	Iss.
CI61–716 American Louisiana Pipe Line Co.	Krotz Springs	La	St. Landry	10 9 63	Iss.
CI61–1562 Trunkline Gas Co.	Esther Field Area	La	Vermilion	10 9 63	Iss.
CI61–1630 Transcontinental Gas Pipe Line Corp.	Vermilion South Marsh Island.[6]	La	Offshore	10 9 63	Iss.
CI62–62 United Gas Pipe Line Co.	North Leroy	La	Vermilion	10 9 63	Iss.
CI62–411 Trunkline Gas Co.	South Mermentau Field.	La	Acadia	10 9 63	Iss.
CI62–412 United Gas Pipe Line Co.	Hollywood	La	Terrebonne	10 9 63	Iss.
CI62–859 Texas Gas Transmission Corp.	Duson	La	Lafayette	10 9 63	Iss.
CI62–965 United Gas Pipe Line Co.	Garden City	La	St. Mary	10 9 63	Iss.
CI63–770 Panhandle Eastern Pipe Line Co.	N. W. Avard	Okla	Woods	12 18 63	Iss.
CI63–1055 Panhandle Eastern Pipe Line Co.	Northwest Borchers	Kans	Meade	7 2 63	Iss.
CI63–1264 Texas Gas Transmission Corp.	Downsville	La	Union	8 28 63	Iss.
CI63–1431 Northern Natural Gas Co.	Hansford Upper Morrow	Tex	Hansford	9 13 63	Iss.
CI63–1572 Panhandle Eastern Pipe Line Co.	Northwest Borchers	Kans	Meade	8 6 63	Iss.
CI64–26 Texas Eastern Transmission Corp.	West Delta Block 27.[6]	La	Plaquemines	12 19 63	Iss.
CI64–47 Cities Service Gas Co.	N. W. Quinlan	Okla	Woodward	8 23 63	Iss.
CI64–201 El Paso Natural Gas Co.	West Jal Strong Gas Pool.	N. Mex	Lea	10 31 63	Iss.
CI64–384 Cities Service Gas Co.	Laketon	Tex	Gray	11 12 63	Iss.
CI64–386 Northern Natural Gas Co.	Bechtold	Tex	Lipcomb	11 12 63	Iss.
Gulf Oil Corp., Operator & Agent, et al.:					
CI63–1149 Arkansas Louisiana Gas Co.	S.E. Custer City Area	Okla	Custer	10 30 63	Iss.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[2] DOCKET NO. AND PURCHASER [3]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Gulf Oil Corp., Operator, et al.:					
CI60-412 Coastal Transmission Corp.	Chenango*	Tex.	Brazoria	8 6 63	Iss.
Carl E. Gungoll, et al.:					
CI63-1228 Oklahoma Natural Gas Gathering Corp.	Ringwood	Okla.	Major	9 13 63	Iss.
H & H Oil & Gas Co.:					
CI63-795 Cabot Corp.	Washington District.	W. Va.	Calhoun	9 13 63	Iss.
CI64-37 Arkansas Louisiana Gas Co.	Monroe	La.	Union	8 21 63	Iss.
Hadson Oil & Gas Co., Operator, et al.:					
CI63-1054 Kansas-Nebraska Natural Gas Co., Inc.	Bradshaw-Wedel	Kans.	Hamilton	9 13 63	Iss.
Zora A. Hafer:					
CI61-1714 South Penn Natural Gas Co.	Elk District	W. Va.	Kanawha	9 17 63	Iss.
Joseph H. Hager:					
CI63-1289 United Fuel Gas Co.	Henay District	W. Va.	Clay	8 28 63	Iss.
Michel T. Halbouty:					
CI60-700 American Louisiana Pipe Line Co.	South Eunice	La.	Acadia	10 25 63	Iss.
James H. Hall:					
CI64-91 Hope Natural Gas Co.	Freemans Creek District	W. Va.	Lewis	8 30 63	Iss.
Frederick C. & Ferris F. Hamilton:					
CI63-1044 Kansas-Nebraska Natural Gas Co., Inc.	Undesignated	Kans.	Hamilton	7 29 63	Iss.
John M. Hamilton, et al.:					
CI64-347 Trunkline Gas Co.	Almond*	Tex.	Jim Wells	10 31 63	Iss.
Jake L. Hamon:					
CI64-291 Northern Natural Gas Co.	Baggerly Gas Unit	Okla.	Beaver	10 15 63	Iss.
CI64-540 Arkansas Louisiana Gas Co.	North Spiro	Okla.	Haskell	12 26 63	Iss.
Jake L. Hamon, Operator, et al.:					
CI63-1362 South Texas Natural Gas Gathering Corp.	Santo Nino	Tex.	Duval*	9 13 63	Iss.
Hanley Co., Operator, et al.:					
G-15694 El Paso Natural Gas Co.	Spraberry Trend	Tex.	Midland*	9 17 63	Iss.
Hanlon Oil Co.:					
CI64-328 Hope Natural Gas Co.	Clay District	W. Va.	Ritchie	10 31 63	Iss.
Don W. Hardman, Agent:					
CI63-863 Hope Natural Gas Co.	DeKalb District	W. Va.	Gilmer	8 5 63	Iss.
CI63-865 Hope Natural Gas Co.	Union District	W. Va.	Ritchie	8 5 63	Iss.
CI64-72 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	8 23 63	Iss.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION 1
Don W. Hardman, et al.:					
CI64-314 Hope Natural Gas Co.	Union District	W. Va.	Ritchie	10 31 63	Iss.
CI64-430 Hope Natural Gas Co.	Union District	W. Va.	Ritchie	11 18 63	Iss.
Harkins & Co., Operator, et al.:					
CI63-1552 Texas Eastern Transmission Corp.	City of Alice	Tex.	Jim Wells	7 25 63	Iss.
CI64-348 Texas Eastern Transmission Corp.	McKeown	Tex.	San Patricio	10 31 63	Iss.
Harper Oil Co.:					
CI63-1139 Arkansas Louisiana Gas Co.	N. Drummond Area	Okla.	Garfield*	10 11 63	Iss.
Harper Oil Co., Operator:					
CI62-1245 Arkansas Louisiana Gas Co., et al.	Chickasha*	Okla.	Grady*	8 5 63	Iss.
Harper Oil & Gas Co.:					
CI63-1521 Commonwealth Gas Corp.	Washington District.	W. Va.	Calhoun	7 9 63	Rej.
CI63-1522 Godfrey L. Cabot, Inc.	Washington District.	W. Va.	Calhoun	10 30 63	Iss.
D. D. Harrington, et al.:					
CI63-281 Phillips Petroleum Co.	Panhandle	Tex.	Moore	8 5 63	Iss.
Neva L. Harris, et al.:					
CI63-794 Northern Natural Gas Co.	Undesignated	Okla.	Beaver	8 5 65	Iss.
Russell W. Harvey, et al.:					
CI64-383 Equitable Gas Co.	Union District	W. Va.	Ritchie	11 12 63	Iss.
Glenn L. Haught, Agent:					
CI63-1245 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	8 6 63	Iss.
Glenn L. Haught, et al.:					
CI63-898 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	8 5 63	Iss.
CI63-1247 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	8 6 63	Iss.
CI64-429 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	11 18 63	Iss.
L. E. Haught, et al.:					
CI64-551 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	12 26 63	Iss.
Hawn Brothers, Operator, et al.:					
CI60-662 Banquete Gas Co., A Division of Crestmont.	South Saint Paul	Tex.	San Patricio	8 5 63	Iss.
Hugh A. Hawthorne, Operator, et al.:					
CI64-41 Texas Gas Transmission Corp.	North Tepetate	La.	Acadia	8 21 63	Iss.
Hays & Co., Agent:					
CI63-1234 Equitable Gas Co.	Clay District	W. Va.	Harrison	8 6 63	Iss.
CI63-1413 Equitable Gas Co.	Southwest District	W. Va.	Doddridge	9 13 63	Iss.
CI63-1471 Hope Natural Gas Co.	DeKalb District	W. Va.	Gilmer	10 11 63	Iss.
CI64-81 Hope Natural Gas Co.	Center District	W. Va.	Gilmer	8 30 63	Iss.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION 1
Hays & Co., Agent—Continued					
CI64-93 Hope Natural Gas Co.	Collins Settlement	W. Va.	Lewis	8 30 63	Iss.
CI64-210 United Fuel Gas Co.	Geary District	W. Va.	Roane	9 27 63	Iss.
CI64-374 Equitable Gas Co.	Birch District	W. Va.	Braxton	10 31 63	Iss.
CI64-529 Hope Natural Gas Co.	Warren District	W. Va.	Upshur	12 26 63	Iss.
Minnie Bell Heep, et al.:					
CI61-437 Banquete Gas Co., a Division of Crestmont.	Plymouth*	Tex.	San Patricio	8 5 63	Iss.
H. C. Heldenfels:					
CI63-1568 Banquete Gas Co., a Division of Crestmont.	Undesignated	Tex.	San Patricio	7 25 63	Iss.
Thomas K. Hendrick, Operator, et al.:					
CI63-1199 Arkansas Louisiana Gas Co.	Erick	Okla.	Beckham	9 13 63	Iss.
James W. Hershberger:					
CI63-1421 Cities Service Gas Co.	Antelope East Mississippi.	Kans.	Marion	9 17 63	Iss.
B. M. Hester:					
CI63-1377 Texas Gas Transmission Corp.	S. Bayou Mallet	La.	Acadia	9 13 63	Iss.
Roy G. Hildreth, Jr., et al.:					
CI64-92 Hope Natural Gas Co.	Spencer District	W. Va.	Roane	8 30 63	Iss.
CI64-289 United Fuel Gas Co.	Geary District	W. Va.	Roane	10 15 63	Iss.
Va Roy Hildreth, et al.:					
CI64-330 Hope Natural Gas Co.	Spencer District	W. Va.	Roane	10 31 63	Iss.
George T. Hill, Agent					
CI64-530 Hope Natural Gas Co.	Freemans Creek District.	W. Va.	Lewis	12 26 63	Iss.
Jack Hobson, et al.:					
CI64-408 Hope Natural Gas Co.	Grant District	W. Va.	Ritchie	11 18 63	Iss.
T. F. Hodge, Operator, et al.:					
CI63-1130 Arkansas Louisiana Gas Co.	Ada	La.	Bienville	7 29 63	Iss.
Robert L. Holland, et al.:					
CI63-864 Hope Natural Gas Co.	New Milton District.	W. Va.	Doddridge	8 5 63	Iss.
CI64-218 Equitable Gas Co.	Grant District	W. Va.	Doddridge	9 27 63	Iss.
Hollandsworth & Travis, Operator, et al.:					
CI61-1793 Mississippi River Fuel Corp.	Woodlawn	Tex.	Harrison	7 29 63	Iss.
J. H. Holt, et al.:					
CI64-454 Hope Natural Gas Co.	Greenbrier District	W. Va.	Doddridge	11 29 63	Iss.
Ernest L. Hoyle, Trustee:					
CI64-118 Equitable Gas Co.	McElroy District	W. Va.	Tyler	9 6 63	Iss.
J. M. Huber Corp.:					
CI61-811 Anadarko Production Co.	Interstate	Kans.	Morton	7 29 63	Iss.
CI63-1043 Michigan Wisconsin Pipe Line Co.	Woodward area	Okla.	Dewey	9 13 63	Iss.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION 1
J.M. Huber Corp.—Con.					
CI63-1475 Panhandle Eastern Pipe Line Co.	Undesignated	Kans	Seward	10 11 63	Iss.
CI63-1557 Panhandle Eastern Pipe Line Co.	Undesignated	Okla	Beaver	7 25 63	Iss.
CI64-197 Panhandle Eastern Pipe Line Co.	Undesignated	Okla	Woods	12 18 63	Iss.
CI64-435 Northern Natural Gas Co.	Logan*	Okla*	Harper*	11 29 63	Iss.
T. C. Huddle, et al.:					
G-11183 Texas Eastern Transmission Corp.	Meyersville	Tex	De Witt	7 2 63	Iss.
Hudson Gas & Oil Corp., Operator, et al.:					
G-8938 Tennessee Gas Transmission Co.	West Delta Farms	La	Lafourche	10 31 63	Iss.
Huffman & Malloy Consolidated, Ltd. Partnership:					
CI63-1518 Natural Gas Pipeline Co. of America.	Camrick	Okla	Beaver	10 11 63	Iss.
Humble Oil & Refining Co.:					
G-14967 United Fuel Gas Co.	Florence	La	Vermilion	8 7 63	Iss.
G-15227 United Gas Pipe Line Co.	American Island*	La	Unnamed	8 7 63	Iss.
G-17349 United Gas Pipe Line Co.	Yellow Bayou Area	La	St. Mary	8 7 63	Iss.
G-17570 United Gas Pipe Line Co.	N. E. Gibson	La	Terrebonne	8 7 63	Iss.
G-17772 Transcontinental Gas Pipe Line Corp.	Sorrento	La	Ascension	8 7 63	Iss.
G-18547 United Gas Pipe Line Co.	Chacahoula	La	Lafourche	8 7 63	Iss.
G-18714 Tennessee Gas Transmission Co.	West Delta Block 30.	La	Plaquemines	8 7 63	Iss.
G-18715 Tennessee Gas Transmission Co.	Lake Washington	La	Plaquemines	8 7 63	Iss.
G-18716 Tennessee Gas Transmission Co.	S.W. Pass	La	Plaquemines	8 7 63	Iss.
G-19800 United Gas Pipe Line Co.	Bayou Chauvin	La	Terrebonne	8 7 62	Iss.
G-20019 Tennessee Gas Transmission Co.	Clovelly	La	Lafourche	8 7 63	Iss.
CI60-96 Tennessee Gas Transmission Co.	South Timbalier Block 54.	La	Offshore	8 7 63	Iss.
CI60-531 Tennessee Gas Transmission Co.	La Blanc	La	Vermilion	8 7 63	Iss.
CI60-623 United Gas Pipe Line Co.	Belle River	La	St. Martin	8 7 63	Iss.
CI61-397 Tennessee Gas Transmission Co.	Little Lake*	La	Lafourche	8 7 63	Iss.
CI61-425 Southern Natural Gas Co.	South Little Lake*	La	Lafourche*	8 7 63	Iss.
CI61-1176 Tennessee Gas Transmission Co.	Bully Camp	La	Lafourche*	8 7 63	Iss.
CI62-69 Transcontinental Gas Pipe Line Corp.	Ship Shoal Area	La	Offshore	8 7 63	Iss.
CI62-70 Trunkline Gas Co.	South Mermentau	La	Acadia	8 7 62	Iss.
CI62-847 El Paso Natural Gas Co.	Spraberry Area	Tex	Midland*	8 5 63	Iss.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Humble Oil & Refining Co.—Con.					
CI63-455 United Gas Pipe Line Co.	Duck Lake	La.	St. Martin	8 7 63	Iss.
CI63-635 Southern Natural Gas Co.	Pointe-A-La-Hache.*	La.	Plaquemines	8 7 63	Iss.
CI63-755 Hope Natural Gas Co.	Charenton	La.	St. Mary	8 7 63	Iss.
CI63-1120 Natural Gas Pipeline Co. of America.	Camrick	Okla.	Beaver	7 29 63	Iss.
CI63-1162 Northern Natural Gas Co.	Como	Okla.	Beaver	7 2 63	Iss.
CI63-1163 Lone Star Gas Co.	Sho-Vel-Tum Area	Okla.	Stephens	7 2 63	Iss.
CI63-1453 Natural Gas Pipeline Co. of America.	S. Lundell Field Area.	Tex.	Duval	10 11 63	Iss.
CI63-1542 Mountain Fuel Supply Co.	Vermilion Creek	Wyo.	Sweetwater	9 6 63	Iss.
CI64-5 United Fuel Gas Co.	Garden City*	La.	St. Mary*	11 15 63	Iss.
CI64-86 Natural Gas Pipeline Co. of America.	Camrick	Okla.	Beaver	8 30 63	Iss.
CI64-164 Northern Natural Gas Co.	Hansford Pool	Tex.	Hansford	9 19 63	Iss.
CI64-340 El Paso Natural Gas Co.	Blanco	Colo.	La Plata	10 31 63	Iss.
Humble Oil & Refining Co., Operator, et al.:					
CI60-177 Tennessee Gas Transmission Co.	Little Temple	La.	Lafourche*	8 7 63	Iss.
CI62-619 Western Gas Service Co.	Mocane-Lock	Okla.	Beaver	11 22 63	Iss.
H. L. Hunt:					
CI64-117 Arkansas Louisiana Gas Co.	Anthon Area	Okla.	Custer	11 18 63	Iss.
Hassie Hunt Trust:					
G-14109 Transcontinental Gas Pipe Line Corp.	Rousseau	La.	Lafourche	7 17 63	Iss.
Hunt Oil Co., Operator, et al.:					
CI63-1045 Arkansas Louisiana Gas Co.	Anthon Area	Okla.	Custer	10 30 63	Iss.
W. C. Hurtt:					
CI63-1406 Equitable Gas Co.	Glenville District	W. Va.	Gilmer	9 13 63	Iss.
CI64-467 Equitable Gas Co.	Glenville District	W. Va.	Gilmer	12 5 63	Iss.
William C. Hurtt, et al.:					
CI64-525 Hope Natural Gas Co.	Hamilton District	W. Va.	Nicholas	12 13 63	Iss.
Husky Oil Co., Operator, et al.:					
CI61-1574 Montana-Dakota Utilities Co.	Manderson-Slick Creek Area.	Wyo.	Big Horn	9 17 63	Iss.
H. L. Ice, Agent:					
CI63-1498 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	10 11 63	Iss.
H. L. Ice, et al.:					
CI64-369 Equitable Gas Co.	Murphy District	W. Va.	Ritchie	10 31 63	Iss.
Henry S. Inger:					
CI63-1494 Panhandle Eastern Pipe Line Co.	Wil	Kans.	Edwards	10 11 63	Iss.
CI64-15 Panhandle Eastern Pipe Line Co.	Wil	Kans.	Edwards	10 15 63	Iss.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
International Oil Corp.:					
CI62-369 El Paso Natural Gas Co.	Spraberry	Tex.	Midland*	8 5 63	Iss.
International Oil Corp., Operator, et al.:					
G-14833 El Paso Natural Gas Co.	Blanco	N. Mex.	Rio Arriba	8 5 63	Iss.
CI62-851 El Paso Natural Gas Co.	Blanco	N. Mex.	Rio Arriba	8 5 63	Iss.
S. W. Jack Drilling Co., et al.:					
CI63-1571 Equitable Gas Co.	Meade District	W. Va.	Upshur	8 6 63	Iss.
George Jackson, et al.:					
CI63-1158 Cumberland & Allegheny Gas Co.	Meade District	W. Va.	Upshur	7 2 63	Iss.
Lloyd G. Jackson, et al.:					
CI63-894 Hope Natural Gas Co.	Clark* Districts	W. Va.	Harrison	9 13 63	Iss.
Javelin Oil Co.:					
CI63-1529 United Gas Pipe Line Co.	Bethany	Tex.	Harrison	10 11 63	Iss.
Jefferson Lake Sulphur Co., Operator, et al.:					
G-14307 Texas Gas Transmission Corp., et al.	Maxie*	La.	Acadia	10 31 63	Iss.
Theodore R. Johnson:					
CI64-333 Northern Natural Gas Co.	Undesignated	Tex.	Hansford	12 13 63	Iss.
Edwin M. Jones Oil Co.:					
CI62-1079 United Gas Pipe Line Co.	North Hondo Creek.	Tex.	Karnes	8 5 63	Iss.
CI62-1080 Natural Gas Pipeline Co. of America.	Clayton	Tex.	Live Oak	8 5 63	Iss.
CI62-1201 Texas Eastern Transmission Corp.	Dunn	Tex.	Live Oak	8 5 63	Iss.
CI62-1393 Texas Eastern Transmission Corp.	Englehart	Tex.	Colorado	8 5 63	Iss.
CI62-1394 Transcontinental Gas Pipe Line Corp.	Greta	Tex.	Refugio	8 5 63	Iss.
Edwin M. Jones Oil Co., et al.:					
CI62-1438 Texas Eastern Transmission Corp.	West George West	Tex.	Live Oak	8 5 63	Iss.
Gerald D. Jones, et al.:					
CI64-532 Hope Natural Gas Co.	Lee District	W. Va.	Calhoun	12 26 63	Iss.
Kaas-Brewer Drillers & Producers, Inc., et al.:					
CI63-1311 Equitable Gas Co.	Union District	W. Va.	Ritchie	9 13 63	Iss.
Herman George Kaiser:					
CI60-74 Michigan Wisconsin Pipe Line Co.	Nichols	Kans.	Kiowa	8 28 63	Iss.
Kansas Natural Gas, Inc.:					
CI64-103 Colorado Interstate Gas Co.	Hugoton	Kans.	Haskell	8 30 63	Iss.
CI64-222 Cities Service Gas Co.	Hugoton	Kans.	Morton*	9 27 63	Iss.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Keener Oil Co.:					
CI60-534 Michigan Wisconsin Pipe Line Co.	Laverne	Okla.	Harper	7 2 63	Iss.
CI63-1391 Northern Natural Gas Co.	S.W. Como	Okla.	Beaver	10 30 63	Iss.
R. E. Kellerman:					
G-18136 United Gas Pipe Line Co.	Theall	La.	Vermilion	9 13 63	Iss.
Kelly, Butterworth & Lemann:					
CI63-1229 Hope Natural Gas Co.	Grant* Districts	W. Va.	Harrison	7 29 63	Iss.
J. A. Kenny, Operator, et al.:					
CI63-839 Tennessee Gas Transmission Co.	Ammann	Tex.	Wharton	8 5 63	Iss.
Kerr-McGee Oil Industries, Inc.:					
G-19307 United Gas Pipe Line Co.	Jeanerette	La.	St. Mary	11 29 63	Iss.
CI62-398 Texas Gas Transmission Corp.	Jeanerette	La.	St. Mary	11 29 63	Iss.
CI63-808 Cities Service Gas Co.	Northwest Lovedale.	Okla.	Harper	8 5 63	Iss.
Kerr-McGee Oil Industries, Inc., et al.:					
CI63-1251 Southern Natural Gas Co.	Larosa Area	La.	St. Martin	9 13 63	Iss.
Kewanee Oil Co.:					
CI64-380 Cities Service Gas Co.	S.E. Guymon	Okla.	Texas	11 12 63	Iss.
Lee W. Kilgore:					
CI63-1231 El Paso Natural Gas Co.	Blanco Mesaverde	N. Mex.	San Juan	7 29 63	Iss.
Kilroy Properties, Inc., et al.:					
G-17338 Hope Natural Gas Co.	Bayou Pigeon	La.	Iberia	7 17 63	Iss.
Kay Kimbell:					
CI63-1416 Northern Natural Gas Co.	Hansford Upper Morrow.	Tex.	Hansford	9 13 63	Iss.
Roy E. Kimsey, Jr., Operator, et al.:					
CI63-1272 El Paso Natural Gas Co.	Noelke	Tex.	Crockett	10 11 63	Iss.
Russell King:					
CI63-1255 Hope Natural Gas Co.	Glenville District	W. Va.	Gilmer	8 6 63	Iss.
C. L. Kingsbury:					
CI63-899 Hope Natural Gas Co.	Washington District.	W. Va.	Calhoun	8 5 63	Iss.
C. L. Kingsbury, et al.:					
CI64-73 Hope Natural Gas Co.	Washington District.	W. Va.	Calhoun	8 23 63	Iss.
Kingwood Oil Co.:					
CI63-1492 Arkansas Louisiana Gas Co.	North Cooper	Okla.	Blaine*	11 22 63	Iss.
Kingwood Oil Co., Operator, et al.:					
CI64-479 Northern Natural Gas Co.	Camrick	Okla.	Beaver	12 5 63	Iss.
Kirby Production Co., et al.:					
CI64-191 Colorado Interstate Gas Co.	Greenwood	Kans.	Morgan	10 9 63	Iss.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Kirkwood & Morgan, Inc., Operator, et al.:					
CI63-1357 South Texas Natural Gas Gathering Corp.	West Mirando City.	Tex	Webb	9 13 63	Iss.
Harold T. Konkler, et al.:					
CI64-100 Hope Natural Gas Co.	Glenville District	W. Va	Gilmer	8 30 63	Iss.
R. M. Kuhn, Agent:					
CI63-900 Hope Natural Gas Co.	Court House District.	W. Va	Lewis	8 5 63	Iss.
Lab Oil Co., Operator, et al.:					
CI60-130 Texas San Juan Oil Corp.	Miller*	Tex	Duval	8 5 63	Iss.
LaGloria Oil & Gas Co.:					
CI63-1205 El Paso Natural Gas Co.	Fulcher Kutz	N. Mex	San Juan	7 29 63	Iss.
CI63-1468 Arkansas Louisiana Gas Co.	Waukomis	Okla	Garfield	11 22 63	Iss.
Roy A. Lamb & A. G. Galt:					
G-16835 United Gas Pipe Line Co.	North Larosa	Tex	Refugio	8 28 63	Iss.
G-16877 United Gas Pipe Line Co.	North Larosa	Tex	Refugio	8 28 63	Iss.
Landmark Oil, Inc.:					
CI63-1426 El Paso Natural Gas Co.	Spraberry Trend Area.	Tex	Glasscock	11 29 63	Iss.
Landmark Oil, Inc., et al.:					
CI64-125 El Paso Natural Gas Co.	Spraberry Trend Area.	Tex	Upton	9 6 63	Iss.
R. W. Lange, Operator, et al.:					
CI63-1348 Panhandle Eastern Pipe Line Co.	Undesignated	Kans	Meade	9 13 63	Iss.
Forrest C. Lattner, et al.:					
CI63-1587 United Gas Pipe Line Co.	Riggs	Tex	Goliad	8 13 63	Iss.
Lavaca Production Co.:					
CI63-1341 Valley Gas Transmission, Inc.	Alta Mesa	Tex	Brooks	9 13 63	Iss.
CI63-1342 Valley Gas Transmission, Inc.	Tree Encinos	Tex	Brooks	9 13 63	Iss.
Lawrence Oil, Inc., Operator, et al.:					
CI64-300 Texas Eastern Transmission Corp.	Port Barre, et al	La	St. Landry	10 31 63	Iss.
Leben Drilling, Inc., Operator, et al.:					
CI63-1137 Panhandle Eastern Pipe Line Co.	Undesignated	Kans	Edwards	10 11 63	Iss.
Philip Lemon, Agent:					
CI64-548 Cabot Corp	Murphy District	W. Va	Ritchie	12 26 63	Iss.
Lignum Oil Co.:					
CI62-1218 El Paso Natural Gas Co.	San Juan Basin	N. Mex	Rio Arriba	8 5 63	Iss.
Livingston Oil Co.:					
CI63-1544 Cities Service Gas Co.	N.E. Enid	Okla	Garfield	7 25 63	Iss
Logue & Patterson, et al.:					
CI61-60 AGSCO Minerals Corp.	Refugio Town Tract.	Tex	Refugio	7 18 63	Dis.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Logue & Patterson, Operator, et al.:					
CI63-1379 Banquete Gas Co., a Division of Crestmont.	Plymouth and East Taft Field Area.	Tex.	San Patricio	9 13 63	Iss.
George Longfellow:					
CI63-1568 Equitable Gas Co.	Birch District	W. Va.	Braxton	8 6 63	Iss.
George Longfellow, et al.:					
CI63-1465 Hope Natural Gas Co.	Washington District.	W. Va.	Calhoun	10 11 63	Iss.
Brennie Lynch:					
CI63-1354 Equitable Gas Co.	Union District	W. Va.	Ritchie	9 13 63	Iss.
C. H. Lyons, Sr., et al.:					
CI60-329 Transcontinental Gas Pipe Line Corp.	Johnson Bayou	La.	Cameron	8 23 63	Iss.
CI63-1190 Trunkline Gas Co.	West Merryville	La.	Beauregard	8 6 63	Iss.
CI63-1576 Texas Eastern Transmission Corp.	Bunchy Creek	La.	Alan	8 6 63	Iss.
MPS Production Co., Operator, et al.:					
CI63-1425 Texas Gas Transmission Corp.	S. Bell City	La.	Calcasieu	9 13 63	Iss.
MacDonald Oil Corp., et al.:					
CI64-322 United Gas Pipe Line Co.	Agua-Dulce	Tex.	Nueces	10 31 63	Iss.
M. F. McCain, et al.:					
CI62-582 United Gas Pipe Line Co.	Gibeon	La.	Terrebonne	8 23 63	Iss.
McCall Drilling Co., Inc.:					
CI63-850 Hope Natural Gas Co.	DeKalb District	W. Va.	Gilmer	8 5 63	Iss.
Russell McConnell:					
CI62-762 Consolidated Gas Gathering Corp.	Undesignated	Pa.	Erie*	7 16 63	Iss.
R. L. McCulty, et al.:					
CI64-399 Hope Natural Gas Co.	Lee District	W. Va.	Calhoun	11 12 63	Iss.
J. Ray McDermott & Co., Inc.:					
G-17337 Hope Natural Gas Co.	West Cameron	La.	Offshore	7 17 63	Iss.
J. Ray McDermott & Co., Inc., Operator:					
G-17239 Texas Eastern Transmission Corp., et al.	May*	Tex.	Kelberg*	7 2 63	Iss.
Joe S. McGuffin:					
CI63-1097 Coastal States Gas Producing Co.	A & W Field Area	Tex.	Duval	7 11 63	Rej.
Galen McKibben, et al.:					
CI64-317 Hope Natural Gas Co.	Glenville District	W. Va.	Gilmer	10 31 63	Iss.
McWood Corp.:					
CI64-27 Texas Gas Transmission Corp.	West Cameron Area	La.	Cameron	8 21 63	Iss.
Ralph W. Mace, et al.:					
CI63-1477 Hope Natural Gas Co.	Lee District	W. Va.	Calhoun	10 11 63	Iss.
Ralph Mace, et al.:					
CI64-428 Hope Natural Gas Co.	Lee District	W. Va.	Calhoun	11 18 63	Iss.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION 1
Mack Oil Co., Operator, et al.:					
CI63-785 Panhandle Eastern Pipe Line Co.	Haynes-Mississippi	Tex	Stafford	8 5 63	Iss.
Magna Oil Corp.:					
G-19957 Texas Gas Transmission Corp.	Thibodaux*	La	Lafourche*	10 31 63	Iss.
G-19958 Southern Natural Gas Co.	Bayou Boullion*	La	St. Martin*	10 31 63	Iss.
CI61-44 Texas Gas Transmission Corp.	Jefferson Island	La	Iberia	10 25 63	Iss.
Magness Petroleum Co., Operator., et al.:					
CI64-167 Arkansas Louisiana Gas Co.	N.E. Ames	Okla	Major	9 19 63	Iss.
J. C. Man, Jr.:					
CI63-1131 El Paso Natural Gas Co.	Dakota Unit	N. Mex	San Juan	7 2 63	Iss.
CI63-1174 El Paso Natural Gas Co.	Dakota Formation	N. Mex	San Juan	7 2 63	Iss.
CI63-1191 El Paso Natural Gas Co.	Gallup Formation	N. Mex	San Juan	7 2 63	Iss.
Management Service Corp.:					
CI63-1029 Panhandle Eastern Pipe Line Co.	Carson Hutchinson	Tex	Moore	7 2 63	Iss.
Maoco Drilling & Supply Co.:					
CI63-1259 New York State Natural Gas Corp.	Benezette Township.	Pa	Elk	8 6 63	Iss.
Marathon Oil Co.:					
CI64-131 El Paso Natural Gas Co.	Chinle Wash	Utah	San Juan	9 19 63	Iss.
CI64-156 Colorado Interstate Gas Co.	Wamsutter Unit Area.	Wyo	Sweetwater	9 19 63	Iss.
Ben D. Marks, et al.:					
CI62-82 Banquete Gas Co., a Division of Crestmont.	Odem*	Tex	San Patricio	8 5 63	Iss.
R. E. Massengill:					
CI63-82 Florida Gas Transmission Co.	Angelita North	Tex	San Patricio	7 29 63	Iss.
Mayflo Oil Co.:					
CI63-872 Western Gas Service Co.	Guymon-Hugoton	Okla	Beaver	11 22 63	Iss.
O. W. Mayhew, et al.:					
CI64-450 Hope Natural Gas Co.	Court House District.	W. Va	Lewis	11 29 63	Iss.
Maynard Oil Co., Operator, et al.:					
CI63-1135 Natural Gas Pipeline Co. of America.	Ken-Rich	Tex	Jack	8 6 63	Iss.
CI63-1136 Natural Gas Pipeline Co. of America.	Boonsville	Tex	Jack*	8 6 63	Iss.
Reuben W. Mayronne, Jr.:					
G-20182 Transcontinental Gas Pipe Line Corp.	North Duson	La	Lafayette	12 26 63	Iss.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Maytex Co.:					
CI63-1570 Texas Eastern Transmission Corp.	Canadian Bayou Area.	La.	DeSoto	9 19 63	Iss.
Cecil Meadows:					
CI63-895 Hope Natural Gas Co.	Freemans Creek	W. Va.	Lewis	8 5 63	Iss.
Cecil Meadows, et al.:					
CI64-101 Hope Natural Gas Co.	Troy District	W. Va.	Gilmer	8 30 63	Iss.
W. L. Meadows, Jr., et al.:					
CI64-432 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	11 18 63	Iss.
Mercury Drilling Co.:					
CI64-311 Cities Service Gas Co.	Eureka	Okla.	Grant	10 31 63	Iss.
Mid-Eastern Gas Co., Inc.:					
CI62-1005 Equitable Gas Co.	West Union District	W. Va.	Doddridge	8 28 63	Iss.
Midhurst Oil Corp.:					
CI62-894 Trunkline Gas Co.	East Bearhead Creek.	La.	Beauregard	8 5 63	Iss.
Midland Petrochemical Co., Operator.:					
CI64-129 Arkansas Louisiana Gas Co.	Moravia	Okla.	Beckham	10 9 63	Iss.
Midwest Oil Corp.:					
CI63-388 Panhandle Eastern Pipe Line Co.	Undesignated	Okla.	Dewey	12218 63	Iss.
Allerton Miller:					
CI63-1175 Cumberland & Allegheny Gas Co.	Meade District	W. Va.	Upshur	7 2 63	Iss.
CI64-281 Cumberland & Allegheny Gas Co.	Buckhannon District.	W. Va.	Upshur	10 15 63	Iss.
Miller & Fox Minerals Corp., Operator., et al.:					
CI60-362 Texas San Juan Oil Corp.	Miller *	Tex.	Duval *	8 5 63	Iss.
Irwin Miller, Operator, et al.:					
CI63-179 Trunkline Gas Co.	South Mermentau	La.	Acadia	10 31 63	Iss.
George Mitchell & Assoc., Inc., Operator., et al.:					
CI64-323 Texas Eastern Transmission Corp.	Garwood	Tex.	Colorado	10 31 63	Iss.
Rex Monahan:					
CI63-545 Kansas-Nebraska Natural Gas Co., Inc.	Smith D Sand	Colo.	Logan	10 11 63	Iss.
Monsanto Chemical Co.:					
CI63-1373 Texas Eastern Transmission Corp.	North Brandt	Tex.	Goliad	9 13 63	Iss.
CI63-1577 Texas Eastern Transmission Corp.	N.W. Brandt	Tex.	Goliad	8 6 63	Iss.
Monsanto Chemical Co., Operator, et al.:					
CI63-1117 Southern Natural Gas Co.	Merit	Miss.	Simpson	7 29 63	Iss.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
M. J. Moran, et al.:					
CI63-1439 Hope Natural Gas Co.	Glenville District	W. Va.	Gilmer	10 11 63	Iss.
CI64-337 Hope Natural Gas Co.	Glenville District	W. Va.	Gilmer	10 31 63	Iss.
CI64-451 Hope Natural Gas Co.	Glenville District	W. Va.	Gilmer	11 29 63	Iss.
Ed Morris, Agent:					
CI64-431 Hope Natural Gas Co.	Murphy District	W.Va.	Ritchie	11 18 63	Iss.
Winnie Fae Morris, et al.:					
CI64-523 Hope Natural Gas Co.	Murphy District	W.Va.	Ritchie	12 13 63	Iss.
John L. Morrison, et al.:					
CI63-1366 El Paso Natural Gas Co.	Blanco Mesaverde	N. Mex.	San Juan	11 22 63	Iss.
Morwell Co., Inc.:					
CI64-17 Kansas-Nebraska Natural Gas Co., Inc.	Loam	Colo.	Morgan	8 21 63	Iss.
George W. Moses:					
CI63-1370 Equitable Gas Co.	Flemington District	W. Va.	Taylor	12 13 63	Iss.
W. H. Mosser:					
G-17033 Equitable Gas Co.	Union District	W. Va.	Ritchie	8 6 63	Iss.
CI63-1244 Hope Natural Gas Co.	Freemans Creek District.	W. Va.	Lewis	8 6 63	Iss.
CI63-1452 The Manufacturers Light and Heat Co.	McElroy District	W. Va.	Tyler	10 30 63	Iss.
W. H. Mosser, et al.:					
CI64-490 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	12 13 63	Iss.
CI64-527 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	12 26 63	Iss.
Mound Co., Operator, et al.:					
CI60-258 Southern Natural Gas Co.	Franklin	La.	St. Mary	8 5 63	Iss.
Mountain States Natural Gas Corp.:					
CI63-1271 El Paso Natural Gas Co.	Bondad	Colo.	La Plata	9 13 63	Iss.
CI63-1367 El Paso Natural Gas Co.	Gavilan	N. Mex.	Rio Arriba	9 13 63	Iss.
Mountain States Natural Gas Corp., Operator, et al.:					
CI63-1035 El Paso Natural Gas Co.	Lindreth	N. Mex.	Rio Arribe	7 2 63	Iss.
Musgrove Drilling Co., Operator, et al.:					
CI61-925 Anadarko Production Co.	Interstate	Kans.	Morton	7 29 63	Iss.
Mutual Oil Co.:					
CI64-99 Hope Natural Gas Co.	Union* Districts	W. Va.	Ritchie	8 30 63	Iss.
Mutual Oil Co., et al.:					
CI64-96 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	9 30 63	Iss.
Holly Nester, Agent:					
CI63-858 Hope Natural Gas Co.	Cobe	W. Va.	Doddridge	8 5 63	Iss.
O. A. Newbrough, et al.:					
CI64-1466 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	10 11 63	Iss.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Joseph E. Newman, Operator, et al.:					
CI64-13 Panhandle Eastern Pipe Line Co.	Carver-Robbins	Kans.	Pratt	8 21 63	Iss.
Newmont Oil Co.:					
G-17765 Tennessee Gas Transmission Co.	East Cameron Block 62.	La.	Cameron	9 7 63	Iss.
Arthur L. Nicholson, Agent:					
CI63-1254 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	8 6 63	Iss.
Homer Noble:					
CI63-1418 Medina Gathering Corp.	Undesignated	Pa.	Erie *	10 15 63	Iss.
Northern Natural Gas Producing Co.:					
CI63-1049 El Paso Natural Gas Co.	Basin Dakota	N. Mex.	San Juan	7 29 63	Iss.
CI63-1050 El Paso Natural Gas Co.	Basin Dakota	N. Mex.	San Juan	7 29 63	Iss.
CI63-1051 El Paso Natural Gas Co.	Basin Dakota	N. Mex.	San Juan	7 29 63	Iss.
CI63-1138 El Paso Natural Gas Co.	Basin Dakota	N. Mex.	San Juan	7 29 63	Iss.
CI63-1397 El Paso Natural Gas Co.	Basin Dakota	N. Mex.	San Juan	10 11 63	Iss.
Patrick J. O'Hornett:					
CI64-148 Northern Natural Gas Co.	Undesignated	Okla. *	Beaver *	9 12 63	Iss.
Robert W. O'Meara:					
CI62-479 Texas Gas Transmission Corp.	Bay Junop	La.	Terrebonne	9 13 63	Iss.
Ocean Drilling & Exploration Co.:					
G-17342 Hope Natural Gas Co.	East Cameron	La.	Offshore	7 17 63	Iss.
CI61-1162 Transcontinental Gas Pipe Line Corp.	Ship Shoals Area	La.	Offshore	11 12 63	Iss.
Ocean Drilling & Exploration Co., Operator, et al.:					
G-17343 Hope Natural Gas Co.	Bayou Pigeon	La.	St. Martin*	7 17 63	Iss.
Oil Development Co. of Texas:					
CI63-786 Natural Gas Pipeline Co. of America.	Spearman*	Tex.	Hansford	8 5 63	Iss.
Oklahoma Natural Gas Co.:					
CI63-340 Panhandle Eastern Pipe Line Co.	Avard	Okla.	Woods	12 18 63	Iss.
CI63-608 Michigan Wisconsin Pipe Line Co.	North Oakdale	Okla.	Woods	12 18 63	Iss.
CI63-956 Michigan Wisconsin Pipe Line Co.	Cederdale	Okla.	Major	9 12 63	Iss.
CI63-1238 Northern Natural Gas Co.	Laverne	Okla.	Beaver	8 6 63	Iss.
CI64-42 Cities Service Gas Co.	N.W. Quinlan	Okla.	Woodward	8 21 63	Iss.
CI64-388 Cities Service Gas Co.	S.W. Prairie Gem	Okla.	Lincoln	11 29 63	Iss.
Okmar Oil Co.:					
CI64-514 Hope Natural Gas Co.	Center District	W. Va.	Calhoun	12 13 63	Iss.
Omega Petroleum Corp.:					
CI63-1537 Arkansas Louisiana Gas Co.	Monroe	La.	Ouachita	10 11 63	Iss.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
J. R. Orbison Co.:					
CI63-1320 Valley Gas Transmission, Inc.	Old Refugio	Tex	Refugio	9 13 63	Iss.
Rhea H. Owens, Operator, et al.:					
CI62-1301 Panhandle Eastern Pipe Line Co.	Undesignated	Okla	Beaver	12 26 63	Iss.
Ozark-Mahoning Co.:					
CI64-66 Panhandle Eastern Pipe Line Co.	Undesignated	Okla	Beaver	8 23 63	Iss.
Hal Pack:					
CI63-1404 South Penn Oil Co.	McComas District	W. Va	Cabell	10 11 63	Iss.
Pan American Petroleum Corp.:					
G-16946 Transcontinental Gas Pipe Line Corp.	Lake Arthur	La	Jefferson Davis	11 19 63	Iss.
G-17977 Transcontinental Gas Pipe Line Corp.	Thibodaux	La	Lafourche	11 19 63	Iss.
G-19223 Transcontinental Gas Pipe Line Corp.	Wildcat Bayou	La	Terrebonne	11 19 63	Iss.
G-20049 Southern Natural Gas Co.	Southern Natural Gas Co.	La	Lafourche*	11 19 63	Iss.
CI60-133 Tennessee Gas Transmission Co.	Caillou Island	La	Terrebonne	11 19 63	Iss.
CI60-777 Trunkline Gas Co.	Southwest Esther	La	Vermilion	11 19 63	Iss.
CI61-127 Texas Gas Transmission Corp.	Chacahoula	La	Lafourche	11 19 63	Iss.
CI61-143 United Gas Pipe Line Co.	Chauvin	La	Terrebonne	11 19 63	Iss.
CI61-355 Transcontinental Gas Pipe Line Corp.	Block 35	La	Vermilion	11 19 63	Iss.
CI61-808 Transcontinental Gas Pipe Line Corp.	Raceland	La	Lafourche	11 19 63	Iss.
CI61-974 United Gas Pipe Line Co.	Gibson	La	Terrebonne	11 19 63	Iss.
CI62-724 Tennessee Gas Transmission Co.	Raccourci	La	Lafourche	11 19 63	Iss.
CI62-782 Transcontinental Gas Pipe Line Corp.	North White Lake	La	Vermilion	11 19 63	Iss.
CI62-1300 Texas Gas Transmission Corp.	Blackburn	La	Claiborne	9 17 63	Iss.
CI62-1341 Transcontinental Gas Pipe Line Corp.	South Marsh Island Area.	La	Offshore	11 19 63	Iss.
CI63-781 Northern Natural Gas Co.	Undesignated	Tex	Roberts*	8 5 63	Iss.
CI63-960 Colorado Interstate Gas Co.	Mocane	Okla	Beaver	10 9 63	Iss.
CI63-1101 El Paso Natural Gas Co.	Blanco Mesaverde	N. Mex	San Juan	7 29 63	Iss.
CI63-1102 El Paso Natural Gas Co.	South Blanco-Pictured Cliffs.	N. Mex	San Juan*	7 29 63	Iss.
CI63-1200 Northern Natural Gas Co.	N. Puckett	Tex	Pecos	8 6 63	Iss.
CI63-1262 Valley Gas Transmission, Inc.	Yeary	Tex	Kleberg	10 30 63	Iss.
CI63-1392 El Paso Natural Gas Co.	West Kutz Pictured Cliffs.	N. Mex	San Juan	10 11 63	Iss.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Pan American Petroleum Corp.—Continued					
CI63-1539 El Paso Natural Gas Co.	Bisti Lower Gallup	N. Mex.	San Juan	10 31 63	Iss.
CI64-78 Cities Service Gas Co.	S. E. Guymon	Okla.	Texas	8 30 63	Iss.
CI64-155 Kansas-Nebraska Natural Gas Co., Inc.	Kirby Draw	Wyo.	Fremont	9 12 63	Iss.
CI64-169 El Paso Natural Gas Co.	Basin Dakota	N. Mex.	San Juan	12 23 63	Wtd.
CI64-170 El Paso Natural Gas Co.	Basin Dakota	N. Mex.	San Juan	12 23 63	Wtd.
CI64-171 El Paso Natural Gas Co.	San Juan Basin	N. Mex.	San Juan	12 23 63	Wtd.
CI64-172 El Paso Natural Gas Co.	San Juan Basin	N. Mex.	San Juan	12 23 63	Wtd.
CI64-173 El Paso Natural Gas Co.	San Juan Basin	N. Mex.	San Juan	12 23 63	Wtd.
CI64-174 El Paso Natural Gas Co.	San Juan Basin	N. Mex.	San Juan	12 23 63	Wtd.
CI64-175 El Paso Natural Gas Co	Carnahan Gas Unit No. 1, et al.	N. Mex.	San Juan*	12 23 63	Iss.
CI64-176 El Paso Natural Gas Co.	Carnahan Gas Unit No. 1, et al.	N. Mex.	San Juan	12 23 63	Wtd.
CI64-177 El Paso Natural Gas Co.	Navajo D No. 1, et al.	N. Mex.	San Juan*	12 23 63	Wtd.
CI64-179 El Paso Natural Gas Co.	San Juan 28-5 Unit	N. Mex.	San Juan*	12 23 63	Wtd.
CI64-180 El Paso Natural Gas Co.	San Juan 28-5 Unit	N. Mex.	San Juan*	12 23 63	Wtd.
Pan American Petroleum Corp., et al.:					
CI62-1437 Anadarko Production Co.	Interstate	Kans.	Morton	7 29 63	Iss.
Pan American Petroleum Corp., Operator, et al.:					
CI63-1261 Valley Gas Transmission, Inc.	Big Lake*	La.	Cameron	10 30 63	Iss.
CI64-199 Valley Gas Transmission, Inc.	Sol West Area	Tex.	Live Oak	9 19 63	Iss.
Panhandle Development Co., Inc., Operator, et al.:					
CI63-1282 Panhandle Eastern Pipe Line Co.	Undesignated	Kans.	Meade	8 28 63	Iss.
Panhandle Petroleum Limited Partnership:					
CI60-147 Northern Natural Gas Co.	Perryton*	Tex.	Ochiltree	8 28 63	Iss.
CI61-852 Michigan Wisconsin Pipe Line Co.	Laverne-Mocane Area.	Okla.	Beaver	7 2 63	Iss.
CI62-140 The Bering Co.	Horizon-Cleveland	Tex.	Ochiltree	8 28 63	Iss.
CI63-1073 Northern Natural Gas Co.	Horizon-Cleveland	Tex.	Hansford	10 11 63	Iss.
Pano Tech Exploration Corp., Operator:					
CI63-1147 Southern Natural Gas Co.	La Rose Area	La.	St. Martin	7 2 63	Iss.
George Parker, Operator, et al.:					
CI63-1564 Texas Eastern Transmission Corp.	Henzeville	Tex.	Goliad	7 25 63	Iss.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[#] DOCKET NO. AND PURCHASER [#]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Parker Petroleum:					
CI64-90 Hope Natural Gas Co.	Grant District	W. Va.	Ritchie	8 30 63	Iss.
Frank Parkes:					
CI63-1290 Natural Gas Pipeline Co. of America.	Camrick	Okla.	Beaver	11 22 63	Iss.
Irving Pasternak:					
CI63-1343 El Paso Natural Gas Co.	Undesignated	N. Mex.	Rio Arriba*	9 13 63	Iss.
CI64-163 El Paso Natural Gas Co.	Undesignated	N. Mex.	Rio Arriba	9 12 63	Iss.
C. M. Paul, et al.:					
CI64-228 Southern Union Gathering Co.	Basin Dakota	N. Mex.	San Juan	9 27 63	Iss.
W. C. Payne, Operator, et al.:					
CI64-120 Oklahoma Natural Gas Gathering Corp.	Ringwood	Okla.	Major	9 6 63	Iss.
Peake Petroleum Co.:					
CI63-1128 Hope Natural Gas Co.	Crook District	W. Va.	Boone	7 29 63	Iss
Harvey Peltier:					
CI60-505 Transcontinental Gas Pipe Line Corp.	Thibodaux	La.	Lafourche	8 23 63	Iss.
Pemco Gas, Inc.:					
CI63-779 Equitable Gas Co.	Skin Creek District	W. Va.	Lewis	8 5 63	Iss.
G. E. Penn, Operator, et al.:					
CI64-1 Lone Star Gas Co.	Leopard	Tex.	Rusk	8 21 63	Iss.
Neville G. Penrose, et al.:					
CI63-891 El Paso Natural Gas Co.	Ignacio-Blanco	Colo.	La Plata	8 5 63	Iss.
Peoples Petroleum Corp., et al.:					
CI64-553 Hope Natural Gas Co.	Union District	W. Va.	Ritchie	12 26 63	Iss.
Carl D. Perkins, et al.:					
CI64-350 Equitable Gas Co.	Central District	W. Va.	Doddridge	10 31 63	Iss.
J. R. Perkins & Elizabeth Perkins:					
CI60-825 Lone Star Gas Co.	Tatums	Okla.	Carter	7 10 63	Wtd.
Pete Perri, et al.:					
CI63-1497 Hope Natural Gas Co.	Troy District	W. Va.	Gilmer	10 11 63	Iss.
Dwight Perrine:					
CI63-853 Equitable Gas Co.	Otter District	W. Va.	Braxton	8 5 63	Iss.
Petroleum Consultants, Inc.:					
CI63-1240 Oklahoma Natural Gas Gathering Corp.	Ringwood	Okla.	Major	9 13 63	Iss.
Petroleum Exploration, Inc. of Texas, et al.:					
CI63-412 El Paso Natural Gas Co.	Spraberry Formation.	Tex.	Upton	11 22 63	Iss.
Petroleum Promotions, Inc.:					
CI64-489 Hope Natural Gas Co.	Court House District.	W. Va.	Lewis	12 13 63	Iss.
CI64-503 Hope Natural Gas Co.	Glenville District	W. Va.	Gilmer	12 13 63	Iss.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Petrolini Corp.:					
CI64-485 Kentucky West Virginia Gas Co.	Ledecio	Ky	Lawrence	12 13 63	Iss.
A. O. Phillips, et al.:					
CI63-448 Michigan Wisconsin Pipe Line Co.	Woodward Area	Okla	Woodward	12 18 63	Iss.
B. F. Phillips:					
CI63-447 Michigan Wisconsin Pipe Line Co.	Woodward Area	Okla	Woodward	12 18 63	Iss.
Phillips Petroleum Co.:					
G-18375 Florida Gas Transmission Co.	Lake Chicot	La	St. Martin	11 29 63	Iss.
G-19714 United Gas Pipe Line Co.	Jeanerette	La	St. Mary	11 29 63	Iss.
CI63-1193 Natural Gas Pipeline Co. of America.	Camrick	Okla	Beaver	7 29 63	Iss.
CI63-1304 Hope Natural Gas Co.	Valley District	W. Va	Preston	9 13 63	Iss.
CI63-1586 El Paso Natural Gas Co.	Lancaster Hills Area	Tex	Crockett	8 13 63	Iss.
W. C. Pickens:					
CI63-683 Michigan Wisconsin Pipe Line Co.	Woodward Area	Okla	Woods	10 30 63	Iss.
Pioneer Production Corp.:					
CI64-462 Northern Natural Gas Co.	Ivanhoe-Morrow	Okla	Beaver	11 29 63	Iss.
Pioneer Production Corp., et al.:					
CI62-955 El Paso Natural Gas Co.	Spraberry Trend Area.	Tex	Upton	7 29 63	Iss.
Pioneer Production Corp., Operator, et al.:					
CI63-1127 Northern Natural Gas Co.	North Mammoth Creek.	Tex	Lipscomb	9 13 63	Iss.
CI63-1528 Panhandle Eastern Pipe Line Co.	Undesignated	Kans	Morton	10 11 63	Iss.
CI63-1547 Panhandle Eastern Pipe Line Co.	Glenwood	Okla	Beaver	7 25 63	Iss.
CI64-373 Northern Natural Gas Co.	Mammoth Creek North.	Tex	Lipscomb	11 29 63	Iss.
CI64-481 Northern Natural Gas Co.	Mammoth Creek North.	Tex	Lipscomb	12 5 63	Iss.
CI64-547 Northern Natural Gas Co.	North Cleveland*	Tex	Lipscomb	12 26 63	Iss.
Placid Oil Co.:					
G-13183 Transcontinental Gas Pipe Line Corp.	Thibodaux	La	Lafourche	7 17 63	Iss.
G-13184 Transcontinental Gas Pipe Line Corp.	Raceland	La	Lafourche	7 17 63	Iss.
CI63-1150 Arkansas Louisiana Gas Co.	Anthon Area	Okla	Custer	10 30 63	Iss.
Rufus G. Poole & Suzanne H. Poole:					
CI63-1556 El Paso Natural Gas Co.	Undesignated	N. Mex	San Juan	10 11 63	Iss.
Celestine V. Powell Trust:					
CI62-22 Northern Natural Gas Co.	Prentice	Tex	Yoakom	8 5 63	Iss.
Kenneth Powell, Agent:					
CI64-35 South Penn Natural Gas Co.	Grant District	W. Va	Doddridge	8 21 63	Iss.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION ‡
M. F. Powers Estate:					
CI63-1441 Cities Service Gas Co.	Hugoton	Kans.	Kearny	9 13 63	Iss.
Prado Oil & Gas Co.:					
CI63-1376 Natural Gas Pipeline Co. of America.	Camrick	Okla.	Beaver	9 13 63	Iss.
Max Pray:					
CI64-278 Lone Star Gas Co.	Undesignated	Okla.	Stephens	10 15 63	Iss.
Robert B. Prentice, et al.:					
G-18710 United Gas Pipe Line Co.	Hollywood	La.	Terrebonne	9 26 63	Iss.
G-19292 United Gas Pipe Line Co.	Houma	La.	Terrebonne	9 26 63	Can.
Prime Petroleum Co., et al.:					
CI63-1467 Hope Natural Gas Co.	Freemans Creek District.	W. Va.	Lewis	10 11 63	Iss.
CI63-1487 Hope Natural Gas Co.	Freemans Creek District.	W. Va.	Lewis	10 11 63	Iss.
CI63-1507 Hope Natural Gas Co.	Freemans Creek District.	W. Va.	Lewis	10 11 63	Iss.
Ferrell L. Prior:					
CI64-550 Hope Natural Gas Co.	Sheridan District	W. Va.	Calhoun	12 26 63	Iss.
Ferrell L. Prior, et al.:					
CI64-528 Hope Natural Gas Co.	Collins Settlement District.	W. Va.	Lewis	12 26 63	Iss.
Producing Properties, Inc., et al.:					
G-20599 Texas Eastern Transmission Corp.	South Karon	Tex.	Bee*	8 16 63	Iss.
Chesley Pruet, Operator, et al.:					
CI63-1249 Texas Gas Transmission Corp.	Downsville	La.	Union	8 6 63	Iss.
Pruitt Second Oil, Operator, et al.:					
CI63-1284 United Gas Pipe Line Co.	Undesignated	Tex.	Goliad	8 28 63	Iss.
Publishers Petroleum, A Division of Oklahoma Publishing:					
CI63-1052 Kansas-Nebraska Natural Gas Co., Inc.	Bradshaw-Wedel	Kans.	Hamilton	9 13 63	Iss.
The Pure Oil Co.:					
G-19140 Florida Gas Transmission Corp.	Potrero Lopena	Tex.	Kenedy	12 26 63	Wtd.
CI63-1270 Cities Service Gas Co.	Sterling Area	Okla.	Comanche	8 6 63	Iss.
CI64-284 Arkansas Louisiana Gas Co.	Canute Area	Okla.	Washita	10 15 63	Iss.
Homer Queen:					
CI63-849 Hope Natural Gas Co.	Skin Creek District	W. Va.	Lewis	8 5 63	Iss.
CI63-897 Hope Natural Gas Co.	Skin Creek District	W. Va.	Lewis	8 5 63	Iss.
Homer Queen, et al.:					
CI64-79 Hope Natural Gas Co.	Skin Creek District	W. Va.	Lewis	8 30 63	Iss.
CI64-84 Hope Natural Gas Co.	Warren District	W. Va.	Upshur	8 30 63	Iss.
Ragsdale, Pierce and Crain, Operators, et al.:					
CI61-917 Banquete Gas Co., a Division of Crestmont.	Spartan*	Tex.	San Patricio	8 5 63	Iss.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Ramrod Production Co., Inc.:					
CI64-198 Maytex Co.	Canadian Bayou Area.	La.	Desoto	9 19 63	Iss.
James S. Ray, et al.:					
CI62-893 United Fuel Gas Co.	Malden District	W. Va.	Kanawha	8 28 63	Iss.
J. Newton Rayzor, et al.:					
CI63-1278 Valley Gas Transmission, Inc.	South Spanish Camp.	Tex.	Wharton	10 30 63	Iss.
The Redco Corp.:					
CI63-1515 Northern Natural Gas Co.	Northwest Hokit Wolfcamp.	Tex.	Pecos	9 17 63	Iss.
Redfern Development Corp., et al.:					
CI63-1538 El Paso Natural Gas Co.	Carson Gas Unit	N. Mex.	San Juan	10 11 63	Iss.
Redrock Gas, Inc.:					
CI60-90 Cities Service Gas Co.	Redrock	Okla.	Noble	10 31 63	Dis.
Rhodes & Hicks Drilling Corp., et al.:					
CI63-1420 Valley Gas Transmission, Inc.	Maetz	Tex.	Goliad	9 13 63	Iss.
W. J. Riley:					
CI61-1054 Banquete Gas Co., a Division, of Crestmont.	Spartan*	Tex.	San Patricio	8 5 63	Iss.
CI62-91 Banquete Gas Co., a Division of Crestmont.	Odem*	Tex.	San Patricio	8 5 63	Iss.
CI62-406 Banquete Gas Co., a Division of Crestmont.	Spartan*	Tex.	San Patricio	8 5 63	Iss.
Rimrock Tidelands, Inc.:					
G-15214 Tensas Gas Gathering Corp.	Chamblee	La.	Tensas	7 2 63	Iss.
Robbins Petroleum Corp., Operator, et al.:					
CI63-1316 Lone Star Gas Co.	Henderson	Tex.	Rusk	9 13 63	Iss.
John R. Robinson, et al.:					
CI63-831 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	8 5 63	Iss.
CI64-83 Hope Natural Gas Co.	Lee District	W. Va.	Calhoun	8 30 63	Iss.
Robinson & Marshall Drilling Co.:					
G-13756 R. M. Tuttle Pipe Line Co.	West Sporn	Okla.	Lincoln	7 2 63	Iss.
Rock Castle Gas Co.:					
CI64-214 United Fuel Gas Co.	Appalachian	Ky.	Lawrence*	9 27 63	Iss.
Rock Island Oil & Refining Co., Inc.:					
CI63-1203 El Paso Natural Gas Co.	Basin Dakota	N. Mex.	San Juan	7 29 63	Iss.
Rosenthal, Cook and Green, et al.:					
CI63-1287 Transcontinental Gas Pipe Line Corp.	S. Tilden	Tex.	McMullen	8 28 63	Iss.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION 1
Ross Petroleum, Inc., Operator, et al.:					
CI63-1209 Phillips Petroleum Co.	Texas Hugoton	Tex.	Sherman	7 29 63	Iss.
A. M. Rozeman:					
CI63-1088 The Jaybird Corp.	Waskom	Tex.	Harrison	8 6 63	Iss.
Neal Rudder:					
CI64-140 Columbian Fuel Corp.	New Milton District.	W. Va.	Doddridge	9 6 63	Iss.
Kenneth Rupp, Operator, et al.:					
CI63-1033 Panhandle Eastern Pipe Line Co.	Kismet	Kans.	Seward	10 11 63	Iss.
Otis Russell, Operator, et al.:					
CI63-1546 Valley Gas Transmission, Inc.	Lissie	Tex.	Wharton	8 23 63	Iss.
A. W. Rutter, Jr., et al.:					
CI63-1180 El Paso Natural Gas Co.	Spraberry Trend	Tex.	Upton	10 11 63	Iss.
Rutter and Wilbanks Brothers:					
CI63-1520 El Paso Natural Gas Co.	Spraberry Trend Area.	Tex.	Upton	10 11 63	Iss.
St. Clair Oil Co.:					
CI64-472 Equitable Gas Co.	Elk District	W. Va.	Harrison	12 5 63	Iss.
Salem Oil Corp., Operator, et al.:					
CI63-1286 Valley Gas Transmission, Inc.	Ric John*	Tex.	Goliad	8 28 63	Iss.
Samedan Oil Corp., Operator, et al.:					
CI64-152 Cities Service Gas Co.	Northwest Quinlan.	Okla.	Woodward	9 12 63	Iss.
W. G. Sampson, et al.:					
CI64-524 Hope Natural Gas Co.	Washington District.	W. Va.	Calhoun	12 13 63	Iss.
Caroline Hunt Sands, et al.:					
G-17398 Hope Natural Gas Co.	S. Thornwell	La.	Jefferson Davis.*	7 17 63	Iss.
S. J. Sarkeys:					
CI63-730 Michigan Wisconsin Pipe Line Co.	Woodward Area	Okla.	Dewey	12 18 63	Iss.
CI63-738 Panhandle Eastern Pipe Line Co.	Undesignated	Okla.	Dewey	12 18 63	Iss.
Sarkeys, Inc., Operator, et al.:					
CI63-877 Natural Gas Pipeline Co. of America.	Undesignated	Okla.	Dewey	7 29 63	Iss.
Schulz & Brannan Drilling Co., Operator, et al.:					
CI60-441 Texas San Juan Oil Corp.	Miller*	Tex.	Duval*	8 5 63	Iss.
Joseph E. Seagram & Sons, Inc.:					
CI61-1412 Transcontinental Gas Pipe Line Corp.	Chegby	La.	Lafourche	12 18 63	Iss.
CI64-302 Phillips Petroleum Co.	South King Mountain.	Tex.	Upton	12 2 63	Iss.
H. F. Sears:					
CI62-982 Phillips Petroleum Co.	Hugoton	Tex.	Sherman	7 2 63	Iss.
CI62-1009 Phillips Petroleum Co.	West Panhandle	Tex.	Hutchinson	7 2 63	Iss.

See footnotes at end of table. p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
H.F. Sears—Continued					
CI63-1060 Henderson Trusts.	West Panhandle Red Cave.	Tex.	Hutchinson	7 29 63	Iss.
Service Drilling Co., Operator, et al.:					
CI63-1381 Northern Natural Gas Co.	Undesignated	Okla.	Beaver	9 13 63	Iss.
CI63-1382 Western Gas Service Co.	Undesignated	Okla.	Texas	11 22 63	Iss.
Shadid Production Co., Operator, et al.:					
CI64-46 Arkansas Louisiana Gas Co.	Moravia Area	Okla.	Beckham	8 23 63	Iss.
The Shamrock Oil & Gas Corp.:					
CI60-778 Panhandle Eastern Pipe Line Co.	Undesignated	Kans.	Meade*	7 2 63	Iss.
CI63-1202 Western Gas Service Co.	Undesignated	Tex.	Ochiltree	7 29 63	Iss.
CI64-398 Natural Gas Pipeline Co. of America.	Camrick	Okla.	Beaver	11 29 63	Iss.
Shannon Oil Co., Operator, et al.:					
CI63-1176 Kansas-Nebraska Natural Gas Co., Inc.	Undesignated	Wyo.	Fremont	8 6 63	Iss.
Shell Oil Co.:					
CI63-1267 Texas Gas Transmission Corp.	Downsville	La.	Union	8 28 63	Iss.
CI63-1532 Panhandle Eastern Pipe Line Co.	Iuka-Carmi	Kans.	Pratt	10 11 63	Iss.
CI64-7 Arkansas Louisiana Gas Co.	Elk City	Okla.	Beckham	8 13 63	Iss.
CI64-69 Panhandle Eastern Pipe Line Co.	Undesignated	Okla.	Woods*	11 18 63	Iss.
Shell Oil Co., Operator:					
CI63-1178 Tennessee Gas Transmission Co.	San Ramon	Tex.	Hidalgo	7 29 63	Iss.
Shelton Equipment & Machine Co., Inc., Operator, et al.:					
CI64-414 Northern Natural Gas Co.	West Follett	Tex.	Lipscomb	11 29 63	Iss.
Shiprock Industries, Inc.:					
CI63-1533 El Paso Natural Gas Co.	Gallegos-Gallup Sand Unit.	N. Mex.	San Juan	10 11 63	Iss.
D. J. Simmons, et al.:					
CI64-165 United Gas Pipe Line Co.	Monroe	La.	Union*	9 12 63	Iss.
Maxwell D. Simmons, Operator, et al.:					
CI63-906 Lone Star Gas Co.	Danville	Tex.	Gregg*	8 5 63	Iss.
Cecil Simms:					
CI64-144 Midland Petrochemical Co.	Moravia	Okla.	Beckham	10 9 63	Iss
CI64-145 Midland Petrochemical Co.	Moravia	Okla.	Beckham	10 9 63	Iss
CI64-146 Midland Petrochemical Co.	Moravia	Okla.	Beckham	10 9 63	Iss.
CI64-147 Midland Petrochemical Co.	Moravia	Okla.	Beckham	10 9 63	Iss.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Sinclair Oil & Gas Co.:					
G–17917 United Gas Pipe Line Co.	North Leroy	La.	Vermilion	10 28 63	Iss.
CI61–300 Southern Natural Gas Co.	Gabriel	La.	Iberville	10 28 63	Iss.
CI61–670 Tennessee Gas Transmission Co.	West Delta Block 83	La.	Plaquemines	10 28 63	Iss.
CI61–1138 El Paso Natural Gas Co.	Sawyer	N. Mex.	Lea	8 24 63	Wtd.
CI61–1257 Trunkline Gas Co.	Esther	La.	Vermilion	10 28 63	Iss.
CI63–463 Southern Natural Gas Co.	Bayou Felice	La.	Plaquemines	10 28 63	Iss.
CI63–1104 Transcontinental Gas Pipe Line Corp.	Dilworth Dome	Tex.	McMullen	7 29 63	Iss.
CI63–1220 Southern Natural Gas Co.	Merit	Miss.	Simpson	8 6 63	Iss.
CI63–1486 United Gas Pipe Line Co.	Cadeville	La.	Ouachita	10 11 63	Iss.
CI64–545 Natural Gas Pipeline Co. of America.	Thomas Area	Okla.	Dewey*	12 26 63	Iss.
CI64–546 Northern Natural Gas Co.	Follett*	Tex.	Lipscomb*	12 26 63	Iss.
Sinclair Oil & Gas Co., Operator, et al.:					
CI63–1408 Kansas-Nebraska Natural Gas Co., Inc.	Castle Garden Area	Wyo.	Fremont	10 11 63	Iss.
CI64–11 Lone Star Gas Co.	Healdton	Okla.	Carter	9 27 63	Iss.
CI64–12 Kansas-Nebraska Natural Gas Co., Inc.	Kirby Draw	Wyo.	Fremont	8 13 63	Iss.
CI64–426 El Paso Natural Gas Co.	Lancaster Hills Area.	Tex.	Crockett	11 18 63	Iss.
Wiley W. Singleton:					
CI63–1169 Banquete Gas Co., a Division of Crestmont.	Plymouth*	Tex.	San Patricio	7 2 63	Iss.
Skelly Oil Co.:					
CI61–1419 Texas Gas Transmission Corp.	North Scott	La.	Lafayette	12 18 63	Iss.
CI63–851 Kansas-Nebraska Natural Gas Co., Inc.	Dombey	Okla.	Beaver	8 5 63	Iss.
CI63–1164 Cities Service Gas Co.	Sterling	Okla.	Comanche	7 2 63	Iss.
CI63–1170 Arkansas Louisiana Gas Co.	Simsboro	La.	Lincoln	10 11 63	Iss.
CI63–1201 Northern Natural Gas Co.	Undesignated	Okla.	Beaver	7 29 63	Iss.
CI63–1432 Arkansas Louisiana Gas Co.	North Carter	Okla.	Beckham	10 30 63	Iss.
CI63–1489 Cities Service Gas Co.	Hugoton	Okla.	Texas	10 31 63	Iss.
CI63–1503 Panhandle Eastern Pipe Line Co.	Undesignated	Okla.	Texas	10 11 63	Iss.
CI64–157 Kansas-Nebraska Natural Gas Co., Inc.	Bradshaw	Kans.	Hamilton*	9 12 63	Iss.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Skelly Oil Co.—Continued					
CI64-272 Northern Natural Gas Co.	Banner Block Area	Kans	Stevens	10 9 63	Iss.
Skelly Oil Co., Operator:					
CI63-1436 El Paso Natural Gas Co.	W. Jal Strawn	N. Mex	Lea	10 11 63	Iss.
D. W. Skinner, Operator, et al.:					
CI64-363 Cities Service Gas Co.	Boggs	Kans	Barber	10 31 63	Iss.
Smith & Barker Oil & Gas Co., Inc.:					
CI64-150 Cabot Corp.	Center District	W. Va	Gilmer	9 12 63	Iss.
CI64-151 Cabot Corp.	Sheridan District	W. Va	Calhoun	9 12 63	Iss.
CI64-153 Cabot Corp.	Lee District	W. Va	Calhoun	9 12 63	Iss.
Carl E. Smith, Inc.:					
CI63-1248 Hope Natural Gas Co.	Grant District	W. Va	Doddridge	8 6 63	Iss.
Edward M. Smith, Agent:					
CI64-95 Hope Natural Gas Co.	Sheridan District	W. Va	Calhoun	8 30 63	Iss.
Homer L. Smith:					
CI64-142 Midland Petrochemical Co.	Moravia	Okla	Beckham	10 9 63	Iss.
CI64-143 Midland Petrochemical Co.	Moravia	Okla	Beckham	10 9 63	Iss.
Jas. F. Smith:					
CI63-1212 Northern Natural Gas Co.	Panhandle	Tex	Hansford	7 29 63	Iss.
CI64-202 Kansas-Nebraska Natural Gas Co., Inc.	Donbey	Okla	Beaver	9 19 63	Iss.
CI64-498 Panhandle Eastern Pipe Line Co.	Carthage-Topeka	Okla	Texas	12 13 63	Iss.
Jas. F. Smith, Operator, et al.:					
CI62-1384 Michigan Wisconsin Pipe Line Co.	Mocane-Laverne-Morrow.	Okla	Beaver	9 17 63	Iss.
J. M. L. Smith, Agent:					
CI63-1480 Hope Natural Gas Co.	Centerville District	W. Va	Tyler	10 11 63	Iss.
Louis J. Smith, et al.:					
CI64-371 Equitable Gas Co.	Otter District	W. Va	Braxton	10 31 63	Iss.
Walter E. Smith, et al.:					
CI64-141 Cabot Corp.	Sherman District	W. Va	Calhoun	9 12 63	Iss.
CI64-395 Cabot Corp.	Clay District	W. Va	Wirt	11 12 63	Iss.
CI64-480 Cabot Corp.	Sherman District	W. Va	Calhoun	12 5 63	Iss.
Socony Mobil Oil Co., Inc.:					
G-12094 Southern Natural Gas Co.	Gwinville	Miss	Jefferson Davis*	8 5 63	Iss.
G-17625 Tennessee Gas Transmission Co.	East Cameron Block 62.	La	Cameron	8 7 63	Iss.
CI60-310 Tennessee Gas Transmission Co.	High Island	La	Cameron	10 9 63	Iss.
CI60-311 United Gas Pipe Line Co.	N. W. Oberlin	La	Allen	10 9 63	Iss.
CI60-392 Tennessee Gas Transmission Co.	N. W. Chalkley	La	Calcasieu	10 9 63	Iss.
CI61-290 Southern Natural Gas Co.	St. Gabriel	La	Iberville*	10 9 63	Iss.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Socony Mobil Oil Co., Inc.—Con.					
CI61-659 Transcontinental Gas Pipe Line Corp.	Lucy	La.	St. John*	10 9 63	Iss.
CI61-674 Texas Gas Transmission Corp.	South Thornwell	La.	Jefferson Davis	10 9 63	Iss.
CI61-1128 United Gas Pipe Line Co.	Gibson	La.	Terrebonne	10 9 63	Iss.
CI61-1366 Montana-Dakota Utilities Co.	Big Horn Area	Wyo.	Big Horn	7 2 63	Iss.
CI61-1640 Transcontinental Gas Pipe Line Corp.	Vermilion Block 131.*	La.	Offshore	10 9 63	Iss.
CI62-25 Montana-Dakota Utilities Co.	Big Horn Area	Wyo.	Big Horn*	7 2 63	Iss.
CI63-670 Northern Natural Gas Co.	Hugoton	Kans.	Haskell	9 13 63	Iss.
CI63-1299 Natural Gas Pipeline Co. of America.	S. Lundell	Tex.	Duval	8 28 63	Iss.
CI63-1300 Natural Gas Pipeline Co. of America.	West Crane*	Okla.	Dewey*	9 13 63	Iss.
CI63-1423 Valley Gas Transmission, Inc.	S.W. Pheasant	Tex.	Matagorda	9 13 63	Iss.
CI64-229 El Paso Natural Gas Co.	West Jal	N. Mex.	Lea	9 27 63	Iss.
CI64-286 Kansas-Nebraska Natural Gas Co., Inc.	Syracuse	Kans.	Hamilton	10 15 63	Iss.
CI64-394 Lone Star Gas Co.	East Doyle	Okla.	Stephens	11 12 63	Iss.
Sohio Petroleum Co.:					
CI60-489 Southern Natural Gas Co.	Felice Bayou	La.	Plaquemines	11 13 63	Iss.
CI61-638 Texas Gas Transmission Corp.	North Rousseau	La.	Lafourche	11 13 63	Iss.
CI62-337 Transcontinental Gas Pipe Line Corp.	Cossinade	La.	Vermilion	11 13 63	Iss.
CI64-213 Natural Gas Pipeline Co. of America.	Camrick	Okla.	Beaver	10 9 63	Iss.
CI64-342 Mountain Fuel Supply Co.	Nitchie Gulch Area	Wyo.	Sweetwater	10 31 63	Iss.
Sokla Gas Co.:					
CI63-1184 Lone Star Gas Co.	Tatums	Okla.	Carter	7 2 63	Iss.
South Penn Oil Co.:					
CI61-945 Carnegie Natural Gas Co.	Undesignated	W. Va.	Doddridge*	10 9 63	Iss.
Southeastern Public Service Co.:					
CI62-1396 Southern Natural Gas Co.	South Section 28	La.	St. Martin	10 31 63	Iss.
Southern Crescent Corp.:					
G-16778 United Gas Pipe Line Co.	North Laroca	Tex.	Refugio	8 28 63	Iss.
Southern Minerals Corp.:					
CI63-1239 Northern Natural Gas Co.	N. Puckett Ellenburger.	Tex.	Pecos	8 6 63	Iss.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Southern Triangle Oil Co., Inc.:					
CI64-74 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	8 23 63	Iss.
Southern Triangle Oil Co., Inc., et al.:					
CI64-80 Hope Natural Gas Co.	Central District	W. Va.	Doddridge	8 30 63	Iss.
Southern Union Production Co.:					
CI64-282 El Paso Natural Gas Co.	Dakota Formation	N. Mex.	San Juan*	10 15 63	Iss.
Southwest Gas Producing Co., Inc., et al.:					
CI63-1195 Southern Natural Gas Co.	Oldenburg	Miss.	Franklin	7 29 63	Iss.
Southwest Production Co.:					
CI63-618 El Paso Natural Gas Co.	Undesignated	N. Mex.	San Juan*	10 17 63	Wtd.
CI63-1159 El Paso Natural Gas Co.	Undesignated	N. Mex.	San Juan	7 2 63	Iss.
CI63-1208 El Paso Natural Gas Co.	Gallup Formation	N. Mex.	San Juan	7 29 63	Iss.
Southwest Resources, Inc.:					
G-20103 Transcontinental Gas Pipe Line Corp.	Iota	La.	Acadia	10 31 63	Iss.
Southwestern Development Co.:					
CI63-848 Hope Natural Gas Co.	Union District	W. Va.	Ritchie	8 5 63	Iss.
Southwestern Life Insurance Co.:					
CI62-1304 Texas Eastern Transmission Corp.	Helen Gohlke	Tex.	Victoria	8 5 63	Iss.
MacDonald Spidel, et al.:					
CI64-483 Equitable Gas Co.	Salt Lake District	W. Va.	Braxton	12 5 63	Iss.
J. E. Stack, Jr., Operator, et al.:					
CI64-61 United Gas Pipe Line Co.	Gwinville	Miss.	Jefferson Davis	11 12 63	Iss.
Paul Starr, Agent:					
CI64-313 Hope Natural Gas Co.	Washington District.	W. Va.	Calhoun	10 31 63	Iss.
CI64-316 Hope Natural Gas Co.	Washington District.	W. Va.	Calhoun	10 31 63	Iss.
CI64-368 Equitable Gas Co.	Birch District	W. Va.	Braxton	10 31 63	Iss.
CI64-549 Hope Natural Gas Co.	Tygart District	W. Va.	Wood	12 26 63	Iss.
State Exploration Co.:					
CI62-326 Trunkline Gas Co.	Esther Field Area	La.	Vermilion	10 25 63	Iss.
Stewart Oil Co.:					
CI64-88 Cities Service Gas Co.	Undesignated	Kans.	Cowley	8 30 63	Iss.
Deane H. Stoltz:					
CI61-484 El Paso Natural Gas Co.	Spraberry Trend Area.	Tex.	Upton	12 13 63	Iss.
Gordon Street, Inc., Operator, et al.:					
CI64-372 Tennessee Gas Transmission Co.	East Alligator Bayou.	Tex.	Chambers	10 31 63	Iss.
C. A. Stricklin, et al.:					
CI63-1478 Hope Natural Gas Co.	Union District	W. Va.	Ritchie	10 11 63	Iss.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Sun Oil Co.:					
G-19574 Southern Natural Gas. Co.	Montegut	La.	Lafourche*	12 23 63	Iss.
CI62-470 Arkansas Louisiana Gas Co.	Manziel	Tex.	Wood	7 29 63	Iss.
CI62-1186 Tennessee Gas Transmission Co.	Lake Pelto	La.	Terrebonne	12 23 63	Iss.
CI63-1142 Northern Natural Gas Co.	John Creek	Tex.	Hutchinson	7 2 63	Iss.
CI63-1335 Cities Service Gas Co.	N.W. Lovedale	Okla.	Harper	9 13 63	Iss.
CI63-1543 Northern Natural Gas Co.	S.E. Share	Tex.	Ochiltree	7 25 63	Iss.
CI64-352 Texas Eastern Transmission Corp.	Shepherd	Tex.	Hidalgo	10 31 63	Iss.
CI64-353 Texas Eastern Transmission Corp.	Hidalgo	Tex.	Hidalgo	10 31 63	Iss.
CI64-362 The Manufacturers Light and Heat Co.	Henry Clay* Townships.	Pa.	Fayette	10 31 63	Iss.
Sunland Refining Co.:					
CI64-332 El Paso Natural Gas Co.	Huerfand Dakota Unit.	N. Mex.	San Juan	10 31 63	Iss.
Sunray DX Oil Co.:					
G-13349 Kansas-Nebraska Natural Gas Co., Inc.	Little Hoot	Colo.	Logan	8 5 63	Iss.
G-13365 Coastal States Gas Producing Co.	Premont Area	Tex.	Jim Wells	8 5 63	Iss.
G-13634 Northern Natural Gas Co.	Beaver	Tex.	Oklahoma*	8 5 63	Iss.
G-13641 Northern Natural Gas Co.	Undesignated	Tex.	Hansford	8 5 63	Iss.
G-14347 Panhandle Eastern Pipe Line Co.	Cameron	Okla.	Texas	8 5 63	Iss.
G-16233 Texas Eastern Transmission Corp.	Southeast Charco	Tex.	Goliad	8 5 63	Iss.
G-16444 Cities Service Gas Co.	Eureka District	Okla.	Grant*	8 5 63	Iss.
CI60-250 United Gas Pipe Line Co.	N. Leroy	La.	Vermilion	8 23 63	Iss.
CI62-1412 Oklahoma Natural Gas Gathering Corp.	Ringwood	Okla.	Major	9 17 63	Iss.
CI63-1118 Cities Service Gas Co.	N.E. Waynoka	Okla.	Woods	7 29 63	Iss.
CI63-1407 Kansas-Nebraska Natural Gas Co., Inc.	Syracuse Area	Kans.	Hamilton	9 13 63	Iss.
CI63-1502 El Paso Natural Gas Co.	W. Jal Strawn	N. Mex.	Lea	10 11 63	Iss.
CI64-32 Arkansas Louisiana Gas Co.	Anthon	Okla.	Custer	10 15 63	Iss.
CI64-33 Arkansas Louisiana Gas Co.	Lacy	Okla.	Kingfisher	10 15 63	Iss.
CI64-34 Arkansas Louisiana Gas Co.	Thomas Area	Okla.	Custer	10 15 63	Iss.
CI64-40 Arkansas Louisiana Gas Co.	Southeast Custer City.	Okla.	Custer	8 21 63	Iss.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Sunray DX Oil Co.—Continued					
CI64-106 Northern Natural Gas Co.	Hunt Baggett	Tex.	Crockett	9 6 63	Iss.
CI64-137 Panhandle Eastern Pipe Line Co.	Northeast Trail	Okla.	Dewey	11 18 63	Iss.
CI64-158 Southern Union Gathering Co.	San Juan Basin	N. Mex.	San Juan	10 9 63	Iss.
CI64-261 Arkansas Louisiana Gas Co.	North Cooper	Okla.	Blaine	11 18 63	Iss.
CI64-555 Northern Natural Gas Co.	Southeast Como	Okla.	Beaver	12 26 63	Iss.
Sunset International Petroleum Corp.:					
CI63-803 Northern Natural Gas Co.	Hansford	Tex.	Hansford	8 5 63	Iss.
The Superior Oil Co.:					
G-16380 Transcontinental Gas Pipe Line Corp.	Vermilion Area	La.	Offshore	7 17 63	Iss.
G-16388 United Gas Pipe Line Co.	Bayou Penchant*	La.	Terrebonne	7 17 63	Iss.
G-19129 Florida Gas Transmission Co.	Potrero Lopena	Tex.	Kenedy	12 26 63	Wtd.
The Superior Oil Co., et al.:					
CI63-377 United Gas Pipe Line Co.	Bayou Rambio	La.	Terrebonne	10 31 63	Iss.
Syndex, Inc.:					
CI64-102 Hope Natural Gas Co.	Sheridan District	W. Va.	Calhoun	8 30 63	Iss.
B. E. Talkington, et al.:					
CI64-318 Hope Natural Gas Co.	Meade District	W. Va.	Upshur	10 31 63	Iss.
Warren L. Taylor, et al.:					
CI64-449 Hope Natural Gas Co.	McClellan District	W. Va.	Doddridge	11 29 63	Iss.
Tenneco Corp.:					
CI63-312 Panhandle Eastern Pipe Line Co.	N.W. Avard	Okla.	Woods	9 17 63	Iss.
CI63-1424 Panhandle Eastern Pipe Line Co.	N.E. Trail	Okla.	Dewey	12 18 63	Iss.
Tenneco Oil Co.:					
CI63-1302 Oklahoma Natural Gas Gathering Corp.	Ringwood	Okla.	Major	8 28 63	Iss.
Tex-Star Oil & Gas Corp.:					
CI64-31 El Paso Natural Gas Co.	Ignacio	Colo.	La Plata	8 21 63	Iss.
Tex-Star Oil & Gas Corp., et al.:					
CI61-1524 Transcontinental Gas Pipe Line Corp.	Undesignated	La.	Vermilion	11 12 63	Iss.
Texaco Inc.:					
G-10202 Colorado Interstate Gas Co.	Mocane	Okla.	Beaver	8 5 63	Iss.
G-16994 United Gas Pipe Line Co.	Lapeyrouse	La.	Terrebonne	10 25 63	Iss.
G-17779 Transcontinental Gas Pipe Line Corp.	Hancker	La.	Vermilion	10 25 63	Iss.
G-20251 Hope Natural Gas Co.	South Bosco	La.	Acadia*	10 25 63	Iss.
CI60-518 Tennessee Gas Transmission Co.	Lake Washington*	La.	Plaquemines*	10 25 63	Iss.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Texaco Inc.—Continued					
CI61-60 Tennessee Gas Transmission Co.	Grosse Isle	La.	Vermilion	10 25 63	Iss.
CI61-955 United Gas Pipe Line Co.	Gibson	La.	Terrebonne	10 25 63	Iss.
CI61-962 Texas Gas Transmission Corp.	Bay Junop	La.	Terrebonne	10 25 63	Iss.
CI61-969 Transcontinental Gas Pipe Line Corp.	South Berg	La.	Terrebonne	10 25 63	Iss.
CI61-1416 Coastal Transmission Corp.	Lake Fausse Point	La.	Iberville*	10 25 63	Iss.
CI61-1420 Coastal Transmission Corp.	Pecaniere	La.	St. Landry	10 25 63	Iss.
CI61-1438 Coastal Transmission Corp.	Lake Mongoulois	La.	St. Martin	10 25 63	Iss.
CI61-1463 Tennessee Gas Transmission Co.	LeBlanc	La.	Allen	10 25 63	Iss.
CI61-1713 Tennessee Gas Transmission Co.	Chandeleur Sound	La.	St. Bernard	10 25 63	Iss.
CI62-16 United Gas Pipe Line Co.	North Leroy	La.	Vermilion	10 25 63	Iss.
CI62-407 Transcontinental Gas Pipe Line Corp.	Bayou Couba	La.	St. Charles	10 25 63	Iss.
CI62-712 Cities Service Gas Co.	Guymon-Hugoton	Okla.	Texas	7 2 63	Iss.
CI63-449 United Fuel Gas Co.	Cote Blanche Island	La.	St. Mary	10 25 63	Iss.
CI63-756 United Fuel Gas Co.	Little Pecan Lake	La.	Cameron	10 25 63	Iss.
CI63-1111 Panhandle Eastern Pipe Line Co.	Hansford North	Tex.	Hansford	7 29 63	Iss.
CI63-1364 Natural Gas Pipeline Co. of America.	Lundell	Tex.	Duval	9 13 63	Iss.
CI63-1438 Cities Service Gas Co.	S.E. Sterling	Okla.	Comanche	10 11 63	Iss.
CI64-3 Arkansas Louisiana Gas Co.	North Carter	Okla.	Beckham	9 6 63	Iss.
CI64-196 Panhandle Eastern Pipe Line Co.	Mouser Deep Area	Okla.	Texas	10 9 63	Iss.
CI64-268 Northern Natural Gas Co.	Banner Block Area	Kans.	Stevens	10 15 63	Iss.
CI64-416 Banquete Gas Co., a division of Crestmont.	East Taft	Tex.	San Patricio	11 18 63	Iss.
Texaco Inc., Operator, et al.:					
CI62-1370 Lone Star Gas Co.	West Chapel Hill	Tex.	Smith	8 5 63	Iss.
Texas Crude Oil Co., Operator, et al.:					
G-20124 Trunkline Gas Co.	Esther Field Area	La.	Vermilion	9 13 63	Iss.
Texas Gas Exploration Corp.:					
CI62-930 Transcontinental Gas Pipe Line Corp.	Vermilion Area	La.	Offshore	12 18 63	Iss.
Texas Gas Exploration Corp., Operator, et al.:					
CI61-1125 Hope Natural Gas Co.	South Rayne	La.	Acadia*	12 18 63	Iss.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Texas Gulf Producing Co.:					
CI63-772 Texas Gas Transmission Corp.	North Hayes	La.	Calcasieu	12 26 63	Iss.
CI64-54 Natural Gas Pipeline Co. of America.	Lundell Field Area	Tex.	Duval	8 23 63	Iss.
Texas Pacific Coal & Oil Co.:					
CI63-1351 El Paso Natural Gas Co.	Jalmat	N. Mex.	Lea	9 13 63	Iss.
CI63-1573 Phillips Petroleum Co.	South King Mountain.	Tex.	Upton	8 6 63	Iss.
Texas Petro Gas Co.:					
CI63-1179 Petro Gas Producing Co.	Undesignated	La.	Cameron	10 11 63	Iss.
Texas San Juan Oil Corp.:					
CI60-122 Tennessee Gas Transmission Co.	Miller*	Tex.	Jim Wells*	8 5 63	Iss.
Texoma Production Co.:					
CI63-1042 Michigan Wisconsin Pipe Line Co.	Woodward Area	Okla.	Dewey	9 13 63	Iss.
CI64-134 Panhandle Eastern Pipe Line Co.	West Taloga Area	Okla.	Dewey	10 15 63	Iss.
Glenn F. Thomas, et al.:					
CI64-130 Northern Natural Gas Co.	Harper Ranch	Kans.	Clark	9 6 63	Iss.
Thomason-Brooks Drilling Co., Inc.:					
CI63-1328 United Gas Pipe Line Co.	Sibley	La.	Webster	10 30 63	Iss.
James and Knight Thornton:					
CI64-119 United Natural Gas Co.	Kane	Pa.	Elk	9 6 63	Iss.
Harry T. Thorson:					
CI63-1123 Mountain Fuel Supply Co.	Salt Wells Area	Wyo.	Sweetwater	7 2 63	Iss.
Tidewater Oil Co.:					
G-17578 Florida Gas Transmission Co.	Palacios	Tex.	Matagorda	10 31 63	Iss.
G-18376 Florida Gas Transmission Co.	Palacios	Tex.	Matagorda	10 31 63	Iss.
G-19071 Florida Gas Transmission Co.	Pheasant	Tex.	Matagorda	12 26 63	Wtd.
CI60-142 United Gas Pipe Line Co.	Bastian Bay	La.	Plaquemines	7 17 63	Iss.
CI63-823 United Gas Pipe Line Co.	Southwest Kinder	La.	Allen	12 26 63	Iss.
CI63-824 United Gas Pipe Line Co.	St. Martinville	La.	St. Martin	12 26 63	Iss.
CI63-914 Michigan Wisconsin Pipe Line Co.	N.E. Cederdale	Okla.	Major	12 18 63	Iss.
Tidewater Oil Co., Operator, et al.:					
CI62-638 Texas Gas Transmission Corp.	Duson	La.	Lafayette	12 26 63	Iss.
Robert P. Tinnin, et al.:					
CI64-60 El Paso Natural Gas Co.	Canyon Largo	N. Mex.	Rio Arriba	8 23 63	Iss.
J. C. Trahan, Drilling Contractor, Inc.:					
CI63-1288 Arkansas Louisiana Gas Co.	Lick Creek	La.	Claiborne	8 28 63	Iss.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
J. C. Trahan, Drilling Contractor, Inc., et al.:					
CI64-276 Trunkline Gas Co.	Cage Ranch	Tex.	Brooks	10 15 63	Iss.
Trans-Appalachian Oil & Gas Co.:					
CI64-312 Hope Natural Gas Co.	Clay District	W. Va.	Harrison	10 31 63	Iss.
Transamerican Petroleum Corp.:					
CI63-1417 Medina Gathering Corp.	Undesignated	Pa.	Crawford	11 12 63	Iss.
Mary H. Trenchard:					
CI64-226 Montana-Dakota Utilities Co.	Worland	Wyo.	Washakie*	9 27 63	Iss.
Trojan Coal & Petroleum Corp.:					
CI63-1524 Hope Natural Gas Co.	Elk District	W. Va.	Barbour	10 11 63	Iss.
Twin Gas Co., Operator:					
CI63-1192 Lone Star Gas Co.	Undesignated	Okla.	Comanche*	7 29 63	Iss.
Paul H. Umbach:					
CI63-1325 El Paso Natural Gas Co.	Blanco	N. Mex.	San Juan	11 22 63	Iss.
Rip C. Underwood:					
G-18585 Northern Natural Gas Co.	Hansford	Tex.	Ochiltree	8 28 63	Iss.
Union Drilling, Inc.:					
CI62-1029 Equitable Gas Co.	Buckbannon District.	W. Va.	Upshur	8 28 63	Iss.
CI63-871 Cumberland & Allegheny Gas Co.	Warren District	W. Va.	Upshur	8 5 63	Iss.
CI63-1233 Equitable Gas Co.	Skin Creek District	W. Va.	Lewis	9 13 63	Iss.
Union Producing Co.:					
CI60-344 Southern Natural Gas Co.	Felice Bayou	La.	Plaquemines	10 29 63	Iss.
CI61-1111 Transcontinental Gas Pipe Line Corp.	Eugene Island Area	La.	Offshore	10 29 63	Iss.
Union Texas Petroleum, a Division of Allied Chemical Co.:					
CI61-462 Transcontinental Gas Pipe Line Corp.	S. E. Houma	La.	Terrebonne	8 23 63	Iss.
CI63-1095 Lone Star Gas Co.	E. Durant	Okla.	Bryan	7 29 63	Iss.
United Co., Operator and Agent:					
CI64-45 Trunkline Gas Co.	West Premont	Tex.	Jim Wells	8 21 63	Iss.
United Western Oil & Gas Co.:					
CI63-1177 Mountain Fuel Supply Co.	Six Mile Spring	Wyo.	Sweetwater	7 2 63	Iss.
U.S. Oil of Louisiana, Inc.:					
CI61-174 United Gas Pipe Line Co.	Sunrises	La.	Terrebonne	10 31 63	Iss.
U.S. Oil of Louisiana, Inc., Operator, et al.:					
CI61-173 Southern Natural Gas Co.	Lake Washington	La.	Plaquemines	10 31 63	Iss.
R. N. Usher & Polly Usher:					
CI63-1384 El Paso Natural Gas Co.	Basin Dakota	N. Mex.	San Juan	9 13 63	Iss.
Valley Gas Production, Inc.:					
CI63-1561 Valley Gas Transmission, Inc.	S. Coleto Creek	Tex.	Victoria	9 19 63	Iss.
William Van Harlow, Jr., et al.:					
CI64-98 Phillips Petroleum Co.	Hugoton*	Okla*	Texas*	8 30 63	Iss.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER#, DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Viersen & Cochran, Operator, et al.:					
CI63-1508 Arkansas Louisiana Gas Co.	East Medford	Okla.	Grant	10 11 63	Iss.
Frank Vogler:					
CI64-75 Texas Gas Transmission Corp.	Midland Area	Ky.	Muhlenburg	8 30 63	Iss.
Voor Mac Trust:					
CI63-122 Colorado Interstate Gas Co.	Highland	Okla.	Beaver	8 5 63	Iss.
Wacker Oil Co., Inc.					
CI63-1389 United Gas Pipe Line Co.	Donner	La.	Terrebonne	9 13 63	Iss.
Frank H. Walsh Line Co.:					
CI63-1114 Kansas-Nebraska Natural Gas Co., Inc.	State Lease North	Colo.	Logan	7 29 63	Iss.
Tommy Ward Drilling Co., Operator, et al.:					
CI63-1324 Arkansas Louisiana Gas Co.	Lacy area	Okla.	Kingfisher	9 13 63	Iss.
CI64-168 Northern Natural Gas Co.	N.E. Flat Area	Okla.	Texas	9 19 63	Iss.
Warren American Oil Co.:					
CI63-1582 Cities Service Gas Co.	North Quinlan	Okla.	Woodward	8 6 63	Iss.
Dorothea Webber:					
CI62-1310 Hope Natural Gas Co.	Meade	W. Va.	Tyler	8 5 63	Iss.
Ted Weiner, Operator, et al.:					
G-20126 Trunkline Gas Co.	Esther Field Area	La.	Vermilion	9 13 63	Iss.
N. M. Welch:					
CI64-542 Cabot Corp.	Clay District	W. Va.	Wirt	12 26 63	Iss.
Douglas Whitaker, Operator, et al.:					
CI63-1350 Arkansas Louisiana Gas Co.	Chenlere	La.	Ouachita	9 13 63	Iss.
Charles C. White, Operator, et al.:					
CI63-1213 Texas Gas Transmission Corp.	Hanson Area	Ky.	Hopkins	7 29 63	Iss.
Whittington Number Four, Operator, et al.:					
CI64-36 United Gas Pipe Line Co.	Bethany-Blocker	Tex.	Harrison	8 21 63	Iss.
E. V. Whitwell:					
G-7471 United Gas Pipe Line Co., et al.:	Cotton Valley	La.	Webster	10 30 63	Iss.
Wilcox Oil Co.:					
CI63-1415 Northern Natural Gas Co.	Booker East	Tex.	Lipscomb	10 30 63	Iss.
CI63-1504 Arkansas Louisiana Gas Co.	S.E. Custer City	Okla.	Custer	10 30 63	Iss.
CI63-1553 Panhandle Eastern Pipe Line Co.	N.W. Avard	Okla.	Woods	10 15 63	Iss.
W. E. Williams:					
CI63-1258 Texas Gas Transmission Corp.	Midland Area	Ky.	Muhlenberg	8 6 63	Iss.
Harry Wines, et al.:					
CI64-410 Hope Natural Gas Co.	Malden	W. Va.	Kanawha	11 18 63	Iss.

See footnotes at end of table, p. 1720.

NEW SERVICE CERTIFICATES—Continued

PRODUCER, # DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
M. R. Witsman, et al.:					
CI63-1462 Hope Natural Gas Co.	Freemans Creek District.	W. Va.	Lewis	10 11 63	Iss
Wolfson Oil Co., Operator, et al.:					
CI63-1032 Northern Natural Gas Co.	Tubbland Blinery	N. Mex.	Lea	7 2 63	Iss.
Herbert E. Wollard:					
CI63-1181 Tennessee Gas Transmission Co.	N. Ross	Tex.	Starr	7 29 63	Iss.
Wood Oil Co.:					
CI63-113 Fort Smith Gas Corp.	Cartersville	Okla.	Leflore	8 6 63	Iss.
A. C. Woodford, et al.:					
CI64-474 Penzoil Co.	Union* Districts	W. Va.	Ritchie	12 5 63	Iss.
Woods Petroleum Corp., Operator, et al.:					
CI63-1321 Cities Service Gas Co.	Undesignated	Okla.	Alfalfa	9 13 63	Iss.
E. M. Woody, et al.:					
CI64-76 Arkansas Louisiana Gas Co.	North Carter	Okla.	Beckham	11 18 63	Iss.
Worldwide Petroleum Corp.:					
CI62-761 Consolidated Gas Gathering Corp.	Undesignated	Pa.	Erie*	7 16 63	Iss.
CI64-132 Lake Shore Pipe Line Co.	Conneaut Township.	Pa.	Erie	9 19 63	Iss.
Wrico Drilling Co. Operator, et al.:					
CI63-1124 Cities Service Gas Co.	Undesignated	Kans.	Cowley	7 2 63	Iss.
Richard J. Wright, et al.:					
CI64-552 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	12 26 63	Iss
J. C. Wynne:					
CI62-271 Northern Natural Gas Co.	Undesignated	Tex.	Ochiltree	8 28 63	Iss.
George L. Yaste:					
CI63-1093 Cabot Corp.	Pleasants District	W. Va.	Clay	7 29 63	Iss
CI63-1323 Equitable Gas Co.	Clay District	W. Va.	Ritchie	9 13 63	Iss.
CI63-1380 Hope Natural Gas Co.	Grant District	W. Va.	Ritchie	9 13 63	Iss.
CI64-492 Carnegie Natural Gas Co.	Union District	W. Va.	Ritchie	12 13 63	Iss.
Bert Young:					
CI64-305 Cities Service Gas Co.	Antelope E. Mississippi Gas Pool.	Kans.	Marion	12 5 63	Iss.
Milton S. Yunker, Operator, et al:					
CI64-234 Texas Gas Transmission Corp.	Midland Gas Area	Ky.	Muhlenberg	9 27 63	Iss.
Zapata Offshore Co.:					
G-18369 Transcontinental Gas Pipe Line Corp.	Block 86	La.	Vermilion	8 23 63	Iss.
Lura M. Zickefoose:					
CI62-957 Carnegie Natural Gas Co.	Union District	W. Va.	Ritchie	10 9 63	Iss.

See footnotes at end of table, p. 1720.

PRODUCER APPLICATIONS FOR ABANDONMENT OF SERVICE DISPOSED OF DURING THE PERIOD JULY 1, 1963 THROUGH DECEMBER 31, 1963

PRODUCER,[3] DOCKET NO. AND PURCHASER[3]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [4]
Acme Drilling Co.:					
CI64-8 New York State Natural Gas Corp.	Leidy Township	Pa.	Clinton	8 13 63	Iss.
R. H. Adkins, et al.:					
CI63-1361 South Penn Oil Co.	Jefferson District	W. Va.	Lincoln	10 11 63	Iss.
H. H. Allen Gas Co.:					
CI64-405 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	11 18 63	Iss.
Ambassador Oil Corp., Operator, et al.					
CI63-818 Lone Star Gas Co.	McPhail Unit	Okla.	Stephens	10 11 63	Iss.
Amerada Petroleum Corp.:					
CI64-406 Transcontinental Gas Pipe Line Corp.	Tilden Area	Tex.	McMullen	11 18 63	Iss.
American Petrofina, Inc., et al.:					
G-16498 Panhandle Eastern Pipe Line Co.	Wellsford	Kans.	Kiowa	7 18 63	Iss.
The Atlantic Refining Co.					
CI62-1409 Orange Grove Flare Gas Gathering Co.	Orange Grove	Tex.	Jim Wells	7 18 63	Iss.
CI63-1121 Transcontinental Gas Pipe Line Corp.	Palmetto	La.	St. Landry	7 18 63	Iss.
CI63-1356 Tennessee Gas Transmission Co.	South Elsa	Tex.	Hidalgo	10 11 63	Iss.
B.C. & K. Gas Co.:					
CI63-1448 South Penn Oil Co.	Sheridan District	W. Va.	Lincoln	10 11 63	Iss.
BTA Oil Producers, Operators, et al.					
CI64-185 El Paso Natural Gas Co.	Undesignated	Tex.	Andrews	10 9 63	Iss.
Bailey Gas Co.:					
CI63-1215 Hope Natural Gas Co.	Triadelphia	W. Va.	Logan	7 18 63	Iss.
Barnwell Drilling Co., Inc.:					
CI64-370 Texas Eastern Transmission Corp.	Fort Lynn	Ark.	Miller	12 26 63	Iss.
Bel Oil Corp., Operator, et al.:					
CI64-292 United Gas Pipe Line Co.	Foley	La.	Allen	10 15 63	Iss.
The Blackwell Oil & Gas Co.:					
CI64-453 Louisiana-Nevada Transit Co.	Haynesville Area	La.	Claiborne	11 29 63	Iss.
B. F. Bowman.:					
CI63-1167 Hope Natural Gas Co.	Union District	Tex.	Harrison	7 18 63	Iss.
C. E. Braden, et al.:					
CI64-321 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	10 31 63	Iss.
H. L. Brown.:					
CI63-1256 United Gas Pipe Line Co.	Doty	Tex.	Orange	10 11 63	Iss.
Francis E. Ca'n, et al.:					
CI63-1334 Hope Natural Gas Co.	Lee District	W. Va.	Calhoun	10 11 63	Iss.

See footnotes at end of table, p. 1720.

ABANDONMENT APPLICATIONS—Continued

PRODUCER,# DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Earl Carlton, Inc., Operator., et al.:					
CI63-1525 Texas Eastern Transmission Corp.	Turtle Bay	Tex	Chambers	10 11 63	Iss.
W. W. Carter, et al.					
G-11773 Texas Eastern Transmission Corp.	S. Karon	Tex	Bee*	8 16 63	Iss.
Lyle Cashion Co.:					
CI64-283 United Gas Pipe Line Co.	Baxterville	Miss	Lamar	10 15 63	Iss.
Cities Service Co.:					
CI64-419 Texas Eastern Transmission Corp.	Puerto Bay	Tex	Aransas	11 18 63	Iss.
Cities Service Oil Co.:					
CI63-1065 Panhandle Eastern Pipe Line Co.	Lamb No. 2 Gas Unit.	Kans	Edwards	10 11 63	Iss.
Coastal States Gas Producing Co.					
CI62-1461 The Altex Corp.	Undesignated	Tex	Jim Wells	8 6 63	Iss.
Cohen & Kosovitz, et al.:					
G-12582 Caddo Pine Island Corp.	Pine Island	La	Caddo	8 17 63	Iss.
Commonwealth Gas Corp.					
CI64-382 United Fuel Gas Co.	Elk District	W. Va	Kanawha	11 12 63	Iss.
Continental Oil Co.:					
CI64-149 Panhandle Eastern Pipe Line Co.	Angell	Kans	Meade	9 12 63	Iss.
Edwin L. Cox, Operator, et al.:					
CI63-1168 Lone Star Gas Co.	Undesignated	Okla	Stephens	10 11 63	Iss.
Creek Oil Co., Inc.:					
CI64-343 Texas Gas Transmission Corp.	Graham Lake	Ky	Muhlenberg	10 31 63	Iss.
Crescent Production Co., Inc., et al.					
CI63-1155 Arkansas Louisiana Gas Co.	Haynesville	La	Claiborne	7 18 63	Iss.
Crystal Oil & Land Co.:					
CI62-52 Arkansas Louisiana Gas Co.	Ivan Gas	La	Bossier	8 23 63	Iss.
C. C. Dodd, et al.:					
CI64-325 Hope Natural Gas Co.	Arthur District	W. Va	Braxton	10 31 63	Iss.
N. V. Duncan Drilling Co., et al.:					
CI62-421 Cities Service Gas Co.	Undesignated	Okla	Logan*	7 18 63	Iss.
Far-West Trading Co., et al.:					
CI64-500 Kansas-Nebraska Natural Gas Co., Inc.	Bijou	Colo	Morgan	12 13 63	Iss.
Far-West Trading Co., Operator, et al.:					
CI64-501 Kansas-Nebraska Natural Gas Co., Inc.	Sutton Lease Trend	Colo	Morgan	12 13 63	Iss.
W. J. Fellers, et al.:					
CI64-212 Phillips Petroleum Co.	West Panhandle	Tex	Hutchinson	10 9 63	Iss.
Ferebee Oil & Gas Co.:					
CI62-1417 Carnegie Natural Gas Co.	Appalachian	W. Va	Tyler	7 18 63	Iss.

See footnotes at end of table, p. 1720.

ABANDONMENT APPLICATIONS—Continued

PRODUCER,[2] DOCKET NO. AND PURCHASER[2]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
John Franks:					
G-18934 Ingersoll Power & Fabricating Co., Inc.	Greenwood-Waskom	La.	Caddo	7 18 63	Iss.
The Fremont Petroleum Co.:					
CI64-139 Northern Utilities Co.	South Sand Draw Unit Area.	Wyo.	Fremont	9 12 63	Iss.
B. C. Garnett, Operator, et al.:					
CI64-192 Florida Gas Transmission Co.	Shield	Tex.	Nueces	9 19 63	Iss.
O. W. Gerwig, et al.:					
CI64-404 Hope Natural Gas Co.	Center District	W. Va.	Gilmer	11 18 63	Iss.
Getty Oil Co., Operator, et al.:					
CI63-1551 Natural Gas Pipeline Co. of America.	Freeborn	Tex.	Jim Wells*	7 25 63	Iss.
Ginther, Warren & Co., Operator, et al.:					
CI63-1461 Texas Eastern Transmission Corp.	Aldine	Tex.	Harris	10 11 63	Iss.
Gulf Oil Corp.:					
CI63-1327 Lone Star Gas Co.	Fox	Okla.	Carter	11 22 63	Iss.
CI64-279 Cities Service Gas Co.	Coffee Creek	Okla.	Okla.	10 15 62	Iss.
CI64-560 Texas Eastern Transmission Corp.	John C. Robbins	Tex.	Rusk	12 26 63	Iss.
Gulf Oil Corp., Operator, et al.:					
CI63-1008 Kansas-Nebraska Natural Gas Co., Inc.	Undesignated	Colo.	Morgan	7 18 63	Iss.
Theo. Hamm Brewing Co., Operator, et al.:					
CI63-1018 Tennessee Gas Tranmission Co.	North Louise	Tex.	Wharton	7 18 63	Iss.
Jake L. Hamon, Operator, et al.:					
CI64-436 Texas Eastern Transmission Corp.	Baker Wilcox	Tex.	McMullen	11 18 63	Iss.
H. B. Harkins					
G-11382 United Gas Pipe Line Co.:	Yanta	Tex.	Goliad*	8 16 63	Dis.
Harper Oil Co., Operator, et al.:					
CI63-1185 Cities Service Gas Co.	Short Junction	Okla.	Cleveland	10 11 63	Iss.
Haught Oil & Gas Co.:					
CI62-1423 Penova Interests.	Dutchman Run	W. Va.	Ritchie*	7 18 63	Iss.
Hawn Brothers:					
CI64-390 Banquete Gas Co., a Division of Crestmont.	St. Paul South	Tex.	San Patricio	11 12 63	Iss.
Helmerich & Payne, Inc., Operator, et al.:					
CI63-1333 Lone Star Gas Co.	East Brady	Okla.	Garvin	11 22 63	Iss.
R. J. Hopkins:					
CI63-1196 The Manufacturers Light and Heat Co.	Benezette Township.	Pa.	Elk	7 18 63	Iss.

See footnotes at end of table, p. 1720.

ABANDONMENT APPLICATIONS—Continued

PRODUCER,[2] DOCKET NO. AND PURCHASER[2]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Humble Oil & Refining Co.:					
CI63-990 Tennessee Gas Transmission Co.	Phil Power	Tex.	Refugio	7 18 63	Iss.
CI63-1071 Texas Eastern Transmission Corp.	Southeast Joaquin	Tex.	Shelby	7 18 63	Iss.
CI63-1359 United Gas Pipe Line Co.	N. Jacksonville	Tex.	Cherokee	10 11 63	Iss.
CI63-1419 Transcontinental Gas Pipe Line Corp.	Cooke	Tex.	Lasalle	10 11 63	Iss.
CI64-407 Natural Gas Pipeline Co. of America.	Blair Unit	Okla.	Tex.	11 18 63	Iss.
H. L. Hunt:					
CI64-204 Socony Mobil Oil Co., Inc.	Cowpen Creek	La.	Beauregard	9 19 63	Iss.
Haroldson L. Hunt, Jr., Trust Estate:					
CI64-56 United Gas Pipe Line Co.	West Pilgrim Church Area.	La.	Allen	8 23 63	Iss.
Lyda Hunt-Margaret Trusts, et al.:					
CI63-1590 Socony Mobil Oil Co., Inc.	Cowpen Creek	La.	Beauregard	8 13 63	Iss.
The Hunter Co., Inc.:					
CI64-381 Arkansas Louisiana Gas Co.	Jefferson	Tex.	Marion	12 26 63	Iss.
Huron Drilling Co., Inc.:					
CI63-643 Kansas-Nebraska Natural Gas Co., Inc.	Surveyors Creek	Colo.	Washington	7 18 63	Iss.
Helen Johnson:					
CI63-1446 Hope Natural Gas Co.	Ten-Mile District	W. Va.	Harrison	10 11 63	Iss.
Marian F. Johnson:					
CI64-235 Hope Natural Gas Co.	Sardis District	W. Va.	Harrison	10 19 63	Iss.
Thomas Jordan, Inc.:					
CI63-1447 United Gas Pipe Line Co.	Napoleonville	La.	Assumption	10 11 63	Iss.
Harry A. Kalish, et al.:					
CI64-114 Hope Natural Gas Co.	Washington District	W. Va.	Calhoun	9 6 63	Iss.
CI64-193 Hope Natural Gas Co.	Washington District	W. Va.	Calhoun	9 19 63	Iss.
Kirkwood & Co.:					
G-11384 Texas Eastern Transmission Corp.	Jennie Bell*	Tex.	De Witt*	8 16 63	Dis.
Lario Oil & Gas Co.:					
CI60-38 Colorado Interstate Gas Co.	Adams Ranch	Kans.	Meade	7 18 63	Iss.
Logue & Patterson, et al.:					
CI61-68 AGSCO Minerals Corp.	Refugio Town Tract	Tex.	Refugio	7 18 63	Iss.
C. H. Lyons, Sr., et al.:					
CI63-789 Texas Gas Transmission Corp.	East Lake Palourde	La.	Assumption	10 11 63	Iss.
CI63-1038 Texas Gas Transmission Corp.	East Lake Palourde	La.	Assumption	10 11 63	Iss.

See footnotes at end of table, p. 1720.

ABANDONMENT APPLICATIONS—Continued

PRODUCER,# DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Alva McCullough, et al.:					
CI63-1555 Hope Natural Gas Co.	Troy District	W. Va.	Gilmer	7 25 63	Iss.
J. C. McCullough Farm Gas Co.:					
CI64-262 Hope Natural Gas Co.	Lafayette District	W. Va.	Pleasants	10 9 63	Iss.
John W. McKnab:					
CI64-452 Kansas-Nebraska Natural Gas Co., Inc.	Young	Colo.	Morgan	11 29 63	Iss.
H. T. Manning, Trustee, et al.:					
CI63-1253 United Gas Pipe Line Co.	Greenwood-Waskom.	La.	Caddo	10 11 63	Iss.
Marathon Oil Co.:					
CI63-1298 Transcontinental Gas Pipe Line Corp.	Quinto Creek	Tex.	Jim Wells	10 11 63	Iss.
CI64-111 Natural Gas Industries, Inc.	Greenwood-Waskom.	La.	Caddo	9 12 63	Iss.
CI64-203 Coastal States Gas Producing Co., et al.	Papalote Area	Tex.	Bee	9 19 63	Iss.
Mathews Heirs Gas Co.:					
CI63-1186 Hope Natural Gas Co.	Troy District	W. Va.	Gilmer	7 18 63	Iss.
Mayflo Oil Co.:					
CI63-1505 Northern Natural Gas Co.	Elmwood	Okla.	Beaver	10 11 63	Iss.
J. R. Meeker, et al.:					
CI63-1346 Texas Eastern Transmission Corp.	Henze	Tex.	De Witt	10 11 63	Iss.
Winnie Fay Morris, et al.:					
CI64-124 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	9 6 63	Iss.
W. H. Mossor:					
CI62-1415 Equitable Gas Co.	Southwest District	W. Va.	Doddridge	7 18 63	Iss.
CI62-1418 Equitable Gas Co.	West Union District	W. Va.	Doddridge	7 18 63	Iss.
W. H. Mossor, et al.:					
CI64-115 Hope Natural Gas Co.	Union District	W. Va.	Ritchie	9 6 63	Iss.
John N. Mowry, et al.:					
CI64-126 Hope Natural Gas Co.	Union District	W. Va.	Ritchie	9 12 63	Iss.
Frederick W. Mueller, Operator, et al.:					
CI64-376 Banquete Gas Co., a Division of Crestmont.	Plymouth*	Tex.	San Patricio	11 29 63	Iss.
Mustang Oil Corp.:					
CI63-1285 Tennessee Gas Transmission Co.	North Odem	Tex.	San Patricio	10 11 63	Iss.
Newlon Oil & Gas Co.:					
CI62-1422 Carnegie Natural Gas Co.	Union District	W. Va.	Ritchie	7 18 63	Iss.
Eulalie M. Noblis, et al.:					
CI63-1280 United Gas Pipe Line Co.	Lisbon	La.	Claiborne	7 18 63	Iss.
Wm. C. Nolan, et al.:					
CI64-459 Humble Gas Transmission Co.	Undesignated	La.	Franklin	12 5 63	Iss.

See footnotes at end of table, p. 1720.

ABANDONMENT APPLICATIONS—Continued

PRODUCER,[2] DOCKET NO. AND PURCHASER[2]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Wayland W. Oatman:					
CI63-1115 Transcontinental Gas Pipe Line Corp.	Clayton	Tex.	Live Oak	7 18 63	Iss.
Oil Reserves Corp.:					
CI63-1016 Trunkline Gas Co.	Little Rock Creek	Tex.	Hardin	10 11 63	Iss.
M. R. Osbourn Gas Co.:					
CI63-835 Cabot Corp.	Murphy District	W. Va.	Ritchie	7 18 63	Iss.
Pace Bower Construction Co.:					
CI63-1133 Hope Natural Gas Co.	Collins Settlement District.	W. Va.	Lewis	7 18 63	Iss.
Pan American Petroleum Corp.:					
CI64-178 El Paso Natural Gas Co.	Navajo D No. 1, et al.	N. Mex.	San Juan[3]	12 23 63	Wtd.
CI64-401 Lone Star Gas Co.	Undesignated	Okla.	Stephens	11 12 63	Iss.
Parker Petroleum Co., Inc., Operator, et al.:					
CI63-1386 Cities Service Gas Co.	Medicine Lodge North.	Kans.	Barber	10 11 63	Iss.
CI63-1387 Cities Service Gas Co.	Undesignated	Kans.	Barber	11 22 63	Iss.
CI63-1566 The Range Co.	Blackwell East	Okla.	Kay	8 6 63	Iss.
Petroleum Exploration, Inc., of Texas, Operator, et al.					
CI64-9 El Paso Natural Gas Co.	Upton-Clearfork	Tex.	Upton	11 22 63	Iss.
Petroleum Promotions, Inc.:					
CI63-1456 Hope Natural Gas Co.	Troy District	W. Va.	Gilmer	10 11 63	Iss.
Phillips Petroleum Co.:					
CI60-619 Rycade Oil Corp.	Emperor	Tex.	Winkler	10 9 63	Iss.
CI64-433 Texas Gas Pipe Line Corp.	Robinson Lake	Tex.	Chambers	11 18 63	Iss.
CI64-455 Otha H. Grimes.	Undesignated	Okla.	Garvin	11 29 63	Iss.
D. W. Pickett, Jr.:					
CI63-1559 Texas Eastern Transmission Corp.	Chicolete Creek	Tex.	Lavaca	8 23 63	Iss.
Pine Hill Gas Co.:					
CI64-97 United Fuel Gas Co.	Undesignated	W. Va.	Cabell	8 30 63	Iss.
Albert C. Plummer:					
CI63-1235 Tennessee Gas Transmission Co.	Cleto Creek	Tex.	Victoria	10 11 63	Iss.
Ferrell L. Prior, et al.:					
CI63-1374 Equitable Gas Co.	Court House District.	W. Va.	Lewis	10 11 63	Iss.
CI63-1375 Equitable Gas Co.	Collins Settlement District.	W. Va.	Lewis	10 11 63	Iss.
Producing Properties, Inc., Operator, et al.:					
CI64-50 Southern Natural Gas Co.	Gwinville	Miss.	Simpson	8 23 63	Iss.
L. H. Puckett, et al.:					
CI64-217 Phillips Petroleum Co.	West Panhandle	Tex.	Unnamed	10 9 63	Iss.
The Pure Oil Co.:					
CI63-1402 Kansas-Nebraska Natural Gas Co., Inc.	Doll Area	Colo.	Weld	10 11 63	Iss.

See footnotes at end of table, p. 1720.

ABANDONMENT APPLICATIONS—Continued

PRODUCER,[2] DOCKET NO. AND PURCHASER[2]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Justin R. Querbes, Jr., et al.:					
CI64-538 United Gas Pipe Line Co.	Greenwood-Waskom.	La.	Caddo	12 26 63	Iss.
Quinto Creek Production Co., Inc.:					
CI63-1140 Transcontinental Gas Pipe Line Corp.	Quinto Creek	Tex.	Jim Wells	7 18 63	Iss.
CI63-1141 Transcontinental Gas Pipe Line Corp.	Quinto Creek	Tex.	Jim Wells	7 18 63	Iss.
Jack P. Rayzor, Operator, et al.:					
CI63-1274 Tennessee Gas Transmission Co.	Kulcak	Tex.	Wharton	10 11 63	Iss.
Refugio Enterprises, Inc., Operator, et al.:					
CI63-1301 GASCO Minerals Corp.	Mission River	Tex.	Refugio	10 11 63	Iss.
William B. Rezek, et al.:					
CI64-127 Hope Natural Gas Co.	Grant District	W. Va.	Ritchie	9 6 63	Iss.
Winston C. Rice, et al.:					
CI63-1332 Ingersoll Power Fabricating Co., Inc.	Greenwood-Waskom.	La.	Caddo	10 11 63	Iss.
H. F. Sears, et al.:					
CI64-359 Phillips Petroleum Co.	Undesignated	Tex.	Hutchinson	10 31 63	Iss.
Sellwood-Myers:					
CI64-57 Arkansas Louisiana Gas Co.	Rodessa	La.	Caddo	8 23 63	Iss.
Shannon Oil Co.:					
CI63-1588 Northern Utilities Co.	South Sand Draw Unit Area.	Wyo.	Fremont	8 13 63	Iss.
Shell Oil Co.:					
CI64-16 Tennessee Gas Transmission Co.	Nada	Tex.	Colorado	8 21 63	Iss.
CI64-108 Texas Eastern Transmission Corp.	Sarah White East	Tex.	Galveston	10 15 63	Iss.
CI64-355 Tennessee Gas Transmission Co.	East Cameron	Tex.	Starr	10 31 63	Iss.
CI64-411 Arkansas Louisiana Gas Co.	Darley	La.	Bienville	11 18 63	Iss.
L. L. Shinn:					
CI64-339 Hope Natural Gas Co.	West Union District.	W. Va.	Doddridge	10 31 63	Iss.
Sinclair Oil & Gas Co.:					
CI63-897 Transcontinental Gas Pipe Line Corp.	Palmetto	La.	St. Landry	7 18 63	Iss.
Sinclair Oil & Gas Co., Operator, et al.					
CI63-1322 Tennessee Gas Transmission Co.	Timbalier Bay	La.	Lafourche	10 11 63	Iss.

See footnotes at end of table, p. 1720.

ABANDONMENT APPLICATIONS—Continued

PRODUCER,[2] DOCKET NO. AND PURCHASER[3]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Siznod Oil Corp., et al.:					
CI63-1531 Texas Eastern Transmission Corp.	Holzmark	Tex.	Bee	10 11 63	Iss.
Skelly Oil Co.:					
CI63-1279 Natural Gas Pipeline Co. of America.	Fairbanks	Tex.	Harris	10 11 63	Iss.
D. W. Skelton:					
CI63-1589 United Gas Pipe Line Co.	Baxterville	Miss.	Lamar*	8 13 63	Iss.
Skinner Corp., Operator, et al.:					
CI64-275 Transcontinental Gas Pipe Line Corp.	Craig	Tex.	McMullen	10 15 63	Iss.
Sam Sklar, et al.:					
CI63-1153 United Gas Pipe Line Co.	Rodessa	Tex.	Cass	7 18 63	Iss.
A. W. Smith, Trustee:					
CI63-1412 Transcontinental Gas Pipe Line Corp.	Lacy	Tex.	Hidalgo*	10 11 63	Iss.
J. M. L. Smith, et al.:					
CI63-1132 Hope Natural Gas Co.	West Union District	W. Va.	Doddridge	7 18 63	Iss.
Sohio Petroleum Co.:					
CI63-1550 Tennessee Gas Transmission Corp.	Timbalier Bay	La.	Lafourche	8 6 63	Iss.
Southwest Gas Producing Co., Inc.:					
CI64-360 Southern Natural Gas Co.	Clay	La.	Lincoln*	10 31 63	Iss.
Stonestreet Lands Co.:					
CI63-1260 Hope Natural Gas Co.	McElory* Districts	W. Va.	Tyler	7 18 63	Iss.
CI64-182 Hope Natural Gas Co.	Clay District	W. Va.	Ritchie	9 12 63	Iss.
Estate of John L. Sullivan, Deceased:					
CI63-1483 Unit Gas Co., Inc.	Palo Blanco	Tex.	Brooks	10 11 63	Iss.
Sun Oil Co., Southwest Division:					
CI64-53 Transcontinental Gas Pipe Line Corp.	Quinto Creek	Tex.	Jim Wells	10 31 63	Iss.
The Superior Oil Co.:					
CI63-1395 El Paso Natural Gas Co.	Spraberry	Tex.	Reagan*	10 11 63	Iss.
Tenneco Corp.:					
CI63-1339 Texas Eastern Transmission Corp.	Seclusion	Tex.	Lavaca	10 11 63	Iss.
CI63-1469 Lone Star Gas Co.	Doyle	Okla.	Stephens	10 11 63	Iss.
CI64-295 Arkansas-Louisiana Gas Co.	S.E. Braman	Okla.	Kay	10 31 63	Iss.
CI64-296 Arkansas-Louisiana Gas Co.	East Haynesville	La.	Claiborne	10 31 63	Iss.
CI64-335 Arkansas-Louisiana Gas Co.	Bistineau	La.	Webster*	10 31 63	Iss.
Tenneco Oil Corp.:					
CI64-336 Arkansas-Louisiana Gas Co.	Wallace Johnson	Tex.	Marion	10 31 63	Iss.

See footnotes at end of table, p. 1720.

ABANDONMENT APPLICATIONS—Continued

PRODUCER[S], # DOCKET NO. AND PURCHASER[S]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Texaco Inc.:					
CI64-301 Humble Gas Transmission Co.	Holly Ridge	La.	Tensas	10 31 63	Iss.
CI64-420 United Gas Pipe Line Co.	Lisbon	La.	Claiborne	11 18 63	Iss.
Texas Gulf Producing Co.:					
CI64-499 Shell Oil Co.	Englehart	Tex.	Colorado	12 13 63	Iss.
Robert B. Thompson:					
CI64-162 The Nueces Co.	Agua Dulce	Tex.	Nueces	9 12 63	Iss.
Tidewater Oil Co.:					
CI63-1450 Natural Gas Pipeline Co. of America.	Sinton	Tex.	San Patricio	10 11 63	Iss.
CI64-265 United Gas Pipe Line Co.	N.W. Corpus Channel.	Tex.	San Patricio*	10 31 63	Iss.
R. A. Tidwell, et al.:					
CI62-443 N. V. Duncan Drilling Co., et al.	Undesignated	Okla.	Lincoln	7 18 63	Iss.
Transcontinental Production Co., Operator, et al.:					
CI63-460 Transcontinental Gas Pipe Line Corp.	Mission Bridge Area	Tex.	Victoria	11 29 63	Iss.
Paul R. Turnbull:					
CI64-135 Tennessee Gas Transmission Co.	Santellana	Tex.	Hidalgo	9 6 63	Iss.
Unit Gas Co., Inc.:					
CI63-1485 Texas Eastern Transmission Corp.	Palo Blanco	Tex.	Brooks	10 11 63	Iss.
Urpman Oil & Gas Co.:					
CI63-836 Cabot Corp.	Murphy District	W. Va.	Ritchie	7 18 63	Iss.
G. H. Vaughn:					
CI63-1472 Louisiana-Nevada Transit Co.	Haynesville	La.	Claiborne	10 11 63	Iss.
Viney Gas Co.:					
CI63-1449 South Penn Oil Co.	Sheridan District	W. Va.	Lincoln	10 11 63	Iss.
Frank B. Waters, Operator, et al.:					
CI64-116 Valley Gas Transmission, Inc.	Ramirena	Tex.	Live Oak	9 6 63	Iss.
Western Natural Gas Co.:					
CI64-558 Texas Eastern Transmission Corp.	West George West	Tex.	Live Oak	12 26 63	Iss.
Joseph Sidney Wheless, Jr.:					
CI63-1067 United Gas Pipe Line Co.	Baxterville	Miss.	Lamar*	7 18 63	Iss.
W. M. Wheless, et al.:					
CI63-1066 United Gas Pipe Line Co.	Baxterville	Miss.	Lamar*	7 18 63	Iss.
J. C. Williamson, Operator, et al.:					
CI64-288 Northern Natural Gas Co.	Clayton Ranch A	Tex.	Crockett	11 12 63	Iss.
John S. Wold:					
CI64-14 Kansas-Nebraska Natural Gas Co., Inc.	Undesignated	Wyo.	Converse	8 21 63	Iss.
Woods Petroleum Corp.:					
CI64-366 Cities Service Gas Co.	Eureka Area	Okla.	Alfalfa	10 31 63	Iss.

See footnotes at end of table, p. 1720.

ABANDONMENT APPLICATIONS—Continued

PRODUCER,# DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Woods Petroleum Corp., et al.:					
CI63-1473 Cities Service Gas Co.	Eureka	Okla	Alfalfa	10 11 63	Iss.
Martin Wunderlich:					
CI63-1017 Cities Service Gas Co.	Undesignated	Okla	Noble	7 18 63	Iss.
Charles E. Young, et al.:					
CI63-1087 Hope Natural Gas Co.	Clay District	W. Va	Ritchie	7 18 63	Iss.
Frank Zickefoose, et al.:					
CI63-1122 Hope Natural Gas Co.	Troy District	W. Va	Gilmer	7 18 63	Iss.
Frank Zickefoose, Attorney-In-Fact.					
CI64-43 Hope Natural Gas Co.	Union District	W. Va	Ritchie	8 21 63	Iss.

PRODUCER APPLICATIONS FOR STATUS DETERMINATION DISPOSED OF DURING PERIOD, JULY 1, 1963 THROUGH DECEMBER 31, 1963

PRODUCER,# DOCKET NO. AND PURCHASER #	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Amerada Petroleum Corp.:					
CI61-1133 Montana-Dakota Utilities Co.	Nesson Anticline Area.	N. Dak	Burke*	7 15 63	Jur.
Signal Oil & Gas Co.:					
CI61-1271 Montana-Dakota Utilities Co.	Nesson Anticline Area.	N. Dak	Burke*	7 15 63	Jur.

*Indicates that other fields, counties, or States are also included.

#Producers' and Purchasers' names may include et al., trustee, agent, or additional names on certain dockets.

[1] Iss., issued; Wtd., withdrawn; Rej., rejected; Dis., dismissed; Can., canceled; Jur., Commission has jurisdiction.